

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Joanne Brock
23285 Mosier Road
Sedro Woolley, WA 98284

File No: PL08-0442

Request: Special Use Permit

Location: 23285 Mosier Road, within a portion of the SW1/4 of Sec. 1,
T35N, R4E, W.M.

Parcel No: P35546

Land Use Designation: Rural Reserve (RRv)

Summary of Proposal: To operate a kennel for the breeding of Chihuahua and Pug dogs.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on October 28, 2009.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Joanne Brock seeks a Special Use Permit to operate a kennel for the breeding of Chihuahua and Pug dogs. This is an unpermitted kennel that existed prior to the adoption of the current kennel regulations. It is being processed as allowed in Ordinance #020080004.

2. The facility is located adjacent to applicant's home at 23285 Mosier Road. The property is Parcel number P35546, within a portion of the SW1/4 Sec. 1, T35N, R4E, W.M. The site is on the north side of Mosier Road between Grip Road and State Route 9, north of Sedro Woolley.

3. The property is zoned Rural Reserve (RRv). It is approximately 10 acres in size and is basically rectangular in shape, with a north-south configuration. The property measures about 330 feet along the north (rear) and south(front) property lines, and 1300 feet along the east and west (side) property lines. The property is fenced and is basically flat.

4. Adjacent properties are of similar size and, except for the next property to the west, are developed with single family homes. The northern half of the property and the area along the west property line are heavily forested.

5. The property has an existing residence, a garage and several outbuildings, all located on the lower third of the lot. The residence is set back approximately 300 feet from Mosier Road. A 31-foot travel trailer is located northeast of the residence. The trailer is used for the kennel operation. It is about 400 feet from the road. The property is served by an on-site septic system and a private well.

6. The travel trailer where the dogs are housed is about 50 feet from the east property line. It is heated in cooler weather and there are fans for warmer times. The temperature is generally kept at 65 degrees. The trailer is well-lighted and there is running water both inside and out. Dry food and water are kept available for the dogs both inside and outside of the trailer. Attached to north side of the trailer are runs to which the dogs have access from the trailer via doggie doors. The covered back run area (approximately 9' x 12') is used by males. The females use the front run (21' x 12'), which is covered in part and uncovered in part. Adjacent to these runs is another covered area (4' x 8 1/2') where puppies are kept after they are four to five weeks old. On the south side of the trailer is a 5' x 8' run area where females in heat are kept. Inside the trailer are a number of portable dog carriers with bedding in them. The females have access to these at all times. Every dog is placed in his own carrier at night.

7. The runs are covered with pea gravel and shavings. Drainage is good and permits infiltration. There is a curtain drain in the driveway to the west of the kennel area. Animal waste is cleaned up daily, placed in double bags and put in the garbage. Garbage is hauled to a transfer station, typically once a month. The portable carriers are pressure washed as needed and

the bedding is washed at least once a week, more often if needed. The trailer is disinfected every four days. The dogs themselves are regularly bathed.

8. The dogs get an adequate amount of exercise. They are turned loose into the dog runs in the morning. They are taken out twice a day to run the fenced property for about two hours.

9. At the time of application, there were eight Chihuahuas and three Pugs at the site. The females are bred once a year. They are taken into the residence when they are ready to give birth. Mothers and puppies stay in the residence from four to five weeks and are then moved to the puppy kennel. The mothers stay there with the puppies for a few days before they are separated during the daytime. The puppies stay with their mothers for three to four weeks at night. When the females start to get old (about seven), they are no longer bred and are thereafter kept as pets. (Currently there are three pet dogs which stay in the house or separate quarters.) Dogs are taken out for rabies shots once a year and the operation has had no dog sickness. The sales contracts provide for the return of puppies if there is a problem.

10. The operation is family run. There are no outside employees. There are no particular hours. Sales are made through newspaper ads, or the internet. Members of the public come to the site only by appointment in connection with sales. There is more than adequate parking on the property.

11. In addition to breeding and selling dogs, the applicant maintains 50 or so birds on the property in a separate enclosure and in the house. She is a volunteer in a bird rescue operation and offers a foster home for some of them. She has macaws, cockatoos, cockatiels and parakeets. These birds are kept solely as pets and are not sold. There is no commercial dimension to keeping the birds.

12. Because of the thick vegetation, no additional landscaping is needed to shield the kennel operation from outside view along the north and west boundaries. However, the Staff recommends additional landscaping along the south and east property lines to screen the kennel area from the view of neighbors.

13. In five years of operation, the applicant has received no complaints. The remoteness of the locale and the rarity of visitors apparently minimize the impact of barking.

14. If an emergency were to require evacuation of the kennel, the applicant states that the dogs could readily be evacuated. In case of a need to leave the property, the dogs could be transported out.

15. The county adopted comprehensive regulations governing kennels in 2008. Permits are now required for most kennels. However, under the adopting Ordinance, kennels that existed prior to July 2, 2007 are exempt from requirements for minimum acreage, minimum setbacks,

and fencing between kennels and property lines. The subject operation is such a pre-existing kennel.

16. Notice of the instant application, mailing and posting were carried out as required by law. There were not public comments prior to hearing. A Mitigated Determination of Non-Significance (MDNS) was issued on July 28, 2009, under the State Environmental Policy Act (SEPA). The appeal period ended on August 28, 2009. There were no appeals.

17. The following conditions were placed in the MDNS:

- Solid waste shall be at a minimum double bagged and placed in metal receptacles on premises to be disposed of on a weekly schedule, either picked up by Waste Management, Inc., another solid waste handler or taken to a solid waste transfer station.
- The bagged waste shall weigh no more than 10 pounds each.
- The receptacle(s) shall be covered and insect and rodent proofed.
- As an alternative, an approved agriculture waste plan or an approved onsite septic system used exclusively for the containment of the animal waste may be used. The septic system must be monitored and maintained at a maximum of every six (6) months.
- The applicant shall comply with SCC 14.16.840 Performance Standards.

18. The application was routed to various County departments for review. Their comments are reflected in conditions of approval. Because no new structures, improvements or land clearing were proposed no critical areas review was required. No written comments were received from members of the public.

19. SCC 14.16.900(2)(i) contains specific criteria for kennels being reviewed for Special Use Permits. The subject operation is exempt from the first two paragraphs of this subsection. The applicable requirements include rules on parking, lighting, waste disposal, prevention of escapement, night-time containment, emergency evacuation, and exercise. By reference the provisions of Chapter 7.02 SCC must also be met. The latter chapter sets forth both environmental and operational requirements, to insure humane treatment of animals as well as human health. Under the facts found above, the Examiner determines that the subject facility and operation, as conditioned below, meets all of these criteria and requirements.

20. In addition, the application must be consistent with the general criteria for Special Use Permit issuance. These are set forth in SCC 14.16.900(1)(b)(v), as follows:

- A. The proposed use will be compatible with existing and planned land use and

comply with the Comprehensive Plan.

B. The proposed use complies with the Skagit County Code.

C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.15.840.

D. The proposed use will not generate intrusions on privacy of surrounding uses.

E. Potential effects regarding the general public health, safety, and general welfare.

F. For special uses in . . . [natural resource lands], the impacts on long-term natural resource management and production will be minimized.

G. The proposed use is not in conflict with the health and safety of the community.

H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

21. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the operation will be consistent with them. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

22. The only public comment at the hearing was from the Humane Society of Skagit Valley. The Society submitted a letter and oral testimony. The Society raised questions about whether sufficient shelter, lighting and temperature controls are being provided to protect the animals. Also questioned was the availability of running water and the frequency of washing the carriers and bedding. Concerns were also expressed about the level of health care given to the dogs. Mention was made of a new statute that addresses humane requirements for breeding operations that will become effective in January.

23. The concerns expressed by the Humane Society were responded to effectively by the applicant. The Hearing Examiner finds that the applicant provided enough information to evaluate and satisfy the requirements for protecting the health and welfare of the animals.

24. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.050(1)(b).
2. The requirements of SEPA have been met.
3. A Hearing Examiner Special Use Permit is required for a "limited kennel" in a Rural Reserve zoning district. SCC 14.06.320(4)(n)(ii).
4. The subject kennel is a "limited kennel" as defined by SCC 14.04.020. The operation meets the special criteria for a limited kennel. SCC 14.16.900(2)(i)(ix).
5. The operation, as conditioned, will meet all of the applicable criteria for kennels under SCC 14.16.900(2)(i), including the provisions of Chapter 7.02 SCC. In particular, adequate provisions have been made for the humane treatment of the dogs and the protection of human health.
6. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The operation shall be conducted as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall comply with all conditions of the MDNS, issued July 28, 2009. (See Finding 17).
3. The applicant shall install additional landscaping on the south and east property lines as approved by Planning and Development Services (PDS).
4. The kennel shall adhere to all requirements listed in Chapter 7.02 SCC and all applicable requirements of SCC 14.16.900(2)(i). No dogs shall be commercially boarded at the site.
5. The applicant shall comply with the following General Kennel Waste Handling Requirements:
 - Kennels need to be cleaned at regular intervals to prevent accumulation of manure that attract flies and rodents. It is recommended that the kennels receive daily cleaning.

- The collected manure needs to be double bagged (heavy duty plastic) with little or no air space in amounts of no more than about 10 pounds. Dispose of the bags with either the household garbage service or self-haul to a Skagit County solid waste handling facility. The double bagged manure (as with household garbage) needs to be stored in durable rodent and fly proof containers with tight fitting lids. The waste needs to be disposed of on a frequency that does not create a nuisance or odors.
- Kennels should be located in areas where drainage from the pads, slabs and runway wash down will be absorbed on the applicant's property and will not affect surface or ground water. Wells should be located 100 feet from kennel drainage areas.
- No more water than is necessary to clean the pads should be used. If the down gradient drainage area is limited in size or the depth of soil limited or the permeability slow it is recommended a high pressure sprayer be used to limit the amount of water used to perform wash down.
- Storage or treatment in a holding tank or on-site sewage (OSS) disposal system separate from the residential system may be used with special review and permission by the Public Health Department. An OSS must be designed or approved by a Licensed Designer or Engineer, monitored on a frequency determined by the Health Department and pumped as needed.

6. The applicant shall comply with all applicable State and County regulations, including but not limited to Chapters 173-210A and 200 WAC (water quality), Chapter 172-60 WAC (noise) and SCC 14.16.840 (performance standards for noise, vibration and light).

7. PDS shall be provided with an invoice from the transfer station to verify the disposal of solid waste from the site.

8. PDS shall be notified by letter within 30 days after any change in ownership of the parcel. The letter shall reference permit number PL08-0418.

9. Per SCC 14.16.900(3), the applicant shall comply with the annual certification process, acknowledging in writing compliance with the original permit approval including any conditions.

10. All planning related fees, including recording of the decision, must be paid within 30 days of receipt of the invoice.

11. If the operation ceases for a period of one year, the permit shall be void.

12. Per SCC 14.16.900(2)(i)(xiv), this permit may be rescinded if it is discovered that the

applicant has been convicted of animal cruelty as defined in Chapter 16.52 RCW.

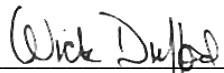
13. Per SCC 14.16.900(2)(i)(xv), PDS may rescind this permit if the operation is found in violation of any of the provisions of Chapter 7.02 SCC.

14. Failure to comply with any of the conditions herein may result in permit revocation.

DECISION

The requested Special Use Permit is approved, subject to the conditions set forth above.

DONE this 30th day of November, 2009.



Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.