

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Gloria Hurst
P.O. Box 105
Clear Lake, WA 98235

File No: PL08-0464

Request: Special Use Permit

Location: 23636 Bartl Ave. in Clear Lake, described as Plat of Clear Lake, Lots 12 to 14, Block 11. The property is within a portion of SE1/4SW1/4 of Sec. 1, T34N, R4E, W.M.

Parcel No: P74843

Land Use Designation: Rural Village Residential

Summary of Proposal: To operate Gloryland Chihuahua Kennel, a kennel for the breeding of Chihuahua dogs. This kennel existed prior to the adoption of current kennel regulations.

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. Gloria Hurst seeks a Special Use Permit to operate a kennel for the breeding of Chihuahua 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 in the applicant's home at 23636 Bartl Avenue in Clear Lake. The property is Parcel number PP74843, described as Plat of Clear Lake, Lots 12 to 14 Block 11. It is within a portion of the SE1/4 SW1/4 Sec. 1, T34N, R4E, W.M. The property lies at the southwest corner of Bartl Avenue and South Mill Street

3. The property is zoned Rural Village Residential. It is approximately .34 acres in size and is basically rectangular in shape with a north/south configuration. The property measures about 110 feet along the north (side) property line (Bartl Ave.), 134 feet along the west (front) property line, 122 feet along the south (side) property line and 123 feet along the east (rear) property line. It is basically flat.

4. Adjacent to the north, south and west are similar-size lots developed with single family homes. To the east is a vacant lot. The property is within 500 feet of designated natural resource land.

5. The property has an existing residence and a garage. The residence is in the middle of the property and the garage is in the southeast corner. A four-foot chain link fence surrounds the residence. A six-foot wood fence runs along the south property line. There is parking for 8-12 cars between the home and this fence. The property is served by an on-site septic system and PUD water.

6. The operation involves showing and breeding Chihuahuas and selling them. The applicant is assisted by her husband and two grandsons. The applicant is very active in organizations that deal with Chihuahuas, and, in particular has supported rescue efforts for dogs that need homes.

7. The kennel operation is conducted within the residence. The 1,500 square-foot basement is used for the bigger dogs (around 10 lbs) which are retired breeders or agility dogs. In the basement are a 4' x 6' x 4' chain link kennel structure and a 4' x 6' homemade wire and wood kennel. Both are heated with heat lamps. Opening to this area is a doggie door that leads to a covered 12' x 10' exercise area. There is an additional 4' x 6' x 4' pen in the exercise area. The floors are mixture of concrete, dirt/shavings, and wood. The basement is also used for the storage of dog feed and equipment.

8. Upstairs on the main level of the house is a covered back deck, 10' x 28'. In the laundry room inside the backdoor are shelves that hold four large crates used for sleeping and eating by the four stud dogs. The adjacent kitchen has three more dog beds used for females.

There are more sleeping/eating crates throughout the house, as well as a variety of pens, including human quality playpens for litters and nursing mothers, as well as plastic exercise pens for weaned pups and litters. The applicant notes, "We do not have room for all of this equipment at one time. We assemble, unassemble, clean and store as needed."

9. The applicant usually has about 20 dogs. But because she takes in rescue dogs that number can increase. All puppies are vet checked. Contracts for sale include a return clause. The contracts also contains a spay or neuter provision. Pups released from the kennel receive a free vet check, three days of puppy food and an information packet on Chihuahua care. The vast majority of puppy sales are to private homes for pets. A small number of dogs are shown by family members or sold for show dogs or as breeders.

10. Kennel waste is picked up daily in the house and as needed in the yard. It is disposed of by double bagging and placing it in the garbage where it is collected by Waste Management.

11. Although the living arrangement would not be everyone's cup of tea, the premises appear clean and well-maintained. There is every indication that the dogs are well cared for and given attention and affection.

12. For this kind of use, the lot is small. However, though the kennel has been in operation for 15 years, there is no record of complaints from neighbors about noise, or anything else. There were no letters of opposition from neighbors. The applicant pointed out that "our dogs keep regular hours. Never outside before 8 a.m., or after 12 p.m." The kennel is not open to the public, except by appointment. Sometimes tours come through from senior centers and church groups. There is more than adequate parking.

13. The dogs have a large grassy outdoor play area within the chain link fence surrounding the house, where they are turned out for exercise and potty breaks every two to three hours in the day time. In foul weather they use the exercise pen under the back deck or the covered deck itself. The dogs are free within the house to run and play at will. They are only crated for feeding and at night for sleeping. According to the applicant Chihuahuas do not need a lot of exercise. Adequate facilities for exercise are provided.

14. If an emergency were to require evacuation of the house, the applicant states that the dogs could be walked out or put in a crate and packed out. Once outside, they would be transported in a van to the local community church which is within walking distance.

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 no 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.

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 which addressed what it perceives as shortcomings in the ordinance, insofar as it contains an exemption for pre-existing kennels from the acreage limitations. It also noted that a new State Law providing humanitarian requirements will become effective in January 2010. These comments are aimed matters which are not presently the law. The Hearing Examiner finds that the applicant provided ample information to evaluate and satisfy the requirements for protecting the health and welfare of the animals.

23. 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 Village Residential zoning district. SCC 14.06.320(4)(e)(iii).

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 provision 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 comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

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).

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. Planning and Development Services (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.

8. 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.

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

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

11. 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.


12. 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.

13. 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.