

WHATCOM COUNTY HEARING EXAMINER

RE: Administrative Appeal ) APL2015-0005  
Application for )  
*Dale and Dawn Marr* ) FINDINGS OF FACT,  
 ) CONCLUSIONS OF LAW,  
 ) AND DECISION

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**SUMMARY OF APPEAL AND DECISION**

Appeal: The Appellants, Dale and Dawn Marr, owners of Marr's Black Plush Ranch, Inc. are appealing an Administrative Decision issued by Whatcom County Planning and Development Services regarding a zoning interpretation that fur farms are a prohibited use in the Rural Zone District.

Planning's reasoning is that the term fur farm is a specific, stated use in the Zoning Ordinance, and is not listed as a Permitted Use, Administrative Approval Use, or a Conditional Use, and is therefore a prohibited use in the Rural zone.

The Appellants argue that a fur or mink farm is a Permitted Use under the category of "animal husbandry."

Decision: The Administrative Decision is upheld. The Appeal is denied.

**FINDINGS OF FACT**

**I.  
Background Information**

Appellants: Dale and Dawn Marrs

Site Location/Address: 9580 and 9590 Mt. Baker Highway, Glacier WA

Assessor's Parcel Number(s): 390601 353177 and 390601 377160

Zoning: Rural (R5A)

Total Acreage: ~10 acres

Authorizing Codes, Policies, Plans, and Programs

The Official Whatcom County Zoning Ordinance, Title 20

Legal Notice of Open Record Hearing, August 6, 2015

Certificate of Posting Notice of Open Record Hearing, August 5, 2015

Hearing Date: August 19, 2015

**Exhibits:**

- 1 Administrative Appeal Application, 2015-0005, dated June 12, 2015 with attachments
  - 1-1 Appeal Statement and Customer Receipt, dated February 17, 2015
  - 1-2 Agent Authorization
  - 1-3 Email from Jack Swanson dated August 3, 2015 to Carole Magner re: property address correction
- 2 Letter dated June 1, 2015 from Amy Keenan to Jack Swanson re: denial of application for storage structure for Marr's Black Plush Ranch
- 3 Appellant's Brief, prepared by Jack Swanson, stamp dated received July 13, 2015, with attachments:
  - 3-1 Attachment A Site Plan for Storage Barn Installation, dated March 14, 2015, prepared by Associated Project Consultants, Inc. submitted with request for building improvements permit
  - 3-2 Attachment B Email from Jack Swanson to Nick Smith, dated May 19, 2015 re: zoning interpretation
  - 3-3 Attachment C Full text of WCC 20.80.800
  - 3-4 Attachment D Email from Amy Keenan to Jack Swanson, dated May 13, 2015
- 4 Staff Report, dated August 6, 2015 with attachments:
  - 4-1 Attachment A June 1, 2015 letter to Jack Swanson [same as Exh 2]
  - 4-2 Attachment B Aerial photo, 1986; 1998; 2004; 2008; 2013
  - 4-3 Attachment C 9580 Mt. Baker Highway: Permit 9280, issued Sept 15, 1986; Permit 8673, issued April 6, 1987; DET2008-00241, issued October 1, 2008;
  - 4-4 Whatcom County Hearing Examiner Summary of Appeal and Decision, Ken and Charmae Scheffer, dated January 30, 2015
- 5 Legal Notice, Open Record Hearing, dated August 6, 2015
- 6 Certificate of Posting, Notice of Open Record Hearing, dated August 5, 2015
- 7 Supplemental Memorandum, prepared by Jack Swanson, August 14, 2015

- 8 1987 Building Permit Application Approval
- 9 Appellant's Second Memorandum, dated August 26, 2015, prepared by Jack Swanson, with attached Letter dated August 30, 2012, from Tyler Schroeder, PDS Planning Manager, re: Zoning verification for Mink Farm Located in the AG Zoning District
- 10 Whatcom County's Response, dated August 28, 2015, prepared by Royce Buckingham

**Parties of Record**

Dale and Dawn Marr  
9471 Mt. Baker Highway  
Glacier, WA 98224

Jack Swanson  
Belcher Swanson Law Firm, LLC  
900 Dupont Street  
Bellingham, WA 98225

Royce Buckingham  
Whatcom County Civil Deputy Prosecutor

Amy Keenan, Senior Planner  
Nick Smith, Permit Center Specialist  
Planning and Development Services

**II.**

The Appellants are the owners of a mink farm. In 1987, a building permit was granted to the Appellants for construction of a building to house a mink farm. The building permit indicated the property was located in the GP or General Protection Zone. The mink farm has expanded over the last three decades. No use permits have been granted for the mink farm or for any of the expansion that has taken place. The property is now in the Rural zone. It appears probable that the mink farm was legally established, but that issue is not part of this Appeal.

In March 2015, the Appellants' representative attended a scheduled prescreening application appointment with Whatcom County Planning and Development Service [PDS], Building Services Division, regarding a permit for construction of a manure/compost storage

shed for the mink farm. The building was proposed as part of an agreement between the mink farm and the Washington State Department of Ecology. The purpose of the building is to provide a place of covering mink feces to improve water quality runoff from the mink farm site.

An initial review of zoning requirements at the site led Staff to conclude that a mink farm is not a Permitted or Conditional Use in the Rural zone. Staff did indicate that the building proposed could be approved as an expansion of a legal nonconforming use if it was legally established.

On June 1, 2015, PDS Staff issued a zoning response letter with an official Administrative Determination concluding that fur farms are a prohibited use in the Rural zone. A timely Appeal was filed. The only issue before the Hearing Examiner is a legal issue regarding the establishment of fur farms in the Rural zone. There are no factual disputes.

### **III.**

Any Findings of Fact deemed to be Conclusions of Law are hereby adopted as such. Based on the foregoing Findings of Fact now are entered the following Conclusions of Law.

## **CONCLUSIONS OF LAW**

### **I.**

It is the Planning Department's position, that since fur farms are treated as a separate and distinct use in a number of sections of the Whatcom County Zoning Ordinance, and because fur farms are not listed as a Permitted, Administrative Approval Use, or a Conditional Use in the Rural zone, fur farms fall under "all other uses," which are prohibited under WCC 20.36.201.

The Appellants argue that fur farms are allowed in the Rural zone under the category of animal husbandry. Animal husbandry is a Permitted Use in the Rural zone.

Planning relies, in part, on the Hearing Examiner Decision in the Administrative Appeals of Ken and Charmae Scheffer, APL2014-0007, APL2014-0008, and APL2014-0009. The Appellants argue that this Appeal can and should be distinguished from the Scheffer Decision and that the Scheffer Decision is not applicable here for a number of reasons.

## II.

The term animal husbandry is used at least nine times in the Whatcom County Zoning Ordinance. It is listed as a Permitted Use in a number of zones, including the Urban Residential, Residential Rural, Rural Agriculture zone, and the Rural Forestry zone.

Animal husbandry is listed as a prohibited use in the Lake Whatcom Watershed Overlay District and the Watershed Protection Overlay District.

The term, fur farms, is used at least four times in the Whatcom County Zoning Ordinance. In three instances, both, animal husbandry and fur farms are used in the same Chapter, and named as separate uses. Animal husbandry is a Permitted Use in the Rural Forestry zone. Fur Farms are listed as a Conditional Use in the Rural Forestry zone.

Animal husbandry and fur farms are listed as prohibited uses, in separate sections, in the Lake Whatcom Overlay District and the Watershed Protection Overlay District.

Planning concludes that the separate use of the term “fur farm” and “animal husbandry” is a clear indication of the legislative body's intent to treat fur farms as a use distinguishable from and different than animal husbandry. The Hearing Examiner agrees. To rule otherwise would be making the use of the term fur farms superfluous in the Chapters where animal husbandry and fur farms are uses listed separately. If the legislative body intended fur farms to be included in animal husbandry, it would make no sense to list them as separate prohibited uses in the two Overlay Districts and, even less sense, to allow animal husbandry as a Permitted Use in the Rural Forestry zone, and then list fur farms as a Conditional Use in the same zone. The rules of statutory construction

require giving meaning to all language within an Ordinance. Where two uses are listed as distinct uses within a number of Chapters of the Zoning Ordinance, the clear implication is that they are separate uses. For this reason, the Hearing Examiner concludes that in the Whatcom County Zoning Ordinance, fur farms are not included in the animal husbandry use, but instead are to be dealt with as a separate use. Planning correctly determined that since fur farms were not listed as a Permitted, Administrative Approval, or Conditional Use in the Rural District, they fell under "all other uses" and were prohibited under WCC 20.36.201.

### III.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

#### **DECISION**

The Administrative Decision of Whatcom County Planning and Development Services is upheld. The Appeal is denied.

#### **NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 9<sup>th</sup> day of September 2015.

A handwritten signature in cursive script that reads "Michael Bobbink".

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Michael Bobbink, Hearing Examiner