



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

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DECISION DATE: July 26, 2012

APPELLANT: Edward and Brianna Stuart

FILE NO.: 12-104006 CT

TYPE OF CASE: Appeal of Notice of Violation

DECISION (SUMMARY): **APPEAL GRANTED**

LOCATION: 15314 Sunset Road, Bothell, WA 98012

This matter having come before the Hearing Examiner on July 25, 2012, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits 1 through 26), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.

3. **Public Hearing.** The Hearing Examiner held an open record appeal hearing on July 25, 2012. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the appeal hearing was issued as required by SCC 30.85.200. (Exhibits 10, 11) Judy Wahl appeared and testified on behalf of the Snohomish County Planning and Development Services Department (PDS). Brianna Stuart, Appellant, appeared at the public hearing. No other members of the public testified at the public hearing.

4. Edward and Brianna Stuart (hereinafter "Appellants") are the owners of certain real property known as tax parcel 010241-000-032-00, located at 15314 Sunset Road, Lot 32 in Bothell, Washington. The property is located within the Windrose, Division 1 subdivision in the PRD-9,600 zone (hereinafter, the "subject property"). (Exhibits 1-5)
5. The facts in this case are undisputed. PDS received two complaints about the chicken coop on May 14, 2012 and May 15, 2012. (Exhibit 2, 3) PDS Code Enforcement Officer Judy Wahl investigated and determined that the chicken coop has been placed within the 30 foot setback from the property lines and notified the Stuarts. (Exhibits 5, 6, 7, 8) A Notice of Violation (NOV) was issued on May 30, 2012, alleging that the chicken coop is located within the 30-foot setback area from the property line, in violation of the County's zoning regulations, SCC 30.23.110(1). (Exhibit 10) The NOV was sent to the Appellants by regular and certified mail. (Exhibit 9)
6. The Stuarts appealed the NOV on June 12, 2012. (Exhibit 1) They allege that the chicken coop is exempt from the setback requirements of SCC 30.23.110(1) because their chickens are "household pets."
7. The Stuart property is located within a residential subdivision. The property is only 40 feet wide, therefore, it is physically impossible for them to place a chicken coop within their fenced backyard and meet the County's requirements. The coop they have placed in their backyard is fairly small and is used to house five chickens. The chickens are all hens of various breeds and have been hand-raised by the Stuarts. The hens have not yet reached maturity and are not laying eggs at this time.
8. In support of this claim, Appellants submitted Exhibits 12 through 24, demonstrating that chickens are sometimes used as therapy animals, and are now popular enough that their feed is carried by large retailers, such as Petco, not just feed stores. Appellants state that all of the hens have names, will come to those names when called, and are treated as household pets by the adults and children in their family. The hens resided in their home while they were very young, but now live outdoors in good weather. The Stuarts expect that the hens will live indoors with them as needed during cold winter months in an indoor coop that is already inside their home. The Appellants claim that they are not raising the hens for food production and expect they will donate most of the eggs they produce to neighbors or food banks. The Appellants claim that the hens are docile, enjoy human interaction and are frequently held by them. The Appellants have asked their neighbors to support their desire to keep their chickens, and many have signed petitions in support, although the next door neighbors did not sign.
9. In response, Officer Wahl argues that SCC 30.23.110 requires a 30-foot setback for structures used for housing or feeding agricultural animals. Under the County's regulations, poultry is part of the "agriculture" use definition. (See SCC 30.91A.110). Therefore, PDS believes the setback must be met. PDS did not address the "household pet" exemption in its Departmental Report. (Exhibit 25) Although PDS alleges that maintaining chickens falls within the "agriculture" definition because it includes "poultry" and "small animal husbandry," PDS does not allege that the chicken coop falls within the restrictions of SCC 30.23.110(19), relating to small animal husbandry.
10. Officer Wahl testified that the homeowners' association has CC&R's that prohibit the maintaining of chicken coops in this subdivision. She was told that they have twice voted to reject the chicken coop. The Hearing Examiner finds that this information has no bearing on

the outcome of this code enforcement case. It is a private, legal matter between the Appellants and the homeowners' association.

11. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the appeal of a Notice of Violation pursuant to Ch. 2.02 SCC and 30.85.190.
2. Appellants were cited in the NOV for violating the special setback provision found in SCC 30.23.110 for placing a chicken coop within 30 feet of the property lines.
3. The Zoning Code at Section 30.23.110 ("Special setbacks for certain uses") is a supplement to the normal setback required by the underlying zone for the specified use. Here, the Appellants were cited for violating SCC 30.23.110, generally. However, that section provides several different setback requirements that could apply to the Stuart's chicken coop. (See, e.g., SCC 30.23.110(1) and .110 (19)). PDS only addresses SCC 30.23.100(1) in its Department Report. Accordingly, the Hearing Examiner determines that they have not cited the Appellants for violating SCC 30.23.110(19) and that issue is not before the Examiner in this appeal.
4. SCC 30.23.100(1), "agriculture," requires a 30-foot setback except for structures used for housing or feeding "household pets." The term "agriculture" is defined at SCC 30.91A.110 to mean:

"...tilling of the soil, raising of crops, horticulture, viticulture, small livestock, poultry, pasturing, grazing, dairying and/or small animal husbandry including all uses customarily incidental thereto. Agriculture includes farming and farm activities, as defined under "farm" herein."

The term "poultry" is undefined in the County Code. However, the USDA has defined poultry to include "domesticated fowl." The term "household pets" is undefined in the County Code. Here, the Hearing Examiner concludes that the ownership and maintenance of chickens falls within the "agricultural" and "small animal husbandry" provisions of SCC 30.23.110.¹

5. One previous Hearing Examiner decision attempting to define the term "household pets" stated that in order to be deemed a "household pet," the animal must reside in the Appellants' residence at least part of the time. (See, *In re the appeal of Mohammad Shahid, File No. 04-100199*). However, in 2011, this Hearing Examiner rejected that definition as overly restrictive and not based on any common definition of the term. (See, *In re the appeal of Herbert Cartmell, File No. 11-101702 CT*)²

¹As noted above, although the term "small animal husbandry" could apply, the Examiner has determined that PDS did not base the NOV on this definition because it does include a citation to SCC 30.23.110(19). Officer Wahl confirmed this at the public hearing.

² In that case, the Hearing Examiner concluded:

6. Having held in prior cases and in this case that the housing of chickens is clearly an agricultural activity subject to SCC 30.23.110(1), the Examiner now turns to whether the hens maintained by the Stuarts are “household pets.”
7. When a term is undefined in the County Code, the Hearing Examiner cannot create her own definition, but may consider the term’s ordinary meaning using commonly available resources. According to the Merriam-Webster dictionary, the term “pet” means “a domesticated animal kept for pleasure rather than utility.”³ This definition clearly employs a subjective test with respect to the intention of the owner.
8. Here, the Appellants urge the Examiner to consider the fact that the hens are:
 - hand-raised and often held and petted by their owners;
 - unsuited for farm life due to their breed (some are endangered or threatened breeds), special care needs and their enjoyment of human contact, including their children;
 - named and wear harnesses and leashes when out of their coop;
 - not kept for food/egg production;
 - viewed by the Stuarts as pets and have a strong family attachment; and
 - the fact that their feed is available from regular retail stores, not just feed stores

Finally, the Appellants ask the Examiner to consider local ordinances from nearby jurisdictions (e.g., Bothell, Mill Creek) allowing chickens to be maintained in backyard coops. The Hearing Examiner cannot consider the regulations of other jurisdictions.

9. The Hearing Examiner does consider the subjective intent of the Appellants with regard to their use and ownership of the chickens. Here, the Stuarts have clearly raised their hens with the subjective intent that they are domesticated pets. They are kept for pleasure, not utility or food production. They intend to donate the eggs produced by the chickens to others. They have been hand-raised and are dependent upon their owners for food, health and protection against predators. They have made accommodations for the hens inside their home and have housed them there up until one month ago. Given the totality of the evidence presented, the Hearing Examiner concludes by a preponderance of the evidence that the chickens are in fact “household pets” of the Stuart family.

Having considered the *Shahid* decision, the Examiner finds that: (a) the cited 2004 decision is not binding precedent as to this Examiner’s decision; (b) the facts of the 2004 case were quite different from the present situation and included the housing of chickens, which clearly is an agricultural activity; and (c) the Hearing Examiner rejects former Deputy Hearing Examiner Good’s definition of a “household pet,” as it is too narrow and not based on any common definition of the term. See, for example, Exhibits 14-3 and 14-4, in which Appellant provided five alternative definitions for the term, from State law and other reputable sources, none of which is anywhere near as narrow as the term adopted in the earlier decision. (Exhibit 14-4) Finding no prior expression of legislative intent from the County Council that it would place such a severe restriction on the common term “household pet,” the Hearing Examiner declines to adopt such a restrictive definition.

In re appeal of Herbert Cartmell, File No. 11-101702 CT

³Merriam-Webster’s Collegiate Dictionary, 11th Edition.

10. Under these specific facts, the Examiner concludes that the appeal should be granted. The Appellant's chicken coop is not subject to the 30-foot setback provisions of SCC 30.23.110(1), because it houses domesticated pets which are exempt under that Section.
11. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

The appeal is **GRANTED** and the Notice of Violation is **dismissed with prejudice**. The Appellant's chicken coop is not subject to the 30-foot setback provisions of SCC 30.23.110(1), because it houses domesticated pets which are exempt under that Section.

Dated this 26th day of July, 2012.



Millie M. Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with a right of appeal to Superior Court. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.85 SCC, the Snohomish County Hearing Examiner Rules and Superior Court Civil Rules.

Reconsideration

Any party of record may request reconsideration by the Hearing Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before August 6, 2012**. There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.85.210]

A petition for reconsideration shall meet the requirements of SCC 30.85.210(3). The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;

- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record; and/or
- (e) New evidence which could not reasonably have been discovered prior to the hearing and which is material to the decision has been discovered;

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.85.210.

Appeal

An appeal to Superior Court may be filed by any aggrieved party of record **within 21 days from the date of this decision** pursuant to Chapter 36.70C RCW, the Land Use Petition Act. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the Superior Court.

NOTE: Please include the County file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Judy Wahl

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

PARTIES OF RECORD REGISTER
STUART 12 104006
APPEAL NOTICE OF VIOLATION

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