

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Cathy L. Jalbert  
7763 Holiday Blvd.  
Anacortes, WA 98221

**File No:** PL08-0475

**Request:** Special Use Permit

**Location:** 7763 Holiday Boulevard on Guemes Island. Holiday Hideaway #1, Block 4 Tract E, within a portion of the SE1/4NW1/4, Sec. 8, T35N, R2E, W.M.

**Parcel No:** P66111

**Land Use Designation:** Rural Intermediate

**Summary of Proposal:** To operate a kennel for the breeding of Yorkshire Terrier dogs (Cathy's Gorgeous Yorkies).

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on November 4, 2009.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Kathy Jalbert seeks a Special Use Permit to operate a kennel for the breeding of Yorkshire Terrier 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 inside the applicant's home at 7763 Holiday Boulevard on Guemes Island in the Holiday Hideaway development. The property is Parcel number P66111, within a portion of the SE1/4NW1/4 Sec. 8, T35N, R2E, W.M.
3. The property is zoned Rural Intermediate. It is approximately .3 acres in size and is triangular in shape. The lot is situated on the west side of Holiday Boulevard and measures about 270 feet along the east (front) property line, 144 feet along the south (side) property line and 330 feet along the west (rear) property line. The developed area is basically flat.
4. Adjacent properties to the east and south are similarly sized lots. Two are developed with single family homes and two are vacant. The properties directly to the west are larger size and developed. The area is heavily vegetated.
5. The subject property currently has an 864 square foot residence and a garage. A building permit has been issued for a 1,500 square foot addition to the residence. Access is via a driveway off of Holiday Boulevard. The property is served by an on-site septic system and a community water system.
6. The kennel operation is conducted inside the small residence, primarily in the living room area. An area attached to the living room that was formerly a covered porch may be used for the kennel in the future. The house is well heated and ventilated. In the future the applicant plans to move the operation to the 24' x 24' garage. The building will be insulated and equipped with heating and air conditioning. A fenced outside covered area adjacent to the garage is projected.
7. Currently the dogs are kept in 2' x 4' wire cages on the floor. The floor is covered with vinyl with water proofed pads placed over the vinyl. The cages are in two rows with stud males kept in a row separate from the females. When a female is giving birth, she is taken to a bedroom in the house and she spends the first week after the birth in that area. Then she is returned to a separate female group cage. Several cages have both male and females in them -- older puppies that have been spayed and are waiting to be sold. At present, there are 18 adult dogs and three puppies at the facility. Six of the 18 have been spayed. The size of the facility will not exceed 25 adults and 25 puppies.

8. The dogs are well fed and given vitamin supplements. Bottled water is available 24-hours a day. There is a small fenced outside exercise area which is covered with a large plastic tarp. However, the dogs are largely kept indoors and are exercised there on a treadmill. This approach is possible because the dogs are so small -- weighing about two pounds, seven ounces. A veterinarian oversees the breeding program and takes care of neutering and vaccination needs. Bathing, grooming and nail cutting are performed regularly.

9 Animal waste is cleaned up as needed, placed in double bags and put in the garbage for weekly pickup. The floor pads are washable and are washed or changed as needed. There is essentially no discharge of wastes to the outside soil.

10. The puppies are either sold as pets or taken into the breeding program. Every puppy that leaves the kennel is micro-chipped and spayed or neutered, except for those that are sold to reputable breeding programs. Homes are eventually found for the retiring adults.

11. The operation is family run. There are no outside employees. There are no particular hours. No members of the public come to the site. Dogs are delivered to the buyers. Before delivery dogs have received all needed shots and a well vet check. They have experienced no returns. Yorkies are a limited breed which occupy a small high-end market.

12. Because of the thick vegetation and indoor operation, no additional landscaping is needed to shield the kennel activities from outside view. There is no outside storage indicating the kennel operation.

13. Having the kennel inside the house largely prevents barking from creating a disturbance to those living nearby. However, one neighbor did object on the basis of noise. The planned new kennel facilities will be soundproofed so that when the dog operation is moved it should be inaudible on the outside.

14. If an emergency were to require evacuation of the kennel, these small dogs could readily be evacuated from the home

15. The county adopted comprehensive regulations governing kennels in 2008. Permits are now required for most kennels. 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. 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 comments or 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. No critical areas were identified within 200 feet of the residence. .

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. In addition to the noise complaint mentioned, one neighboring couple opposed the kennel on the basis of its location in a completely residential neighborhood. There were also a letter and testimony from the Humane Society of Skagit Valley. The Society opposed the application because it exceeds the five dogs per acre limit and uses a treadmill for exercise. Concerns were expressed about the ready availability of veterinary assistance. Mention was made of a new statute that addresses humane requirements for breeding operations that will become effective in January.

23. As a pre-existing operation, the subject kennel is exempt from the dogs-per-acre limit. The proscription on treadmills as a means for exercise is not yet a part of State law. The concerns expressed by the Humane Society about the use and availability of veterinary care 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, provided that conditions of approval are observed.

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 new kennel facilities shall be sound-proofed in order to prevent barking from being audible outside of the property.

4. When the new kennel facilities are installed, the applicant shall submit a description thereof to Planning and Development Services (PDS) which shall determine whether a permit modification needs to be made.

5. When the new facilities are in place, the applicants shall submit a new exercise plan to the County which shows that adequate exercise is available to the dogs through appropriate means.

6. 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.

7. 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.

8. 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).

9. 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.

10. 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.

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

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

13. 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.

14. 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.

15. 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 8th day of December, 2009.



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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.