

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Beaverton Ventures LLC PO Box 2311 Friday Harbor, WA 98250	S.J.C. DEPARTMENT OF JUL 01 2016 COMMUNITY DEVELOPMENT
File No.:	PCUP00-16-0016	
Request:	Conditional Use Permit (CUP)	
Parcel No:	351049104	
Location:	91 Saltspring Drive, San Juan Island	
Summary of Proposal:	An application for a conditional use permit to allow Retail sales in an area previously approved for light industrial use	
Land Use Designation:	Rural General	
Public Hearing:	June 16, 2016	
Application Policies and Regulations:	SJCC 18.80.100(D) CUP Criteria	
Decision:	Approved subject to conditions	

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

S.J.C. DEPARTMENT OF

JUL 01 2016

COMMUNITY DEVELOPMENT

In the Matter of the Application of

Beaverton Ventures LLC

NO. PCUP-16-0016

for approval of a conditional use permit
to allow retail sales
at 91 Saltspring Drive, San Juan Island

Beaverton Ventures LLC CUP

SUMMARY OF DECISION

The request for conditional use permit to authorize An application for a conditional use permit to allow retail sales in an area previously approved for light industrial use at 91 Saltspring Drive, San Juan Island is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Beaverton Ventures LLC (Applicant) requested an application for a conditional use permit to allow retail sales in an area previously approved for light industrial use at 91 Saltspring Drive, San Juan Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on June 16, 2016. At the conclusion of the proceedings, the record was held open to for specific items including: a reworded recommended condition of approval; written comments from a neighboring land owners, and written response to those comments from the Applicant.

Testimony:

At the open record public hearing, the following individuals presented testimony under oath:

Lee McEnery, Planner, San Juan County Department of Community Development
Francine Shaw, Applicant Agent
Debbi Fincher
Penelope Haskew

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner prepared by Julie Thompson, dated June 1, 2016
2. Request for review

3. Determination of Non-Significance, dated May 4, 2016
4. Application form, dated April 19, 2016
5. Environmental checklist
6. Survey maps for Olerin Business Park
7. Survey map for Beaverton Business Park
8. Detailed project description and regulatory analysis
9. Site photos
10. Hearing examiner decision on 03CU004
11. Administrative decision on 04BSP002
12. Hearing examiner decision on PBSP00-12-0001
13. First amendment to declaration of condominium, Beaverton Business Park
14. Declaration of condominium, Beaverton Business Park
15. Publication, notice, and posting information
16. San Juan County Public Works Memorandum from Christine Coray, dated may 18, 2016
17. Written comments and photos submitted at hearing by Debbi Fincher

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Olerin Business Park (file no. 03CU004) was approved by conditional use permit in 2003, dividing the underlying subject property into two business park clusters, west and east. According to the terms of the approval, the west cluster was approved for a mix of offices, professional services, and retail sales and services including such things as professional services, agricultural materials, feed and supply, small equipment sales and rentals, or home decorating and improvement. The east cluster was approved for self-contained trade and industrial activities, including light industrial production or storage and associated incidental retail sales and services restricted to products manufactured, warehoused, or assembled on-site. *Exhibits 1 and 10.*
2. Subsequently, the Olerin Business Park Binding Site Plan (04BSP002) was approved in 2004, creating 10 airspace condominiums, a propane tank site, shared infrastructure, and open space. *Exhibits 6 and 11.* The Declaration of Condominium recorded for the Olerin Business Park does not contain explicit restrictions regarding changing the uses approved in the 2003 CUP, nor any express prohibition against units in the east cluster from being used for commercial purposes specifically including retail sales and services. Section 10.1 of the Declaration of Condominium states:

The structures and units shall be used, on an ownership, rental or lease basis for professional, retail space, light industrial, storage, industrial and material storage as depicted on the Survey Map and Plans or for conducting such other business activities not inconsistent with the provisions of the Declaration nor applicable zoning.

Exhibit 13.

3. In 2013, the County approved a binding site plan application (PBSP00-12-0001) further dividing Unit F of Olerin Business Park into thirteen airspace condominiums into the Beaverton Business Park. *Exhibit 12.* Since then, the owners of the 13 resulting condominiums joined their ownerships together, reducing the total of condominiums in the Beaverton Business Park to six (2013-0906019). *Exhibits 7 and 13.*
4. Four of the six condominiums in Beaverton Business Park are the subject of the instant proposal to change the uses allowed, as established in the 2003 Olerin Business Park. The current owners of Units 1, 3, 4 and 6, originally approved for light industrial use, seek to include retail sales in the uses approved for these units. The four units contain 6,580 square feet as follows: Units 1 and 6 are each 2,040 square feet; Unit 3 is 4,000 square feet; and Unit 4 contains 2,500 square feet. With adjacent parking and maneuvering, the total area subject to the instant application is 0.86 acres. The site is addressed as 91 Saltspring Drive. *Exhibits 1, 4, and 7.*
5. The surrounding area is commercial and industrial in nature. There is residential development approximately 300 feet to the west and 700 feet to the east. Uses in the surrounding business parks include a community theater that is used for educational purposes. There is a regulated wetland and stream offsite to the southwest. The site is not located near the Friday Harbor Airport or any other airfield. All of San Juan County is designated a critical aquifer recharge area. *Exhibits 1 and 17; Fincher Testimony.*
6. The subject property is zoned Rural General Use (RGU), which allows resource-based industrial and commercial activities, rural commercial, rural industrial, and cottage enterprise uses. Retail sales are only allowed in the RGU zoned portions of the County subject to conditional use permit approval. *San Juan County Code (SJCC) 18.30.040.*
7. At the time that the current application was submitted, one of the owners (Scott Hensrude) was proposing to establish a marijuana retail business on-site, as reflected in the application materials. However, since then Mr. Hensrude has found another location for the marijuana retail use and has sold his unit to new owners. At the present time, no particular retail uses are contemplated for these four condominiums; the proposal merely seeks to authorize speculative retail sales and/or professional services in addition to light industrial uses within the four units. *Exhibits 1 and 7; Shaw Testimony.*

8. The four units are ready for construction. As of the hearing date, the site had been graded. Roadside landscaping and stormwater drainage facilities had been installed. At the time the Olerin Business Park was developed, Unit F (which is now the Beaverton Business Park) was included in stormwater design as fully impervious. All runoff from the impervious surfaces would be directed to the existing Olerin stormwater treatment and detention facility. In addition, however, the Beaverton Business Park parking lot would include landscaped islands, reducing total impervious surface areas. All utilities are available at the property line: the Olerin Group A Water System and the existing community on-site septic are installed. Occupancy permits would not be granted prior to final approval of connections and on-site utilities for each unit. *Exhibits 7, 8, 9, and 16; Shaw Testimony.*
9. Access to the site is by Saltspring Drive, an existing private road that connects to public County roads. No work is proposed in the County right-of-way and none is required as a result of the proposal. *Exhibits 8 and 16.* At the time of the Olerin Business Park approval, the public road system serving as access was reviewed in light of both commercial and industrial traffic to the site. Concurrency was reviewed at the time of the 2004 binding site plan and again at the time of the 2012 Beaverton Business Park Site Plan. San Juan County Public Works Department reviewed the instant proposal to change some uses from industrial to commercial and determined that it would not substantially increase the estimated traffic considered in the previous approvals. *Exhibits 7 and 16.*
10. Currently all four units are undeveloped. Numbers of parking spaces, dimensions, and layout would be determined through the building permit review process consistent with SJCC Chapter 18.60. *Exhibits 7 and 16.* If future uses in these four units were to require more parking than is available immediately adjacent to their condominiums or within Beaverton Business Park, it would potentially be possible for joint use parking agreements to be made with other uses within Olerin Business Park for shared parking. *Shaw Testimony.* Two accessible parking spaces were dedicated as a common amenity with the Beaverton Business Park binding site plan approval. The binding site plan also retained areas adjacent to proposed parking for screening landscaping. *Exhibits 7 and 8.*
11. Regarding impacts of the future uses in the four condominiums, the Applicants offered that commercial uses may result in fewer adverse impacts to the human and natural environment because they are less likely to use chemicals or generate fumes, noise, vibration, or dust. *Exhibit 8.*
12. Street frontage landscaping has already been installed along Saltspring Drive. There is a native landscaping buffer along the east property line that screens the business park from adjacent property. Presently no outdoor storage is proposed. Should outdoor storage be desired, fencing would be required by the conditions of the Olerin Business Park binding site plan. There is room within the common element spaces in the Beaverton Business Park binding site plan for refuse dumpsters, if needed. *Exhibits 7, 8, 9, and 11.*

13. The conditional use permit application and supporting materials were submitted April 19, 2016. *Exhibit 1*. Notice of application and public hearing was published, posted on-site, and mailed to owners of surrounding property within 300 feet on May 4, 2016. *Exhibits 1 and 15*.
14. Two members of the public who appeared at the hearing opposed CUP approval. They expressed concern that the previously proposed marijuana retail store no longer affiliated with the instant proposal has relocated adjacent to the business park unit at 70 Saltspring Drive, which they opposed. The property at 70 Saltspring Drive is occupied by a fitness club and the San Juan Community Theater Resource Center, which has a children's program that is growing steadily. They questioned how location of a retail marijuana business could be allowed so near facilities heavily attended by children. Regarding any retail use of the 91 Saltspring Drive space, they testified that the private road is narrow with no painted lines, no lighting, and no sidewalks. They expressed concern that the available parking may be inadequate because the theater parking lot is so full that many kids get dropped off at bottom of the road and walk to their destinations. They asserted that retail use of the subject property would increase the potential for pedestrian/vehicle conflicts on Saltspring Drive. *Testimony of Debbi Fincher and Penelope Haskew*.
15. In response to public comment, Department of Community Development Staff noted that County Public Works Staff determined the proposal met concurrency when the binding site plan was approved. Regulations have not changed since that time. If any given retail use is proposed that causes concern regarding traffic impacts, when the building permit is reviewed, Public Works would require a traffic impact study. Regarding lack of lighting, Planning Staff noted that exterior lighting is regulated to prohibit light pollution of the night time sky. Retail uses are allowable in the Rural General Use zone without review as to content of retail sales. On review of all testimony and evidence submitted, Planning Staff recommended approval subject to compliance with the already applicable conditions of the previous site plan approvals. *McEnergy Testimony*.
16. In response to public comment, the Applicant agent testified that the State Liquor and Cannabis Board has strict guidelines about where retail marijuana uses can be located and every retail marijuana facility must demonstrate compliance with those regulations; however, none is currently proposed on-site and the question is irrelevant as to the instant application. She reiterated Staff's comments that the Rural General Use allows retail uses and added that there are very few acres of this zoning designation in the County. She noted that the applicable road standards do not require sidewalks. Finally, she asserted that additional shared parking can be available at the nearby FedEx facility should any given proposed retail use result in greater traffic than the on-site parking can support: *Shaw Testimony*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

Other Applicable Provisions of the San Juan County Code

SJCC 18.40.110 Commercial uses—Standards for site development.

- A. All Commercial Uses. The following standards apply to all commercial uses as listed in Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040 and to any use determined by the administrator to be commercial use.
 1. Water supplies and sewage disposal facilities adequate to serve the proposed use shall be provided. Occupancy shall not be permitted before water supplies and sewage disposal facilities are approved and installed.
 2. Use of a County access road or private road for access to new commercial development shall be permitted only if the applicant demonstrates that public health, safety, and

welfare will be protected, and if traffic and maintenance impacts to the private road are minimized by conditions on the permit.

3. No use shall be made of equipment or material which produces unreasonable vibration, noise, dust, smoke, odor, electrical interference to the detriment of adjoining property.

Conclusions Based on Findings

1. Conditioned to require compliance with applicable regulations and Comprehensive Plan goals and policies, the expansion of allowed retail uses into the additional four units of the business park would satisfy criteria for conditional use permit. Retail uses are allowed in the Rural General Use type subject to conditional use approval. At the time of building permit, each structure would be reviewed for compliance with parking, height, bulk, screening, signage, stormwater management, erosion control, and all other applicable development, construction, and technical code requirements. The proposed conditional use - expanding an approved industrial use designation for established business park air condominiums to allow either industrial or commercial uses - is an extremely unique situation. Adverse impacts were considered and addressed at the time of the binding site plan approvals. Similarly, demand for and adequacy of public facilities and services, including roadways, fire, emergency response, and police protection, were considered and addressed through the binding site plan approvals. There is nothing in the record supporting a conclusion that retail uses would generate a higher demand for such facilities and services than would be generated by the approved industrial uses. Traffic generated by a combination of light industrial and retail uses was specifically considered in binding site plan approval. With respect to potentially converting some approved industrial uses to retail uses, the Public Works Department determined that concurrency has already been satisfied. There is no evidence supporting a conclusion that retail uses would generate more hazardous traffic than light industrial uses. No airfields would be impacted. *Findings 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, 15, and 16.*
2. With regard standards for commercial uses in rural land use designations: Commercial use of property within the Beaverton Business Park was already approved; no additional demands for services or utilities would result from the expanding the footprint of allowed retail sales and services. Water supply and sewage disposal facilities adequate to serve retail or light industrial use were reviewed and approved with the 2004 binding site plan, as was traffic from uses for all units of the business park. Conditions of binding site plan approval for the original permit would prohibit the use of equipment or materials producing unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining properties. Building coverage was determined by the First Amendment to Declaration of Condominium for Units 1-6 of the Beaverton Business Park Condominium, Auditor's File Number 2013-0906019 (in the record at Exhibit 13). *Findings 1, 2, 3, 4, 6, 8, and 9.*
3. The record contains no evidence of impacts that cannot be mitigated by the conditions imposed herein and already imposed in the previous binding site plan processes.

Concerns from the neighbors relating to the previously proposed marijuana retail use are not relevant because the condominium owner who was the proponent for that use sold his interest. No marijuana retail is included in the instant application. Whether that former owner proposes a retail marijuana establishment elsewhere on Saltspring Drive or in the County is not relevant to the outcome of the instant permit request. Concerns about adding traffic to the private road are within the scope of the instant request; however, aside from asserting concern, opponents to the instant request did not provide evidence successfully controverting the determination of the County Public Works Department that concurrency has been satisfied and that the road is adequate to serve either light industrial or retail commercial uses. *Findings 5, 7, 9, 10, 14, 15, and 16.*

DECISION

Based on the preceding findings and conclusions, the application for a conditional use permit to allow retail sales in an area previously approved for light industrial use at 91 Saltspring Drive, San Juan Island is **APPROVED** subject to the following conditions:

1. All future development shall maintain compliance with all conditions of the previous binding site plan approvals and permits 03CUP004, 04BSP002, and PBSP00-12-0001.
2. Future uses must comply with all applicable regulations of the San Juan County Code and the County's Comprehensive Plan.

Decided June 30, 2016.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.