

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Appeal filed by)
)
MASON BOWLES,)
Appellant,)
)
of a Notice of Violation issued for)
operating an Unpermitted Vacation)
Rental on a property located at 1664)
Alek Bay Road on Lopez Island,)
issued by the)
)
SAN JUAN COUNTY DEPARTMENT OF)
COMMUNITY DEVELOPMENT,)
)
Respondent,)
_____)

File No. PCI000-18-0092
DECISION

SJC DEPARTMENT OF
MAY 06 2019
COMMUNITY DEVELOPMENT

I. SUMMARY OF DECISION.

The pending appeal is granted, in part. County Staff generally stipulated that the appellant presented evidence sufficient to demonstrate that the house on his property has been used for short terms by various parties (guests) in exchange for labor, on an occasional basis, before 1997 and thereafter, but for no more than 20 weeks in any calendar year. Accordingly, appellant's property may continue to be rented on a short-term basis to guests in return for non-monetary remuneration such as an exchange of labor or services, for no more than 20 weeks per calendar year, as that was the extent of the nonconforming use established in this appeal proceeding.

Any subsequent request to alter, modify, intensify, or expand the appellant's nonconforming use will require consideration of the total impact of the nonconforming use as well as the added impact of the incremental changes being proposed and the consistency of the changes with the applicable land use designation (*See SJCC 18.40.310(A)*), which may include conditions of approval that are consistent with those applied to legally

**DECISION RE: BOWLES APPEAL OF NOTICE OF
VIOLATION FOR UNPERMITTED VACATION
RENTAL - PCI000-18-0092**

1 permitted vacation rentals in other parts of the County, including without limitation all
standards found in SJCC 18.40.275.

2 **II. APPLICABLE LAW.**

3 ***Jurisdiction.***

4
5 SJCC 18.100.140 provides the Hearing Examiner with jurisdiction and authority to
6 conduct an open record hearing on appeals of any code enforcement Notice of Violation in
7 accordance with the San Juan County hearing examiner rules and procedures. "The hearing
8 examiner shall consider the evidence and testimony presented at the hearing and, based on
this information, shall reverse or uphold the notice of violation, in whole or in part". *SJCC*
18.100.140(D). Decisions of the hearing examiner are the final decision of the County and
there is no further administrative appeal. *SJCC 2.22.240*.

9 ***Burden of Proof.***

10 SJCC 18.100.140(B) provides that the Director has the burden to prove by a
11 preponderance of the evidence that: 1) The person named on the notice of violation is the
12 responsible party for causing the violation or is the property owner; and 2) The violation
listed on the notice of violation occurred.

13 In this appeal, the appellant alleges that he used his house as a vacation rental before
14 1997, when San Juan County Codes were adopted to restrict such operations. As such, he
15 claims that his use should be "grandfathered" and treated as a legal nonconforming use.
16 Washington caselaw establishes that the landowner "asserting a prior legal, nonconforming
17 use bears the initial burden to prove that (1) the use existed before the county enacted the
18 [contrary] zoning ordinance; (2) the use was lawful at the time; and (3) the applicant did not
19 abandon or discontinue the use [...]" *First Pioneer Trading*, 146 Wn. App. at 614 (citing
Jefferson County v. Lakeside Indus., 106 Wn. App. 380, 385, 23 P.3d 542, 29 P.3d 36
(2001)). Moreover, to establish a valid nonconforming use, the use must have been more
than intermittent or occasional prior to the change in the zoning legislation. *N./S. Airpark*
Ass'n v. Haagen, 87 Wn. App. 765, 772, 942 P.2d 1068 (1997).

20 ***Final Decision.***

21 Decisions of the hearing examiner are the final decision of the County and there is
22 no further administrative appeal. *SJCC 2.22.240*.

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III. RECORD.

The Record for the matter includes all materials in the appeal file, including the Staff Report prepared to address issues raised in this appeal, with three attached Exhibits: 1) the Notice of Violation challenged in this appeal, numbered PCI000-18-0092, with supporting records as attachments; 2) Mr. Bowles' written Notice of Appeal in the form of a letter from his attorney, James P. Grifo, with supporting materials as attachments; and 3) letter from Ms. Shook to the appellant, providing notice of the appeal hearing for this matter. Mr. Grifo submitted an additional letter into the record during the public hearing, responding to the Staff Report, and providing additional legal arguments supporting Mr. Bowles' appeal.

All witnesses who appeared at the appeal hearing offered testimony under oath. Erika Shook, Director of the San Juan County Department of Community Development, appeared and testified for the County, summarizing issues and facts discussed in her Staff Report and the Notice of Violation that is the subject of this appeal. The appellant, Mr. Bowles, appeared and testified on his own behalf, represented by counsel, Mr. Grifo.

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision.

IV. FINDINGS OF FACT.

1. Any statements of fact or findings set forth in previous or subsequent portions of this Decision that are deemed to be findings of fact are hereby adopted and incorporated herein as such.
2. In this matter, the appellant, Mason Bowles, appeals code-enforcement Notice of Violation No. PCI000-18-0092, which he received in late September of 2018 for allegedly operating a vacation rental in a house located on his Lopez Island property that is located in an Agricultural Resource land use designation.
3. There is also no credible dispute regarding the following facts:
 - a. Mr. Bowles property, located at 1664 Alek Bay Road on Lopez Island, assigned San Juan County Tax Parcel Number 141743002000, is within the County's "Agricultural Resource" land use designation;
 - b. The San Juan County code provisions that regulate 'vacation rental' of single family homes were first adopted at some point in 1997;

1 c. Since 1997 until the present date, San Juan County codes do not allow vacation
2 rentals in the Agricultural Resource land use designation, and where such use
(vacation rental) is permitted, it requires a permit to first be issued by the County;

3 d. Since 1997, transient accommodation operations, including vacation rentals,
4 have been required to pay lodging taxes to the Washington State Department of
5 Revenue, a portion of which is redistributed to San Juan County;

6 e. The challenged Notice of Violation was in a proper form, provided sufficient
7 information and content, and was properly mailed/served and received by the
appellant; and

8 f. The appellant has standing. The underlying appeal was filed in a timely manner,
9 and there are no other procedural defects that would prevent it from going forward
to an appeal hearing before the Examiner.

10 4. In the Staff Report, and during her testimony at the public hearing, Ms. Shook
11 credibly described the following evidence supporting the Notice of Violation. On
12 September 22, 2018, the County's Code Enforcement Officer, James Finn, discovered and
13 printed a copy of an advertisement for vacation rental of Mr. Bowles' Lopez Island
14 property that appeared on the VRBO website. The ad included testimonials from two
15 different parties who rented the residence in July of 2018. The online calendar provided on
16 the VRBO website indicated that the property was available for periods less than 30 days,
and that the Bowles' house rents on a per-night basis, not a monthly rate. (*Testimony of Ms.
Shook; Staff Report, page 3; Ex. 1, Notice of Violation with supporting records, including
VRBO ad*). The VRBO ad shows that Mr. Bowles' house was advertised as available for
\$180 per night. (*Ex. 1, NOV, see first attachment, the VRBO ad, on page 1 of 5*).

17 5. Under SJCC 18.20.220, "Vacation rental of a residence or an ADU" means a single-
18 family residential unit or an accessory dwelling unit that is rented for periods of less than 30
19 days.

20 6. Again, since 1997, a vacation rental is not allowed in the Agricultural Resource land
use designation. *See SJCC 18.30.040*.

21 7. At the appeal hearing, Mr. Bowles did not challenge the County's evidence
22 summarized in the Staff Report and in the Notice of Violation, including without limitation
23 the fact that he was renting his property on a per-night basis without a permit in an
Agricultural Resource land use district.

24 8. Instead, in this appeal, Mr. Bowles alleges that he should be exempt from the codes
25 supporting the challenged Notice of Violation, because he claims that he occasionally

1 rented the house on his Lopez Island property before 1997, when the County's vacation
2 rental regulations were first implemented. In legalese, Mr. Bowles asserts that his use of
the property should be "grandfathered" and treated as a legal nonconforming use.

3 9. Based on the preponderance of credible, unchallenged, and un rebutted evidence in
4 the record, including without limitation the VRBO ad included as part of Exhibit 1, the
5 Examiner finds and concludes that the County satisfied its burden of proof to establish that:
1) Mr. Bowles is the responsible party for causing the violation or is the property owner;
and 2) the violation listed on the notice of violation occurred. *See SJCC 18.100.140(B)*.

6 10. Because the County satisfied its burden to support issuance of the Notice of
7 Violation, the burden falls upon Mr. Bowles to establish that a valid nonconforming use
8 exists.

9 ***Nonconforming use discussion.***

10 11. "Nonconforming use" means an existing use of a structure or of land that does not
11 conform to the regulations of the land use designation where the use exists due to changes
12 in code requirements. *SJCC 18.20.140*. Nonconformity is different than and is not to be
13 confused with illegality (see the definitions of "nonconforming," "nonconforming use," and
"illegal use" in Chapter 18.20 SJCC). *SJCC 18.40.310*. Legal nonconforming structures
and uses are commonly referred to as "grandfathered." *Id*.

14 12. Generally, "[a] nonconforming use is a use which lawfully existed prior to the
15 enactment of a zoning ordinance, and which is maintained after the effective date of the
16 ordinance, although it does not comply with the [current] zoning restrictions applicable to
17 the district in which it is situated." *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136
18 Wn.2d 1, 6, 959 P.2d 1024 (1998). A particular nonconforming use "is defined in terms of
19 the property's lawful use established and maintained at the time the zoning [causing
20 nonconformance] was imposed." *Miller v. City of Bainbridge Island*, 111 Wn. App. 152,
164, 43 P.3d 1250 (2002) (emphasis omitted). "The use of property must actually be
established prior to the adoption of the zoning ordinance to qualify as a nonconforming use
thereafter." *Anderson v. Island County*, 81 Wn.2d 312, 321, 501 P.2d 594 (1972) (citing
State ex rel. Smilanich v. McCollum, 62 Wn.2d 602, 384 P.2d 358 (1963)).

21 13. "Legal, nonconforming uses are vested legal rights." *First Pioneer Trading Co. v.*
22 *Pierce County*, 146 Wn. App. 606, 614, 191 P.3d 928 (2008)(citing *Skamania County v.*
Woodall, 104 Wn. App. 525, 539, 16 P.3d 701 (2001)), *review denied*, 165 Wn.2d 1053
23 (2009).

24 14. The landowner – in this appeal, that means Mr. Bowles – bears the burden of
25 establishing that a valid nonconforming use exists. Specifically, the landowner asserting a
prior legal, nonconforming use bears the initial burden to prove that (1) the use existed

1 before the county enacted the contrary zoning ordinance; (2) the use was lawful at the time;
2 and (3) the applicant did not abandon or discontinue the use for over a year prior to the
3 relevant change in the zoning code].” *First Pioneer Trading*, 146 Wn. App. at 614 (citing
Jefferson County v. Lakeside Indus., 106 Wn. App. 380, 385, 23 P.3d 542, 29 P.3d 36
(2001)).

4 15. Moreover, to establish a valid nonconforming use, the use must have been more
5 than intermittent or occasional prior to the change in the zoning legislation. *N./S. Airpark
Ass'n v. Haagen*, 87 Wn. App. 765, 772, 942 P.2d 1068 (1997).

6 16. Only after a landowner first establishes that a legal nonconforming use existed does
7 the burden shift back to any government agency asserting that the nonconforming use was
8 abandoned to show that the landowner abandoned or discontinued the use after the
9 enactment of the relevant zoning ordinance. *Van Sant v. City of Everett*, 69 Wn. App. 641,
648, 849 P.2d 1276 (1993) (quoting 8A Eugene McQuillin, *The Law of Municipal
Corporations* § 25.191 (3d ed. 1986 rev.)).

10 17. In this appeal, the County is NOT alleging that the appellant “abandoned” a
11 nonconforming use. Instead, county staff responded to the appellant’s “nonconforming
12 use” defense to the Notice of Violation by stipulating that Mr. Bowles provided information
13 sufficient to establish that his property “has been rented to various parties in exchange for
14 labor” thus recommending that Mr. Bowles should be allowed to continue short-term rental
15 of his property for “non-monetary remuneration such as exchange of labor at the same level
it has been rented in the past, which appears to be occasional” and that “[a]ny advertising
must clearly indicate that the rental is for exchange of labor and is non-monetary.” (*Staff
Report, Recommendation on page 4*).

16 18. The written letter setting forth the grounds for Mr. Bowles’ underlying appeal
17 expressly states that, after 1983, when Mr. Bowles first purchased the property, he rented
18 the property on a short-term basis. An unsigned declaration from Mr. Bowles’ himself is
19 included as part of his written appeal materials, included as part of Exhibit 2, which reads in
20 relevant part: “*Factual statement: In 1984 I started renting the property. At this time the
property was zoned R20 and San Juan County did not have any codes or regulations
prohibiting short-term rentals. I’ve continuously rented my Lopez Island home on a short-
term basis since that time in exchange for cash and labor.*”

21 19. To establish his “nonconforming use” of his property, Mr. Bowles provided about a
22 dozen written statements, some in the form of declarations (though only six were signed in
23 the packet of materials provided to the Hearing Examiner) from individuals who confirm
24 that they and/or their family ‘rented’ Mr. Bowles’ property on Lopez Island at various times
25 before 1997. None of these written statements provided sufficient details or written
evidence, like cancelled checks, bank statements, or the like, to establish that they regularly
paid actual money to rent Mr. Bowles’ property before 1997. Instead, the most detailed and

1 credible written statements show that people rented Mr. Bowles' property before 1997 in
2 exchange for labor, including building a deck, demolishing an outhouse, painting the main
3 house, yard maintenance, splitting wood, cleaning, painting the exterior, building a bridge,
4 replacing the deck, building a new tool shed, putting a roof on the pump house, planting
5 trees, general landscaping and maintenance, and that they would 'trade work on [Mr.
6 Bowles'] house and property in exchange for' time at the site.

7 20. Appellant's materials only include portions of his federal tax returns that appear to
8 be for tax years 2017 and 1999, showing some "rents received" as income during those tax
9 years, but not specifically identifying the source of such rents as from "Vacation/Short-
10 Term Rental" of any property. Instead, the 2017 federal tax document specifically
11 identifies the Lopez Island property as a "Single Family Residence" 'Type of Property'
12 instead of the option to categorize it as a 'Vacation/Short-Term Rental', further stating that
13 such property was used as a "Fair Rental" for 365 days. Neither of these records aids the
14 appellant in satisfying his burden to establish the existence of a nonconforming use of his
15 property before 1997. In fact, they seem to show that he did not use the property as a
16 "vacation/short term rental" in the 2017 tax year.

17 21. While nonconforming uses are protected, they are properly restricted to the type,
18 level, and intensity of use actually established before the law changed. "The policy of
19 zoning legislation is to phase out a nonconforming use." *Anderson*, 81 Wn.2d at 323. This
20 is because "[n]onconforming uses are disfavored under the law." *Open Door Baptist
21 Church v. Clark County*, 140 Wn.2d 143, 150, 995 P.2d 33 (2000). Nevertheless,
22 nonconforming uses are permitted to continue. Our Supreme Court has explained the
23 reason for allowing such uses: "An ordinance requiring an immediate cessation of a
24 nonconforming use may be held to be unconstitutional because it brings about a deprivation
25 of property rights out of proportion to the public benefit obtained." *State ex rel. Miller v.
26 Cain*, 40 Wn.2d 216, 218, 242 P.2d 505 (1952) (quoting *Austin v. Older*, 283 Mich. 667,
676, 278 N.W. 727 (1938)). "In enacting [nonconforming use] ordinances ... municipal
authorities have had in mind the injustice and doubtful constitutionality of compelling the
immediate removal of the objectionable buildings already in the district, and have usually
made express provision that these *nonconforming uses* may be continued, without the right
to enlarge or rebuild after destruction." *Cain*, 40 Wn.2d at 221 (quoting *Rehfeld v. City of
San Francisco*, 218 Cal. 83, 84, 21 P.2d 419 (1933)). Thus, local governments are
motivated to allow nonconforming uses to persist in order to avoid constitutional challenges
to zoning ordinances. However, while "[a]s a general proposition, due process prevents the
abrupt termination of what one had been doing lawfully[,] [t]he protection does not
generally extend beyond this purpose." *Meridian Minerals Co. v. King County*, 61 Wn.
App. 195, 212, 810 P.2d 31 (1991). (Summary of caselaw as set forth in *McMilian v. King
County*, 161 Wn. App. 581, 255 P.3d 739 (Div. 1, 2011).

22. Appellant's legal arguments assert that the absence of a state UBI number, lack of
records showing payments of lodging or retail taxes to the Washington Department of

1 Revenue, and the like, should not be considered as part of this appeal. Such arguments are
2 misplaced in this appeal, where the key issue is whether the appellant can establish the
3 existence of a nonconforming use, and not whether any established nonconforming use has
4 been abandoned.

5 23. Division One of the Washington Court of Appeals has eliminated any confusion on
6 this subject, where it restated and explained the applicability of its previous decision in the
7 *Van Sant v. City of Everett* case, which was the primary focus of appellant's legal
8 arguments made at the appeal hearing and written materials. In *McMilian v. King County*,
9 161 Wn. App. 581, 255 P.3d 739 (Div. I, 2011), the Court wrote:

10 We are aware of our decision in *Van Sant* wherein we made reference to the
11 former, more restricted theory: "Courts have repeatedly found that licensing
12 and other regulations *unrelated* to land use approval, whether business
13 licensing, business and occupation tax regulations, or building permits, are not
14 per se determinative of the continuance of a nonconforming use." 69 Wn. App.
15 at 651-52. Therein, we held that the absence of business licenses and records
16 and business and occupation tax records, evidencing the landowner's failure to
17 comply with the city's ordinances, was not per se determinative of the question
18 of whether the nonconforming use had been abandoned but it could be
19 considered in determining whether a nonconforming commercial use had been
20 abandoned because "violation of such ordinances may be evidence of an intent
21 to abandon." *Van Sant*, 69 Wn. App. at 652-53.

22 Our decision in *Van Sant* is not, however, determinative of the question
23 presented herein because the present case regards the question of whether a
24 nonconforming use was ever validly established [emphasis added] in the first
25 instance rather than the question of whether a validly established
26 nonconforming use had subsequently been abandoned. In *Van Sant*, we
27 recognized that this was an important distinction: "[T]he City's cases are
28 distinguishable. [In those cases,] there was no previous finding of a
29 nonconforming use [and] the landowner's right to nonconforming use had never
30 actually vested. In contrast, in the present case the nonconforming commercial
31 use clearly vested in 1972." *Van Sant*, 69 Wn. App. at 652 (citation omitted).

32 24. Based on the *McMilian* decision, the Examiner finds and concludes that the
33 Department properly considered the absence of tax records that could have been submitted
34 by the appellant to support his nonconforming use claims. The absence of a UBI number,
35 cancelled checks, ads from any publications or postings in the pre-1997 years, booking
36 registers, common business records maintained by people who use their property as a
37 vacation/short-term rental, and business and occupation tax records in the years thereafter,
38 are all valid considerations to determine whether Mr. Bowles can establish that he had/has a
39 valid nonconforming use. He did not meet his burden to establish that he regularly rented

1 his property in exchange for fair market, short-term rental values prior to 1997.

2 25. Ms. Shook testified that other property owners who were cited for operating
3 vacation rentals without permits, or in an area where such rentals are no longer permitted,
4 have submitted valid tax records, business records, logs of bookings, and other written
5 materials that supported their claims that they operated a valid vacation rental on their
6 property before rules changed. Mr. Bowles did not, and presumably could have if he had a
valid, vacation rental operation, for actual money, on more than an intermittent or
occasional basis, before County codes changed to prohibit such use in the Agricultural
Resource land use designation.

7 26. It is a well-established rule of statutory construction that considerable judicial
8 deference should be given to the construction of an ordinance by those officials charged
9 with its enforcement. *Mall, Inc. v. Seattle*, 108 Wn.2d 369, 377-78, 739 P.2d 668 (1987).
10 In this appeal, the Director's Staff Report and testimony indicates that she believes the
11 appellant has demonstrated that his property has been rented in exchange for labor and non-
12 monetary remuneration. While the Examiner may believe that the evidence in the Record is
not of the type and nature sufficient to establish the existence of anything other than an
intermittent or occasional use prior to the change in the County's zoning legislation, proper
deference to the Director's interpretation, application, and enforcement of the County's
nonconforming use code provisions is due.

13 27. As noted above, in the Staff Report and at the appeal hearing, County Staff
14 generally stipulated that the appellant presented evidence sufficient to demonstrate that the
15 house on his property has been used for short terms by various parties (guests) in exchange
for labor, on an occasional basis, before 1997 and thereafter.

16 28. At the appeal hearing, Ms. Shook correctly testified that the frequency and intensity
17 of an alleged nonconforming use is highly relevant. In this matter, she believes that 20-
18 weeks per year would be the most generous amount of time that the evidence could be read
19 to support as the window of time each year that Mr. Bowles' property has been rented to
20 various parties in exchange for labor or other non-monetary remuneration. Without any
written materials to support his claim, Mr. Bowles' testified that he believes he has rented
his property for 30 to 40 weeks per year.

21 29. With respect and appreciation for Mr. Bowles' polite, friendly, and casual demeanor
22 at the appeal hearing, the Examiner finds that he appeared to simply make up his estimate
23 on the fly regarding the length of time during which he has rented his property each year.
24 Other credibility factors that make his estimate less reliable and less believable than Ms.
25 Shook's 20-week estimate include without limitation: Mr. Bowles' personal interest in the
outcome of this case; the lack of any business records, booking logs, or other written
materials to corroborate his estimate; and the lack of specificity and details in the limited
written statements offered to support his appeal.

1 30. The evidence in this record does not support any finding that Mr. Bowles' property
2 has been rented for any period of time approaching 30 to 40 weeks each year. Instead, the
3 Examiner finds and concludes that Ms. Shook's 20-week estimate is more credible and
plausible.

4 31. Based on the record presented, and with due deference to the Director's
5 recommendation in this matter, the Examiner finds that Mr. Bowles established a very
6 limited nonconforming use of his Lopez Island property before the County's codes changed
7 in 1997. Specifically, the Bowles property has been used as a short-term rental for non-
monetary remuneration, such as the exchange of labor, for no more than 20-weeks each
year. The County did not argue that such use has been abandoned.

8 32. Accordingly, the instant appeal should be granted in part, to allow Mr. Bowles to
9 continue his nonconforming use of his Lopez Island property. Again, the Bowles property
10 may be used as a short-term rental for non-monetary remuneration, such as the exchange of
11 labor, for no more than 20-weeks each year. The Staff Report appropriately notes that any
advertising must clearly indicate that the rental is for exchange of labor and is non-
monetary. (*Staff Report, Recommendation on page 4*).

12 33. Given that the appellant immediately ceased rental of his property and stopped
13 advertising his house as a vacation rental after the NOV was issued, the Examiner finds and
14 concludes that the \$2,300.00 penalty issued against Mr. Bowles should be held in abeyance
15 for two years, and then reduced to zero, if he submits written proof to the Director at such
time demonstrating that he has taken steps to remain in full compliance with this Decision.

16 34. The Staff Report includes a discussion and analysis of how the Notice of Violation
17 was properly issued, and how the appellant only established that the previous use of his
18 property before 1997 was only as a short-term rental offered in exchange for labor and
19 other non-monetary remuneration. Except as modified herein, all statements of fact
20 contained in the Staff Report are all incorporated by reference herein as findings of fact by
the Hearing Examiner supporting this Decision.

21 V. CONCLUSIONS OF LAW.

22 1. Based on testimony and evidence in the Record, including without limitation all
23 findings set forth above, the Examiner concludes that the challenged Notice of Violation is
24 fully supported by substantial and credible evidence. The Department more than satisfied
25 its burden to prove by a preponderance of the evidence that: 1) Mr. Bowles is the
responsible party for causing the violation or is the property owner; and 2) the violation
listed on the notice of violation occurred.

1 2. In response to evidence and information submitted as part of Mr. Bowles' appeal,
2 County Staff generally stipulated that the appellant presented evidence sufficient to
3 demonstrate that the house on his property has been used for short terms by various parties
(guests) in exchange for labor, on an occasional basis, before 1997 and thereafter, but for no
more than 20 weeks in any calendar year.

4 3. Accordingly, appellant's property may continue to be rented on a short-term basis to
5 guests in return for non-monetary remuneration such as an exchange of labor or services,
6 for no more than 20 weeks per calendar year, as that was the extent of the nonconforming
use established in this appeal proceeding.

7 4. The appellant failed to satisfy his burden of proof to establish that he ever operated
8 his property as a valid vacation rental, for monetary compensation, on more than an
intermittent or occasional basis prior to 1997.

9 5. Any legal conclusions or other statements made in previous or following sections of
10 this document that are deemed conclusions of law are hereby adopted as such, and are
11 incorporated herein by this reference.

12 VI. DECISION.

13 Based on evidence included in the record for this appeal: the challenged Notice of
14 Violation is fully supported by substantial and credible evidence; the appellant failed to
15 establish that he operated his property as a valid vacation rental, for monetary
16 compensation, on more than an intermittent or occasional basis prior to 1997, but the
17 Department generally stipulated that the appellant presented evidence sufficient to
demonstrate that the house on his property has been used for short terms by various parties
(guests) in exchange for labor, on an occasional basis, before 1997 and thereafter, but for no
more than 20 weeks in any calendar year.

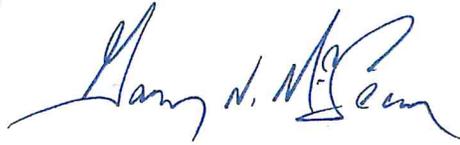
18 Accordingly, Mr. Bowles' property may continue to be rented on a short-term basis
19 to guests in return for non-monetary remuneration such as an exchange of labor or services,
20 for no more than 20 weeks per calendar year. Any advertising must clearly indicate that the
short-term rental is for exchange of labor or other non-monetary compensation.

21 Any subsequent request to alter, modify, intensify, or expand the appellant's
22 nonconforming use – including without limitation a request to obtain a vacation rental
23 permit – will require consideration of the total impact of the nonconforming use as well as
24 the added impact of the incremental changes being proposed and the consistency of the
25 changes with the applicable land use designation (*See SJCC 18.40.310(A)*), which may
include conditions of approval that are consistent with those applied to legally permitted
vacation rentals in other parts of the County, including without limitation all standards

1 found in SJCC 18.40.275.

2 The \$2,300.00 penalty issued against Mr. Bowles shall be held in abeyance for two
3 years, and then reduced to zero, if he submits written proof to the Director at such time
4 demonstrating that he has remained in full compliance with this Decision. Before such
5 time, the penalty will be reduced to zero if the appellant obtains a vacation rental permit
6 authorizing his request to alter, modify, intensify, or expand his nonconforming use (*See*
7 *SJCC 18.40.310(A)*).

8 ISSUED this 3rd Day of May, 2019

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11 Gary N. McLean, Hearing Examiner

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Effective Date, Appeals, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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