

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

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| Applicant(s): | David Page PO Box 1438 Eastsound, WA 98245 | |
| Agent: | Terri Williams PO Box 1001 Eastsound, WA 98245 | |
| File No.: | PCUP00-13-0017 | |
| Request: | Conditional Use Permit (CUP) | S.J.C. COMMUNITY |
| Parcel No: | 271352001 | FEB 28 2014 |
| Location: | 32 Bracken Fern Lane Eastsound | DEVELOPMENT & PLANNING |
| Summary of Proposal: | Application for a conditional use permit to allow transient lodging of a single-family home. | |
| Land Use Designation: | Eastsound Residential, one unit per 2 acres | |
| Public Hearing: | February 12, 2014 | |
| Application Policies and Regulations: | SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria | |
| Decision: | Approved subject to conditions. | |

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

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| 4 RE: Dave Page 5 Conditional Use Permit 6 (PCUP00-13-0017) | 7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION |
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8 **INTRODUCTION**

9 The applicant has applied for approval of a conditional use permit for transient
10 lodging in the bedrooms of a six bedroom residence. In more commonly understood
11 terms, the applicant is proposing a bed and breakfast. The application is approved
12 with conditions. S.J.C. COMMUNITY

12 **TESTIMONY**

FEB 28 2014

13 Lee McEnery testified that the application for a five-bedroom vacation rental in the
14 East Sound at 32 Bracken Fern Lane. The site is part of the rural residential district.
15 The home was previously used as an adult-care facility, thus it has a large number of
16 bedrooms. The applicant's obtained approval to use it as 2-bedroom rental several
17 years ago. Now, the applicant would like to use the whole home as a rental unit.
18 The applicants will remain living in the sixth bedroom. Staff recommends approval
19 of the application. In regard to the aerial photograph, the north side of the property
20 is the side with the most trees. There is not a difference in the permit process
21 between a Bed and Breakfast and a rental home. There is commercial use to the
22 north and south. The lot is .9 acres.

19 Applicant Testimony

20 Terry Williams stated the applicant agrees with the staff report. The surrounding
21 homes are not visible from the subject property and vice versa.

22 **EXHIBITS**

- 23 Ex. 1: Staff report.
24 Ex. 2: Application materials.

25 **FINDINGS OF FACT**

Procedural:

Vacation Rentals¹ of Residences Criteria

1
2 **SJCC 18.40.270(A):** *No more than three guests per bedroom shall be accommodated at any one time.*

3 4. The project is conditioned to limit the total number of guests for the five
4 rooms to 15.

5 **SJCC 18.40.270(B):** *The vacation rental of a principal residence or accessory*
6 *dwelling unit shall be operated in a way that will prevent unreasonable disturbances*
7 *to area residents.*

8 5. The conditions of approval of the permit have been imposed to prevent
9 any unreasonable disturbances. These conditions limit the number of occupants to
10 three guests per room; require posting of rules of conduct which specifically mention
11 prohibition of trespassing and identify property lines; require provision of a 24-hour
12 contact phone number to neighbors in case problems may arise; and require
13 maintenance of a written log of complaints.

14 **SJCC 18.40.270(C):** *At least one additional off-street parking space shall be*
15 *provided for the vacation rental use in addition to the parking required for the*
16 *residence or accessory dwelling unit.*

17 6. Table 300-1 of Chapter 16.55 SJCC requires 1.5 parking spaces for homes
18 over 550 square feet, which translates into 2.5 parking for the proposal. The staff
19 report notes that there are seven parking spaces on site.

20 **SJCC 18.40.270(D):** *If any food service is to be provided the requirements for a bed*
21 *and breakfast residence must be met.*

22 7. No food service is proposed in the application.

23 **SJCC 18.40.270(E):** *No outdoor advertising signs are allowed.*

24 8. No outdoor advertising is proposed.

25 **SJCC 18.40.270(F):** *The owner or a long-term lessee may rent either the principal*
residence or the accessory dwelling unit on a short-term basis (vacation rental), but
not both.

9. There is no accessory dwelling unit.

¹ The proposal is more commonly understood to be a bed and breakfast, but still meets the SJCC 18.40.270 definition of "vacation rental" as "vacation (short-term; less than 30 days) rentals of single-family residential units and accessory dwelling units or portions thereof".

1 **SJCC 18.40.270(G):** *Where there are both a principal residence and an accessory*
2 *dwelling unit, the owner or long-term lessee must reside on the premises, or one of the*
3 *living units must remain unrented.*

4 10. There is no accessory dwelling unit.

5 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
6 *conservancy land use districts, the vacation rental of a residence or accessory*
7 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
8 *lessee demonstrates that the residence or accessory dwelling unit in question was*
9 *used for vacation rental on or before June 1, 1997. When internal land use district*
10 *boundaries are adopted for an activity center, this provision will apply to VR and HR*
11 *districts but not to the activity center in general.*

12 11. Not applicable to properties in the Eastsound, 1 unit per 2 acre
13 designation.

14 **SJCC 18.40.270(I):** *Vacation rental accommodations must meet all local and state*
15 *regulations, including those pertaining to business licenses and taxes.*

16 12. This will be required as a condition of approval.

17 **SJCC 18.40.270(J):** *Owners of vacation rentals must file with the administrator a 24-*
18 *hour contact phone number.*

19 13. This will be required as a condition of approval.

20 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*
21 *to the tenants regarding rules of conduct and their responsibility not to trespass on*
22 *private property or to create disturbances. If there is an easement that provides*
23 *access to the shoreline, this shall be indicated on a map or the easement shall be*
24 *marked; if there is no access, this shall be indicated together with a warning not to*
25 *trespass.*

14. This will be required as a condition of approval.

21 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
22 *18.40.240 cannot be separately leased or rented for less than 30 days.*

23 15. There is no accessory dwelling unit on the property.

24 **Conditional Use Permits – Criteria for Approval**

25 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or*
purposes and regulations of this code or the Comprehensive Plan;

16. This proposal is consistent with the SJCC for the reasons stated above. The vacation rental is consistent with the San Juan County Comprehensive Plan, which allows for tourism-related businesses and activities within the context of maintaining a diverse and balanced economy while minimizing the related negative impacts.

SJCC 18.80.100(D)(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;*

17. The proposal will not alter the exterior appearance of the home, which is a single family home and is thus compatible and appropriate in design, character and appearance with the surrounding single family homes and applicable goals and policies thereto. The criterion is satisfied.

SJCC 18.80.100(D)(3): *The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;*

18. Mitigation measures for vacation rental impacts, such as noise and trespassing, have been added as conditions of approval. Therefore, the use, as conditioned, should not cause significant or unreasonable adverse impacts on neighbors or surrounding environment.

SJCC 18.80.100(D)(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;*

19. The property will continue to appear and function in a manner similar to the existing use with no significant adverse impacts, and further similar requests will not produce significant adverse impacts to the environment.

SJCC 18.80.100(D)(5): *The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;*

20. The proposal is in an existing development and according to staff has been shown to meet these requirements.

SJCC 18.80.100(D)(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;*

21. There will be no alteration to location, size, or any other “outside” feature of the existing property, so no new interference should occur as a result.

1 **SJCC 18.80.100(D)(7):** *The pedestrian and vehicular traffic associated with the*
2 *conditional use will not be hazardous to existing and anticipated traffic in the*
3 *neighborhood;*

4 22. According to the staff report, the pedestrian and vehicular traffic
5 associated with the use will not be hazardous to the neighborhood and there is nothing
6 in the record to suggest anything to the contrary. The criterion is satisfied.

7 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*
8 *forth in Chapter 18.40 SJCC;*

9 23. As conditioned, and discussed above, the proposal will be in compliance
10 with SJCC 18.40.270.

11 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
12 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
13 *36.70.547); and*

14 24. There is no airport or airfield adjacent to this property.

15 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
16 *Chapter 18.60 SJCC.*

17 25. As an existing development site, the proposal is consistent with Chapter
18 18.60 SJCC.

19 DECISION

20 The application is approved as conditioned below. As conditioned below, the
21 proposal is consistent with all the criteria for a conditional use permit:

- 22 1. The five bedroom vacation rental shall be operated as described in the application
23 materials except as modified by these conditions.
- 24 2. A maximum of fifteen guests shall occupy the unit at any one time for rentals of
25 30 days or less.
3. No food service is to be provided. No outdoor advertising signs are allowed.
4. The rentals must meet all local and state regulations, including those pertaining to
business licenses and taxes. Approval of this permit does not authorize the owner to
violate private covenants and restrictions.
5. No use of the property shall be made that produces unreasonable vibration, noise,
dust, smoke, odor or electrical interference to the detriment of adjoining properties.

1 6. A 24-hour non-message, non-recording contact number shall be provided to
2 Community Development and Planning Department (CDPD) and to all neighbors
3 within 300 feet of the property. A log of complaints shall be kept and a copy
4 provided to CDPD upon request.

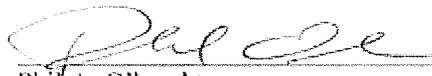
5 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
6 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
7 property boundaries, noise disturbances and any special items specific to the rental
8 unit or adjoining properties. Upon approval by CDPD a copy of the Rules of Conduct
9 shall be posted in the residence, given to all adult tenants and given to all property
10 owners within 300 feet of the residence.

11 8. Authorization under this permit shall be void if the use is discontinued for 24
12 consecutive months.

13 9. Upon determination by the Director of CDPD that any condition listed above has
14 been violated, following issuance of a Notice of Violation, the Director may, in
15 addition to other code enforcement remedies, revoke the conditional use permit.

16 10. The proposal shall meet all applicable standards of SJCC 16.55.240 and
17 16.55.300.

18 Dated this 27th day of February, 2014.

19 
20 Phil A. Olbrechts

21 County of San Juan Hearing Examiner

22 **Effective Date, Appeal Right, and Valuation Notices**

23 Hearing examiner decisions become effective when mailed or such later date in
24 accordance with the laws and ordinance requirements governing the matter under
25 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.

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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 requirement 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.