

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicant(s): Wyndham Resort Development
8427 Southpark Circle
Orlando, FL 32816

Agent: Richard Heiserman
Ankrom Moisan Architects
6720 SW Macadam Ave.
Portland, OR 97219

File No.: PCUP00-13-0012 **S.J.C. COMMUNITY**

Parcel Nos: 260731016 **JAN 08 2014**

Location: 31 Jack and Jill Place **DEVELOPMENT & PLANNING**
Orcas Island

Summary of Proposal: Application for a conditional use permit and a revision to a shoreline conditional use permit in order to add kitchens to the rental units of the Deer Harbor Resort.

Land Use Designation: Deer Harbor Hamlet Commercial

Public Hearing: December 11, 2013

Application Policies and Regulations: SJCC 18.80.100(D) and 18.80.110(M)(2).

Decision: Approved with conditions.

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Deer Harbor Resort 5 Conditional Use Permit and 6 Shoreline Permit Revision (PCUP-13-0012)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION. S.J.C. COMMUNITY JAN 08 2014
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7 **INTRODUCTION**

DEVELOPMENT & PLANNING

8 The applicant has applied for a conditional use permit and a revision to a 1997
9 shoreline conditional use permit in order to add kitchens to the existing cabins of the
10 Deer Harbor Resort. The conditional use permit and shoreline revision are approved
 subject to conditions.

11 **TESTIMONY**

12 Staff Testimony

13 Julie Thompson stated that the conditional use permit covers the entire project. In
14 regard to parking, the applicant has a proposal to bring the project into compliance
15 with the existing parking standards. The proposed parking space standards regarding
16 stall size are in compliance with current parking standards. The number of resort
 stalls and marina stalls is changed in the new proposal.

17 Applicant Testimony

18 Mr. Heiserman testified that the prior parking layout plan was a hand sketch which
19 envisioned parking spaces in places that were not feasible. Now, the applicant is
20 presenting a parking layout proposal that is more conservative, but also feasible. The
21 original conditional use permit was approved, but the owner of the site changed and
22 the parking obligation was never met. The new proposal complies with the number
23 count of stalls agreed on in 1998. This proposal meets current parking standards as
24 well. In 1998, the prior owners agreed to provide 41 parking spaces for the marina
25 and 6 for the post office. The new proposal provides for 90 parking spaces which
 leaves 43 parking spaces for the resort. 4 of these parking spaces are ADA-adaptable
 stalls. There will be 39 standard spaces. 12 of these spaces will be left for employees
 which leaves a balance of 27 for the resort. There are 25 units at the resort. The
 applicant believes one parking space per unit is adequate because the cottages are
 only 525sqft. The new proposal will include signage to ensure patrons know which
 spots are designated for resort use.

1 Brian Wellman added that they are currently pricing signage for the parking lot.

2 **EXHIBITS**

- 3 Exhibit 1 Staff Report
4 Exhibit 2 Applicant Request for Review
5 Exhibit 3 Application Materials
6 Exhibit 4 Comment Letter (parking)
7 Exhibit 5 Site plan with proposed parking

8 **FINDINGS OF FACT**

9 **Procedural:**

- 10 1. Applicant. The Applicant is Wyndham Resort Development.
11 2. Hearing. The Hearing Examiner conducted a hearing on the subject
12 application at 10:15 am on December 11, 2013.

13 **Substantive:**

- 14 3. Site and Proposal Description. The applicant has applied for a conditional
15 use permit and a revision to a 1997 shoreline conditional use permit
16 (97SU028/97CU038) in order to add kitchens to the existing cabins of the Deer
17 Harbor Resort. No new landscaping is proposed. Parking will be improved as
18 outlined in Ex. 5.

19 This is an existing resort that was last subject to a major redevelopment as approved
20 in the 1997 shoreline conditional use and associated site plan permit. There are
21 twenty-three rental units, a check-in building, an outdoor swimming pool, recreation
22 amenities, and a laundry and maintenance building. The resort shares parking with a
23 post office. There is a restaurant building on the property which has been shut down
24 for at least eight years due to economic conditions. There are no plans to reopen it.

25 The resort property slopes gently up hill to the east from Deer Harbor Road to Upper
Deer Harbor Road. A portion of it is within shoreline jurisdiction with a designation
of Urban. The other portion is in the Deer Harbor Hamlet Commercial land use
designation.

4. Characteristics of the Area. A marina is situated in Deer Harbor to the
west. There is residential development to the north, east and south.

5. Adverse Impacts of Proposed Use. There are no adverse impacts
associated with the proposal and the parking improvements proposed by the applicant
will in fact provide a net public benefit. As referenced at page 24 of the staff report,
there is no change proposed in the height, size or location of buildings and no changes
to landscaping so no adverse aesthetic impacts are anticipated. Further, since there is

1 no change the bulk and dimensions of the buildings or to on-site vegetation, no
2 adverse environmental impacts are anticipated either. The staff report concludes that
3 since the resort is an existing use, it is served by adequate access, fire protection,
4 water, stormwater control, and sewage disposal facilities. There is no evidence or
5 reasonable inference to the contrary. The kitchens will also reduce vehicle trips since
6 people won't have to drive to restaurants for all of their meals.

7 The primary issue of concern is the adequacy of existing parking. There is nothing to
8 suggest that kitchens will increase the demand on parking. As discussed in the
9 conclusions of law, the proposal will be conditioned on ensuring that parking will be
10 consistent with the amount of parking proposed and approved in the 1997 shoreline
11 conditional use and site plan decision. Since no increase in parking demand is
12 created by the proposal, the 1997 decision sets the standard for adequate parking.

13 A second issue of concern is maintaining the resort character of the facility. The
14 addition of kitchens to the rental units creates the possibility that tenants will use the
15 facility on a long term basis, essentially converting the units from resort use to
16 residential use. If residential use is not considered compatible with surrounding uses,
17 a limit can be placed on the tenancy of each rental unit (e.g. no unit will be rented out
18 to any single person for more than six months per year, etc.). Such a conversion of
19 use would not be considered incompatible if the San Juan County Council has
20 authorized residential use as a permitted or conditional use in the Hamlet Commercial
21 district and the potential residential densities of the resort are consistent with
22 applicable zoning provisions. SJCC 18.30.310 Table 3.8 authorizes single-family
23 residences in the Hamlet Residential Zone as a conditional use. Unfortunately, there
24 is no residential density assigned to the Hamlet Commercial district in the County's
25 zoning code or comprehensive plan. The Deer Harbor Hamlet plan has a map, Figure
2, assigning residential densities throughout the Deer Harbor Hamlet area but no
density is set for Hamlet Commercial uses. In the absence of any limit to residential
density in the Hamlet Commercial district and the absence of any evidence that long
term use would create compatibility issues it must be concluded that long term use of
the rental units as residences is compatible with surrounding uses¹.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. Shoreline substantial development permit
revisions and conditional use permits are subject to approval by the Hearing
Examiner after conducting a public hearing. SJCC 18.80.110(M); SJCC 18.80.020
Table 8.1; 18.80.100(C).

¹ Note that although limits on the duration of tenancies cannot be imposed on the basis of compatibility
issues, they are imposed for this application in order to comply with the shoreline revision criterion
that the proposal not involve any change in use.

1 **Substantive:**

2 2. Zoning Designation. Deer Harbor Hamlet Commercial.

3 **SHORELINE REVISION**

4 3. Permit Review Criteria. SJCC 18.80.110(M)(2), quoted in italics below, governs
5 the criteria for approval of revisions to shoreline permits.

6 **SJCC 18.80.110(M)(2):** *If the hearing examiner determines that the proposed*
7 *changes are within the scope and intent of the original permit, as defined by WAC*
8 *173-27-100(2), the revision shall be granted.*

9 **WAC 173-27-100(2):** *'Within the scope and intent of the original permit' means all*
10 *of the following:*

11 *(a) No additional over water construction is involved except that pier, dock, or float*
12 *construction may be increased by five hundred square feet or ten percent from the*
13 *provisions of the original permit, whichever is less;*

14 *(b) Ground area coverage and height may be increased a maximum of ten percent*
15 *from the provisions of the original permit;*

16 *(c) The revised permit does not authorize development to exceed height, lot coverage,*
17 *setback, or any other requirements of the applicable master program except as*
18 *authorized under a variance granted as the original permit or a part thereof;*

19 *(d) Additional or revised landscaping is consistent with any conditions attached to the*
20 *original permit and with the applicable master program;*

21 *(e) The use authorized pursuant to the original permit is not changed; and*

22 *(f) No adverse environmental impact will be caused by the project revision.*

23 4. The proposed revision meets all of the criteria above as conditioned. No
24 overwater construction is included in the proposal. No change in height or size of the
25 buildings is proposed, so there should not be any change in ground coverage caused
by the buildings. It is unclear if impervious parking area will be increased, hence the
conditions of approval will require staff to verify that impervious parking area will be
increased by more than 10%. No new landscaping is proposed. Since there are no
proposed changes to the dimensions and locations of the buildings, there should be no
issues related to compliance with height, lot coverage, setback, or any other
requirements of the applicable master program. As determined in Finding of Fact No.
5, there are no adverse impacts associated with the proposal.

1 The one revision criterion that could be a problem for the proposal is WAC 173-27-
2 100(2)(e), which provides that approved use of the facility may not change. As
3 discussed in FOF No. 5, the addition of kitchens to the rental units creates the
4 possibility that the rental units could be used as residences as opposed to resort units.
In order to prevent this from occurring this revision decision is conditioned with the
requirement that no resort guest may occupy the rental units for more than a total of
six months per calendar year.

5 **CONDITIONAL USE CRITERIA**

6 5. Permit Review Criteria. A conditional use permit is required for the
7 proposal because Table 3.8 in SJCC 18.30.310 requires a conditional use permit for
8 any increase in the scope or scale of facilities and services of existing resorts.

9 **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;*

10 6. The criterion is met as detailed in the staff report, excluding the analysis of
11 the staff report on consistency with parking standards, which is addressed below in
COL No. 15.

12 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and
13 appearance with the goals and policies for the land use designation in which the
14 proposed use is located;*

15 7. The criterion is met. As determined in FOF No. 5, as conditioned and approved
16 the proposal will not create any significant adverse impacts, including aesthetic
17 impacts. The addition of kitchens will have almost no discernable impacts to the
18 character or design of the resort or change the type of impacts it creates. SJCC
19 18.30.190 defines the Deer Harbor Hamlet Commercial designation as being
20 composed of existing businesses, specifically identifying the Deer Harbor Resort. The
21 proposed additions of kitchens will have an immaterial impact on the character of this
use. As discussed in FOF No. 5, residential uses of unlimited densities are authorized
in the Hamlet Commercial district so longer term use of the rental units due to the
kitchens would still be consistent with goals and policies of the Hamlet Commercial
district.

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

24 8. As determined in Finding of Fact No. 5, the proposal will not create any
25 significant adverse impacts.

1 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
2 *(the total of the conditional uses over time or space) will not produce significant*
3 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

4 9. The criterion is met. As noted in the staff report, no new resorts are
5 allowed in the Deer Harbor Hamlet Commercial zone. As determined in FOF No. 5
6 there are no adverse impacts associated with the proposal. There is no reason to
7 conclude that those impacts would be any more significant at a cumulative level,
8 when limited to adding kitchens to the other existing resorts in the Hamlet
9 Commercial district.

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

12 10. As determined in Finding of Fact No. 5, the proposal is served by
13 adequate infrastructure and public services.

14 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*
15 *and fences, and screening vegetation associated with the proposed use shall not*
16 *unreasonably interfere with allowable development or use of neighboring properties;*

17 11. The proposal does not involve any exterior changes to buildings,
18 structures or vegetation as contemplated in the criterion above.

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

22 12. The staff report notes that pedestrian and vehicular traffic will not change
23 as a result of the proposal and that current pedestrian and vehicular conditions are not
24 hazardous.

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

As detailed in the staff report, the proposal is consistent with applicable
provisions of Chapter 18.40 SJCC.

SJCC 18.80.100(D)(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

Since there is no change in location, size or height of buildings the
proposal will not create any incompatibilities with any airports that may be nearby.

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

3 15. With the exception of parking, as detailed in the staff report the proposal is
4 consistent with all applicable requirements of Chapter 18.60 SJCC.

5 The most difficult part of this decision concerns whether the proposal complies with
6 applicable parking standards. Contrary the assertions of the applicant and staff, the
7 proposal does not meet current parking standards. However, so long as the parking is
8 as required in the 1998 decision, the proposal provides for adequate parking as
9 required by applicable development standards. The conditions of approval will
10 require that the number of spaces proposed and approved under the 1998 decision.

11 The applicant and staff appear to conclude that only one space per rental unit is
12 required under current parking standards. This is incorrect. Table 6.4 of SJCC 18.
13 60.120 requires one parking space per 300 square feet. The applicant testified that the
14 rental units are around 525 square feet each. SJCC 18.60.120(B)(3) requires that
15 parking space requirements must be rounded up for fractions 0.5 or greater.
16 Consequently, it's fairly clear under the regulations that all rental units must have two
17 parking spaces assigned to them if the rental units are around 525 square feet each.
18 Even if parking is based on total square footage of all resort building space divided by
19 300 as opposed to a per rental unit basis, it is clear that more than one parking space
20 is required per unit. The proposed parking doesn't meet current parking standards.

21 Although the proposal doesn't meet current parking standards, the kitchen remodels
22 don't trigger a need to comply with current parking standards. Chapter 18.60 SJCC
23 doesn't identify when new parking standards are triggered for remodels or
24 redevelopment. In the absence of any direct code language, general judicial holdings
25 of due process are helpful in espousing the principle that development should only be
made responsible to mitigate impacts that it creates. *See, e.g., Burton v. Clark
County*, 91 Wn. App. 505, 516-17 (1998). In this case there is nothing to suggest that
the kitchen remodels will create any more parking demand than what was anticipated
in the 1998 decision. Consequently, so long as the parking was constructed as
proposed and approved in the 1998 decision, the proposal should be regarded as
providing adequate parking.

Unfortunately, in this case the applicant has had to acknowledge that the prior owners
did not in fact construct parking as proposed and approved in the 1997 shoreline/site
plan decision (97SU028/97CU038). These deficiencies have resulted in adverse
impacts to the surrounding community, as noted in the written comments from the
Deer Harbor Review Committee. The applicant has made some good effort in
remediating the issues raised by the Deer Harbor Review Committee by proposing
signage and code compliant parking stall dimensions. However, the record is unclear
as to how many parking spaces were required in the 1997 decision. The conditions of
approval will require that the proposal contain at least the number of parking spaces
proposed and approved in the 1997 shoreline/site plan decision.

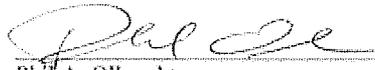
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DECISION

The revision is approved, subject to the following conditions:

1. Staff shall verify that the amount of ground coverage associated with parking improvements shall not increase the total ground cover of the proposal by more than 10% as prohibited by WAC 173-27-100(2). If ground coverage is increased by more than 10% the shoreline revision should be considered denied.
2. Approval of the revision application is conditioned on no guest of the resort occupying the rental units of the resort for a total of more than six months per calendar year.
3. Staff shall verify that the proposed parking contains the number of parking spots approved in the 1997 shoreline/site plan decision (97SU028/97CU038). The applicant shall add parking spaces to the proposal as necessary to comply with the terms of the 1997 decision.

Dated this 30th day of December 2013.


Phil A. Olbrechts

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 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

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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.