

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant: Olerin LLC  
(c/o David McCauley)  
222 Forrest Drive  
Friday Harbor, WA 98250

File No.: PCUP00-10-0012

Request: Conditional Use Permit **S.J.C. COMMUNITY**

Parcel No: 351049103 **MAR 17 2011**

Location: 70 Saltspring Drive **DEVELOPMENT & PLANNING**  
San Juan Island

Summary of Proposal: Conversion of Retail Use to Retail/Light Industrial

Land Use Designation: Rural General Use

Hearing Date: February 3, 2011

Application Policies and Regulations: SJCC 18.80.100(D)

Decision: Approved subject to conditions.

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN** S.I.C. COMMUNITY

2 MAR 17 2011

3 Phil Olbrechts, Hearing Examiner

4 DEVELOPMENT & PLANNING

5 RE: Olerin LLC 6 Conditional Use Permit (PCUP00-10-0012)	7 <b>FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION</b>
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9 **INTRODUCTION**

10 The Applicant has applied for approval of a conditional use permit to allow light industrial use in an existing 30,000 square foot building. The conditional use permit is approved.

11 **TESTIMONY**

12 David McCauley, Applicant, testified that the business park was permitted for light industrial uses, so the stormwater, septic etc. was designed for industrial use. A small part of the project was approved for retail and the rest for light industrial use. The requested change isn't a big change from what was already permitted. It's difficult to get any retail use given the current economic environment and there is a greater demand for industrial use. The Applicant has only received one specific request for industrial use for a small portion of the proposed industrial use so they can't identify what uses will occur on the property. For wastewater discharge, tenants will have to identify what effluent they will discharge ahead of time so that proper pretreatment is involved and testing of water quality will be required on demand. Water usage will also be limited because there's no water right and the project is limited to 5,000 gallons for on-site water. In-bound flow will be metered to ensure that water usage is limited to the water right. Out-bound flow will not be monitored for volume since there are limits to how much water they can use. Mr. McCauley noted that the closest homes are about 50 feet from the property lines and 150 feet from the buildings. The proposed use would be on the opposite side of the current theater use of the building so that the buffer to the adjoining residential use would be the 150 feet to the buildings plus 100 feet of the building itself.

23 Veronica Romey, president of the Midway Cove Homeowner's Association, an eight home subdivision adjoining the project, inquired what uses are allowed in the light industrial zone. Ms. Thompson listed the uses as identified in the staff report. Mr. McCauley noted that a potential tenant is Luxell, which manufactures satellite parts, which would involve waste water. Another light industrial use could be local plumbers. A cabinet maker would also qualify as a light industrial use. Any

1 industrial use could not be heard outside the building or emit dust. Ms. Romey noted  
2 that the theater (a current tenant) used outside lights that lit up her neighborhood, but  
3 the tenants remedied that problem upon hearing from the neighbors. Ms. Romey  
4 noted that the Applicant has been a good neighbor.

5 A site visit was conducted immediately after the hearing. Staff, the applicant and Ms.  
6 Romey were present. Ms. Romey noted that four homes of her subdivision backed  
7 the proposed use. Trees and a difference in grade separated the homes from the  
8 project.

## 9 EXHIBITS

10 All exhibits identified in the "Exhibits for Olerin LLC" exhibit list submitted by staff  
11 and attached to the 1/19/11 staff report are admitted into the record. In addition, an  
12 email from Julie Thompson to the Examiner dated 2/25/11 regarding conditions of  
13 approval is also admitted into the record as Ex. 6.

## 14 FINDINGS OF FACT

### 15 Procedural:

- 16 1. Applicant. The applicant is Olerin LLC.
- 17 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
18 application on February 3, 2010. The Examiner left the record open to the following  
19 Thursday (2/10/11) for written staff comments on mitigation measures, neighbor and  
20 applicant responses were due the following Monday (2/15/11), and staff/applicant  
21 rebuttal was due 2/17/11. In lieu of written correspondence from each of the parties,  
22 as outlined in the previous sentence, the Examiner received an email from Julie  
23 Thompson dated 2/25/11 (Ex. 6) outlining the mitigation agreed upon by all the  
24 parties.

### 25 Substantive:

3. Site and Proposal Description. The Applicant requests a conditional use  
permit to add light industrial use to a condominium lot that has been previously  
approved through the conditional use process for only retail use. The Applicant  
initially acquired conditional use approval at the site for a total of three condominium  
lots. Two of the three lots were approved for both retail and industrial use. The third  
subject lot was only approved for retail use.

The subject condominium lot is a portion of an upland site developed with a 30,000  
square foot building. It currently houses a set-building shop, rehearsal spaces, and a  
costume shop for the San Juan Community Theater. It also houses Extreme Fitness, a  
gym with exercise machines, punching bags, and a group fitness area.

1 4. Characteristics of the Area. The surrounding neighborhood consists of  
2 residential development, agricultural uses, and the Public Works Storage Yard. The  
3 Midway Cove subdivision, composed of eight lots, adjoins the building on the subject  
lot, but is separated from the building by a grade separation of a few feet as well as  
trees and other vegetation.

4 5. Adverse Impacts of Proposed Use. As mitigated, there are no adverse  
5 impacts discernable from the record. A primary issue of concern at the hearing was  
6 compatibility issues raised by Veronica Romey on behalf of the Midway Cove  
7 subdivision. As noted by staff and the Applicant, light industrial uses are fairly  
8 benign and they will be separated from the Midway Cove neighborhood by the  
9 interceding portions of the existing building (100 feet according to the Applicant) that  
10 already house the theater and gym uses. Further, there is grade and vegetative  
11 separation between the neighborhood and building as well. Staff raised concerns  
12 about chemical storage and disposal as well as waste water disposal (the site is served  
13 by a septic system). This issue is difficult to address at this stage of review because  
14 the identity of the light industrial tenants (and hence their uses) are unknown. In  
15 order to address these issues, the conditions of approval, agreed upon by all parties  
16 (see Ex. 6) require future tenants/purchasers to meet with staff to ensure compliance  
with chemical storage and disposal and wastewater disposal requirements. It is also  
noteworthy that SJCC 18.40.280 prohibits anything that could be reasonably  
anticipated as harming adjoining residential uses by requiring all uses to be conducted  
indoors; prohibiting excessive noise; and prohibiting any emissions of dust, dirt,  
odors, smoke, toxic gases or fumes. Since the identity of the tenants or their uses is  
unknown, compliance with SJCC 18.40.280 and the rest of Chapter 18.40 SJCC will  
also be made a condition of approval and staff will have to evaluate each proposed  
tenant as to whether it can comply with the standard.

## 17 CONCLUSIONS OF LAW

### 18 **Procedural:**

19 1. Authority of Hearing Examiner. The hearing examiner is authorized to  
20 conduct hearings and issue final decisions on conditional use permit applications.  
San Juan County Code ("SJCC") 18.80.020 Table 8.1.

### 21 **Substantive:**

22 2. Comprehensive Plan and Zoning Designations. The subject property is  
23 designated as Rural General Use ("RGU").

24 3. Permit Review Criteria. Under Table 3.2 of SJCC 18.30.040, light  
25 industrial use is authorized in the RGU zone as a conditional use. The criteria for a  
conditional use permit are governed by SJCC 18.80.100(D), which are quoted below  
in italics and applied through corresponding conclusions of law.

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

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

4 4. The proposal will have no discernable significant adverse impacts and is  
5 conditioned to comply with performance standards applicable to light industrial uses.  
6 There is nothing in the record to otherwise suggest inconsistency with the purpose,  
7 intent or requirements of the Zoning Code or Comprehensive Plan. The criterion is  
8 satisfied.

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

12 5. Section 2.3(C)(a) of the land use element of the San Juan County Comprehensive  
13 Plan lays out the polices underlying the Rural General Use designation. The goal of  
14 this designation is to “provide flexibility for a variety of small-scale, low-impact uses  
15 to locate on rural lands.” The policies include the objective that “allowable uses  
16 should be compatible with the existing rural character and should not result in  
17 more than a minimal and manageable increase in demand on existing rural  
18 governmental services and facilities, utilities, community water systems, sewage  
19 disposal systems, and County roads.” The project is relatively moderate in scale and  
20 infrastructure demand and the conditions of approval will keep the impacts low as  
21 well. The introduction of light industrial to the area will help add to the variety of  
22 uses in the area as contemplated in the policies. The conditions of approval require  
23 staff to review the currently unknown light industrial tenants to ensure that they meet  
24 the definition and performance standards of light industrial use so that compatibility  
25 is assured. The criterion is satisfied.

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

21 6. As discussed in the Findings of Fact, the conditions of approval will help ensure  
22 that there are no significant adverse impacts.

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

26 7. Impacts of the project are fully mitigated and the project is of low intensity and  
27 located on a large parcel of property. Further, as noted in the staff report, there are a  
28 limited number of acres in the Rural General Use land use designation. For these

1 reasons there does not appear to be any reasonable likelihood of adverse cumulative  
2 impacts.

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

5 8. The prior conditional use permit approval (Ex. 3) already addressed and ensured  
6 the adequacy of most public facilities. The only outstanding area of concern was the  
7 use of the existing septic system for the disposal of light industrial chemicals. Staff  
8 will assess that issue through the conditions of approval when potential tenant/buyers  
9 come forward with specific uses in mind. Staff also noted that the Health Department  
10 will require the Applicant to upgrade the existing water system for the proposed use.

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

14 9. The built portions of the project have already been completed and met binding  
15 site plan approval, which would have included a determination that the buildings and  
16 other structures satisfy the bulk and dimensional requirements of the RGU  
17 designation. Further, the site visit revealed that nothing about the built portions of the  
18 project interfere with the use of adjoining properties. The criterion is satisfied.

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 10. The staff report notes that site distance from the existing driveway is excellent.  
23 The staff report also notes that current activities have not created any pedestrian or  
24 vehicular traffic problems. Nothing in the record suggests that the project is of a  
25 magnitude or scale that would lead to significantly different traffic impacts due to the  
proposed conversion from retail to light industrial use.

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

11. The conditions of approval require staff to evaluate the proposed uses of new  
tenants for consistency with this requirement. It is unusual that all tenants will have  
to be evaluated in this manner, but it is also very unusual to have no information on a  
proposed use beyond the general assertion that the use will be light industrial.

1 It needs to be recognized that evaluating a use for a conditional use permit without  
2 knowing what the use will be is of questionable utility. There arguably<sup>1</sup> is no need to  
3 go through a site specific conditional use permit inquiry on the generalized impacts of  
4 "light industrial" use, because those impacts are already addressed (or should be  
5 addressed) in the performance standards of the Zoning Code. The entire point of the  
6 conditional use permitting process is to mitigate against use specific impacts that  
7 cannot be reasonably anticipated in the Zoning Code. Of course, to conduct that  
8 analysis you need to know what that specific use will be. In the absence of that  
9 information the final decision inevitably results in conditions that require assessment  
10 of impacts when the specific use becomes known. By necessity, most of the  
11 conditional use review is then conducted at the staff level outside of the public  
12 hearing process.

13 On the other hand, it also must be recognized that a business park owner cannot be  
14 reasonably expected to know what tenants (and hence specifically what uses) will  
15 occupy the park.

16 It is tempting under these circumstances to simply require a conditional use permit for  
17 each tenant that comes into the park, but a business park owner cannot be reasonably  
18 expected to go through the expense of building the park without knowing if he will  
19 ever find tenants who can pass subsequent conditional use permit review. Further,  
20 the Zoning Code clearly requires a conditional use permit for the construction of the  
21 industrial park. Requiring additional conditional use permits for tenants would  
22 subject business/industrial park development to more than one conditional use  
23 process review, which is not contemplated in the Zoning Code.

24 The delegation of code consistency analysis to the staff level is not an ideal or perfect  
25 solution to the dilemma of this situation, but it is the best solution available. Light  
26 industrial uses encompass a wide range of uses with a wide divergence on extent and  
27 types of impacts. Requiring each tenant to pass initial staff review for consistency  
28 with Zoning Code requirements helps ensure that the activities of each new tenant are  
29 compatible with the uses affected by it. At the same time, the more discretionary  
30 requirements of conditional use review, such as general requirements of compatibility  
31 with adjacent uses, is not delegated to staff review. This provides some assurance to  
32 the property owner that tenants will be approved if they meet fairly straightforward  
33 use requirements.

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

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<sup>1</sup> This is an arguable proposition because site specific characteristics of the property, as opposed to use, could be good candidates for conditional use review.

12. There is no airport or airfield adjacent to this property.

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

13. No further exterior construction has been proposed. Compliance with 18.60 SJCC for the existing structures has already been found through site plan approval of the existing built environment of the project.

### DECISION

The application is approved subject to the following conditions:

1. Prior to lease or sale of a unit, the owner and prospective tenant/buyer shall consult with the Community Development and Planning Department on chemical usage and proper handling and disposal options, as well as compliance with SJCC 18.30.040 and 18.30.140 and Chapter 18.40 SJCC.
2. Prior to lease or sale of a unit, the owner and prospective tenant/buyer shall consult with the Health and Community Services Department on adequacy of the on-site sewage system for proposed wastewater flows.
3. The conditions of approval for 03CU004 remain in effect.

Dated this 16<sup>th</sup> day of March, 2011.

  
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Phil Olbrechts  
County of San Juan 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.

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

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

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