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BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

RE: Kenneth Day Conditional Use Permit (PCUP00-09-0001)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION S.J.C. COMMUNITY
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INTRODUCTION

JAN 25 2010

The applicant has applied for a conditional use permit to allow vacation rental of a three-bedroom single-family residence. The Examiner approves the application, subject to conditions.

TESTIMONY

No one was present to testify, including the applicant. Lee McEnery summarized the application and noted there were no outstanding issues.

EXHIBITS

See the San Juan County Department of Planning Staff Report, prepared by Lee McEnery, dated December 28, 2009, for a full list of exhibits presented.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Kenneth Day.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on January 6, 2010.

Substantive:

3. Project/Site Description. The subject parcel is located on approximately 0.79 acres in the Rosario Highlands area of Orcas Island. The site is currently developed with a three-bedroom single-family residence. There is no accessory dwelling unit on the property. No critical areas have been identified on the site.
4. Characteristics of the Area. The general area is characterized by residential development in all directions surrounding the property.

1 5. Adverse Impacts of Proposed Use. There have been no adverse impacts
2 identified with the proposed use, as the structure is already in place and will allow
3 only the rental of the property, and no further additional usages or structures.
4 Additionally, the proposal is exempt from SEPA review according to WAC 197-11-
5 800(1)(a)(I)

6 CONCLUSIONS OF LAW

7 **Procedural:**

8 1. Authority of Hearing Examiner. SJCC 2.22.100, 18.80.020, and 18.80.100
9 authorize the Examiner to review and issue a final decision regarding conditional use
10 permits.

11 **Substantive:**

12 2. SJCC 18.80.100 provides general criteria of approval for all conditional
13 use permits. These general criteria require consistency with Chapter 18.40 SJCC,
14 which includes SJCC 18.40.270, a provision that specifically regulates vacation
15 rentals of residences. The criteria of SJCC 189.80.100 and 18.40.270 are quoted in
16 italics below, followed by applicable analysis.

17 **SJCC 18.40.270(A):**

18 *No more than three guests per bedroom shall be accommodated at any one time.*

19 3. There are three bedrooms available in the residence, resulting in a
20 maximum allowable occupancy of nine guests; which shall be included as a condition
21 of approval.

22 **SJCC 18.40.270(B):**

23 *The vacation rental of a principal residence or accessory dwelling unit shall be
24 operated in a way that will prevent unreasonable disturbances to area residents.*

25 4. Possible disturbances and interferences of use shall be mitigated by
conditions limiting the maximum number of occupants to nine, requiring the posting
of specific rules of conduct, identification of property lines, and providing neighbors
with a 24-hour phone contact.

SJCC 18.40.270(C):

*At least one additional off-street parking space shall be provided for the vacation
rental use in addition to the parking required for the residence or accessory dwelling
unit.*

1 5. There are at least four parking spaces available on the property, which
meets this criteria.

2 **SJCC 18.40.270(D):**

3 *If any food service is to be provided the requirements for a bed and breakfast*
4 *residence must be met.*

5 6. No food service is being proposed in the application.

6 **SJCC 18.40.270(E):**

7 *No outdoor advertising signs are allowed.*

8 7. No outdoor signs are being proposed in the application.

9 **SJCC 18.40.270(F):**

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

12 8. The proposal is to rent out the main residence only.

13 **SJCC 18.40.270(G):**

14 *Where there are both a principal residence and an accessory dwelling unit, the owner*
15 *or long-term lessee must reside on the premises, or one of the living units must*
16 *remain unrented.*

17 9. There is no guest house or accessory dwelling unit on the property.

18 **SJCC 18.40.270(I):**

19 *Vacation rental accommodations must meet all local and state regulations, including*
20 *those pertaining to business licenses and taxes.*

21 11. The applicant will obtain a business license and sales tax will be collected
22 on the rental payments.

23 **SJCC 18.40.270(J):**

24 *Owners of vacation rentals must file with the administrator a 24-hour contact phone*
25 *number.*

12. The owner has agreed to file and will do so to meet this criteria.

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SJCC 18.40.270(K):

The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or other easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.

13. The applicant is aware of this provision and will comply with it. It is also being placed as a condition of approval for the permit.

SJCC 18.40.270(L):

Detached accessory dwelling units established under SJCC 18.40.240 cannot separately leased or rented for 30 days.

14. There is no accessory dwelling unit on the property; therefore, this criteria is not applicable.

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;

15. The proposal includes the rental of a residence which is already constructed and which on its own meets the intent and purposes of the code and comprehensive plan. As such, the rental of the property can be mitigated to be consistent with the SJCC and Comprehensive Plan through the conditions of this permit.

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;

16. The proposed use will be in an existing residence, would not change the appearance of the structure, and with conditions of the approval will continue to function in a manner similar to the existing use of the building. Therefore, the residential character of the site would be maintained. Additionally, the proposal meets or can be conditioned to meet the applicable standards of section 18.40 and 18.60 of the SJCC as discussed in depth above.

SJCC 18.80.100(d)(3):

1 *The proposed use will not cause significant adverse impacts on the human or natural*
2 *environments that cannot be mitigated by conditions of approval;*

3 17. Short-term rental proposals often generate complaints regarding
4 trespassing, noise and parking. However, these problems have been addressed by the
5 conditions to approval; which enables the neighbors to report problems regarding the
6 rental use of the property.

7 **SJCC 18.80.100(d)(4):**

8 *The cumulative impact of additional requests for like actions (the total of the*
9 *conditional uses over time or space) will not produce significant adverse effects to the*
10 *environment that cannot be mitigated by conditions of approval;*

11 18. There do not appear to be any adverse environment impacts that will result
12 from this permit, because the structure already exists and will continue to function in
13 a manner similar to the existing use.

14 **SJCC 18.80.100(d)(5):**

15 *The proposal will be served by adequate facilities including access, fire protection,*
16 *water, stormwater control, and sewage disposal facilities;*

17 19. The applicable structure has already been built, undergoing relevant
18 building permit processes at that time. Additionally, there are currently adequate
19 facilities serving the property for rental usage.

20 **SJCC 18.80.100(d)(6):**

21 *The location, size, and height of buildings, structures, walls and fences, and*
22 *screening vegetation associated with the proposed use shall not unreasonably*
23 *interfere with allowable development or use of neighboring properties;*

24 20. As the residence has already been constructed, and there are no proposed
25 renovations or changes, it will not unreasonably interfere with other neighboring uses.
Additionally, the conditions will allow for neighboring property owners to report any
unreasonable impacts upon their usage.

SJCC 18.80.100(d)(7):

The pedestrian and vehicular traffic associated with the conditional use will not be
hazardous to existing and anticipated traffic in the neighborhood;

21. The pedestrian and vehicular traffic generally associated with rental usage
will not likely rise to the level of hazardous. However, as conditioned, the

1 neighboring property owners have a means of contacting the property owners
2 regarding any interference associated with traffic.

3 **SJCC 18.80.100(d)(8):**

4 *The proposal complies with the performance standards set forth in Chapter 18.40*
5 *SJCC;*

6 22. As discussed in depth above, and as conditioned, the proposal is in
7 compliance with SJCC 18.40.

8 **SJCC 18.80.100(d)(9):**

9 *The proposal does not include any use or activity that would result in the siting of an*
10 *incompatible use adjacent to an airport or airfield (RCW 36.70.547);*

11 23. There is no airport or airfield adjacent to this property, and as such this
12 provision is not applicable to the application.

13 **SJCC 18.80.100(d)(10):**

14 *The proposal conforms to the development standards in Chapter 18.60 SJCC.*

15 24. As an existing developed site, the proposal has already undergone review
16 under the development standards, and is as such consistent with SJCC 18.60.

17 **DECISION**

18 The Conditional Use Permit is approved, subject to the conditions of approval
19 recommended by staff in the December 28, 2009 Staff Report, provided that the first
20 sentence in Staff recommended Condition 3 is stricken. As testified by staff,
21 homeowners are free to lease their premises to third parties for periods of longer than
22 30 days without a conditional use permit. The conditions and restrictions of this
23 decision only apply to rentals less than 30 days in length.

24 Dated this 21st day of January, 2010.

25 Mailed when received
January 25, 2010. slt



Phil A. Olbrechts
San Juan County Hearing Examiner

APPEAL RIGHTS

1
2 SJCC 18.80.100(G) provides as follows for appeal rights:

3 *G. Appeals. Decisions approving or denying conditional use permits*
4 *and/or variances may be appealed to the board of County commissioners*
in accordance with procedures specified in SJCC 18.80.140.

5 Section 3.70(4) of the San Juan County Home Rule Charter also allows appellants to
6 bypass an appeal to the San Juan County Council and file an appeal directly with San
7 Juan Superior Court. Superior Court appeal procedures are governed by Chapter
36.70C RCW.

8 Appeal deadlines to both the County Council and the Superior Court are short and
9 procedural standards strict. Failure to comply with procedures will usually result in
10 dismissal of the appeal. Appellants are encouraged to carefully review all procedural
requirements and to consult with a private attorney to ensure that all procedures are
followed correctly.