

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Tom Leonidas
259 140th Avenue NE
Bellevue, WA 98005

File No.: PCUP00-10-0005

Request: Conditional Use Permit (CUP)

Parcel No: 260742016000

Location: 71 Upper Deer Harbor Road
Orcas Island, WA

Summary of Proposal: An application for a conditional use permit to allow
vacation rental of a four-bedroom residential dwelling unit

Land Use Designation: Deer Harbor Hamlet Residential (DHHR)

Public Hearing: Held August 5, 2010

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals
SJCC 18.80.100(D) CUP Criteria

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

AUG 19 2010

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

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RE: Tom Leonidas 5 6 Conditional Use Permit (PCUP00-10-0005)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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8 **INTRODUCTION**

9 The applicant has applied for approval of a Conditional Use Permit to allow for
10 vacation rental of a four-bedroom residential dwelling. The Examiner approves the
11 permit subject to conditions.

12 **TESTIMONY**

13 The Examiner admitted Exhibits 1-5 into the hearing record. Janice Biletnikoff
14 presented the application. Ms. Biletnikoff stated that the subject property is 0.54
15 acres, located in the Deer Harbor activity center. The residence was built in 2003 and
16 has four bedrooms, which would allow twelve guests under the Code. However,
17 according to staff, the applicant is limiting the number of guests to nine at one time.
18 Ms. Biletnikoff called the Examiner's attention to the OrcasGetaway House Rules,
19 (Exhibit 3) given to every tenant by the applicant. In staff's opinion, all criteria are
20 met as proposed and conditioned. Ms. Biletnikoff stated that she had an initial
21 concern regarding the amount of parking because single-family residential uses
22 require two parking spaces and the conditional use requires one extra parking space,
23 for a total of three spaces. However, according to Ms. Biletnikoff, the applicant
24 submitted Exhibit 5 to demonstrate that a third space could be squeezed in by the
25 boulders depicted in the photograph. Ms. Biletnikoff believed that the application
should be conditioned to require signage, which would direct cars to the parking
space and indicate where the other two cars could park to allow access to the third
space. Ms. Biletnikoff confirmed that grass surfaces are adequate to satisfy parking
requirements under the Code.

EXHIBITS

See documents attached to the July 7, 2010, staff report. In addition, the following
documents have been entered into the record:

Exhibit 1: Staff Report
Exhibit 2: Request for Review
Exhibit 3: OrcasGetaway House Rules

KNE814827.DOC;I\13071.900000\

CUP - LEONIDAS

1 Exhibit 4: Photograph with vehicle
2 Exhibit 5: Photograph of property

3 FINDINGS OF FACT

4 Procedural:

- 5 1. Applicant. The applicant is Tom Leonidas.
6 2. Hearing. The Hearing Examiner conducted a hearing on the subject application on August 5, 2010.

7 Substantive:

8 3. Site and Proposal Description. The applicant requests a conditional use
9 permit to allow short-term vacation rentals (less than 30 days) of his four-bedroom
10 single-family residence located near Deer Harbor. The parcel is located within the
11 Deer Harbor Activity Center and is designated as Deer Harbor Hamlet Residential
12 (DHHR) land use. The residence can accommodate 12 people.

13 The site is relatively exposed and clear of vegetation, with dense forest on the
14 adjacent property to the north. A slope rises gently from the west to the east,
15 approximately 20 feet in height. Little separation exists between the subject
16 development and the neighboring residences, which are close in proximity to both the
17 east and west.

18 4. Characteristics of the Area. The surrounding neighborhood is residential
19 in nature, close to Deer Harbor.

20 5. Adverse Impacts of Proposed Use. The Examiner concludes that there are
21 no adverse impacts caused as a result of the proposed use for a single-family
22 residential vacation rental unit. As conditioned, the proposed use should not interfere
23 with the neighboring properties' residential use. Noise must be kept to a minimum,
24 and a 24-hour phone number must be provided in case there are problems that arise.

25 CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The hearing examiner is authorized to
conduct hearings and issue final decisions on conditional use permit applications.
San Juan County Code ("SJCC") 18.80.020 Table 8.1; 18.80.100(C).

Substantive:

2. Comprehensive Plan and Zoning Designations. The subject property is
designated as Deer Harbor Hamlet Residential (DHHR), and the existing land use is
Residential.

1 3. Permit Review Criteria. Under Table 3.8 of SJCC 18.30.310 and
2 comment 7 thereof, vacation rental is an allowed use, subject to a conditional use
3 permit (unless the property qualifies for a provisional permit), for properties such as
4 the subject one located in land use district Deer Harbor Hamlet Residential (DHHR).
5 SJCC 18.80.110 establishes the criteria for approval for a conditional use permit. The
6 conditional use criteria require compliance with all Zoning Code criteria. These
7 criteria include regulations specifically applicable to vacation rentals, SJCC
8 18.40.270. The conditional use criteria and vacation rental criteria are quoted below
9 in italics and applied by corresponding conclusions of law. Furthermore, SJCC
10 18.80.020(C)(5) and (6) require evidence of adequate water and septic service for a
11 proposed use. In this case, the proposed use will occur in an existing single-family
12 residence which is adequately served with water and septic service. Water service is
13 provided by Upper Deer Harbor Water Association Community Water System, and
14 an on-site wastewater system is located on the property.

15 4. Notice. SJCC 18.80.030(A)(2)(a) requires publication of a notice of
16 application. This application was published on June 30, 2010. SJCC
17 18.80.030(A)(2)(b) and (c) also require notification of the application to all property
18 owners within 300 feet of the subject property and posting of the notice of application
19 on the subject property. According to staff, the applicant submitted an affidavit
20 verifying compliance with aforementioned notice requirements.

21 Vacation Rentals of Residences Criteria

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

24 5. There are four bedrooms available on the site, which would accommodate
25 twelve guests. This shall be a condition of approval.

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

6. Noise and trespassing impacts should be normal in comparison to the
normal residential use of the site. Conditions of approval of the permit have been
included to mitigate any such impact. These conditions include limitation of
occupants to three per bedroom, required posting of rules of conduct which
specifically mention prohibition of trespassing, identification of property lines,
provision of a 24-hour contact phone number to neighbors in case problems may arise,
and requiring the maintenance of a written log of complaints.

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 7. Currently, according to staff, two parking spaces are provided on the
2 subject property. These spaces are not demarcated with parking stops or any other
3 physical barrier, but are the only level area near the house adequate to fit a vehicle.
4 The property can accommodate up to twelve guests on a given night, which would
5 likely produce more than two vehicles. The SJCC requires the provision of two
6 parking spaces for a single-family residential use, plus one additional parking space
7 for a short-term vacation rental use. Thus, this criteria is not satisfied, but a condition
8 of approval will be imposed that one additional parking space be provided and marked
9 prior to commencement of the use as a vacation rental.

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

12 8. No food service is proposed in the application.

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

14 9. No outdoor advertising signs are proposed in the application.

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

18 10. There is no accessory dwelling unit on the site, and as such only the
19 residence will be rented.

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

23 11. There is no accessory dwelling unit on the site.

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

12. This property does not qualify for a provisional permit because it was
constructed in 2003 and was not used for vacation rental on or before June 1, 1997.
Therefore, a conditional use permit is required.

SJCC 18.40.270(I): *Vacation rental accommodations must meet all local and state*

1 regulations, including those pertaining to business licenses and taxes.

2 13. Upon approval, the applicant will be required to obtain a business license
3 and collect and/or pay all applicable taxes.

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

6 14. This section has been included as a condition of approval of the permit.

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

13 15. This section has been included as a condition of approval of the permit.
14 The applicant has provided a copy of the current handout for tenants (Exhibit 3).

15 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
16 *18.40.240 cannot be separately leased or rented for less than 30 days.*

17 16. There is no other structure besides the single-family residence being
18 proposed for rental.

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

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

22 17. This proposal is conditioned to be consistent with the SJCC and the
23 Comprehensive Plan, as detailed above. Clearly, vacation rentals are permitted under
24 the SJCC subject to obtaining a conditional use permit. The vacation rental is
25 consistent with the 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. The proposal is also consistent with
code regulations specifically applicable to vacation rentals (SJCC 18.40.270) as
detailed in the prior Conclusions of Law.

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;

18. The proposed use does not alter the general use of the structure as a
residence, and the character of the site will be maintained consistent with the

1 conditions of approval imposed hereunder. As such, the proposal site is already
2 consistent with this criteria. Additionally, the proposal meets or can be conditioned
to meet the applicable standards of sections 18.40 and 18.60 of the SJCC.

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

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

8 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
9 *(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;

10 20. The property will continue to appear and function in a manner similar to
11 the existing single-family residential use, and further similar requests will not produce
12 significant adverse impacts to the environment.

13 **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;

14 21. The residence is in an existing development and has been shown to meet
15 these requirements. The residence was constructed in 2003 and met all such
16 requirements at that time. According to staff, the proposal will not require an
17 increase in the wastewater capacity for the subject property, and it will not increase
the demand for public services.

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

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

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

24 23. According to staff, the pedestrian and vehicular traffic associated with the
25 use will not be hazardous to the neighborhood. The use, as conditioned, should
ensure that the property continues to function in a manner similar to the existing
single-family use.

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

3 24. As conditioned, and discussed above, the proposal will be in compliance
4 with SJCC 18.40.270.

5 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
6 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
7 *36.70.547); and*

8 25. There is no airport or airfield adjacent to this property.

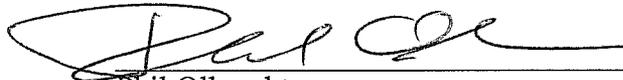
9 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
10 *Chapter 18.60 SJCC.*

11 26. As an existing development site, the proposal is consistent with Chapter
12 18.60 SJCC.

13 **DECISION**

14 The proposed project is consistent with all the criteria for a conditional use permit.
15 The proposal is approved subject to the conditions listed in the staff report.

16 Dated this 16th day of August, 2010.

17 

18 Phil Olbrechts
19 County of San Juan Hearing Examiner

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

21 Hearing examiner decisions become effective when mailed or such later date in
22 accordance with the laws and ordinance requirements governing the matter under
23 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
24 subject to review and approval by the Washington Department of Ecology pursuant to
25 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.

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

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