

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Elaine Coles
4019 Hunts Point Rd
Bellevue, WA 98004

File No.: PCUP00-10-0007

Request: Conditional Use Permit (CUP)

Parcel No: 353350005

Location: 1248 Kanaka Bay Road
San Juan Island

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

Land Use Designation: Rural Residential

Hearing Date: November 4, 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

NOV 19 2010

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Elaine Coles 5 6 Conditional Use Permit (PCUP00-10-0007)	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 Bob Query was present on behalf of the applicant. Julie Thompson summarized the
14 application and noted that it complied with all applicable criteria. She stated that there
15 was comment from the home owner's association stating that rentals were prohibited
16 by the CC&R's for the project. Mr. Query noted there is a contractual dispute over
17 application of the CC&R's and that's being addressed in another venue. There were
18 no other comments made.

19 **EXHIBITS**

20 All documents identified in the staff exhibit list are entered into the record. No other
21 documents were submitted for admission during the hearing.

22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. The applicant is Elaine Coles.
25 2. Hearing. The Hearing Examiner conducted a hearing on the subject
 application on November 4, 2010.

Substantive:

3. Site and Proposal Description. The applicant requests a conditional use
 permit to allow short-term vacation rentals (less than 30 days) of her four-bedroom
 single-family residence located on the shoreline looking across Kanaka Bay at 1248

1 Kanaka Bay Road on the west side of San Juan Island. There is a portion of a
2 Category 3 wetland on the east side of the property, and the National Wetlands
3 Inventory shows a marine/estuarine wetland along the shoreline. There is parking
4 available for five automobiles on the property. There is no accessory dwelling unit on
5 the site.

4. Characteristics of the Area. The surrounding neighborhood is rural and
residential in nature.

5. Adverse Impacts of Proposed Use. The Examiner concludes that there are
no adverse impacts caused as a result of the proposed use for a single-family
residential vacation rental unit. As conditioned, the proposed use should not interfere
with the neighboring properties' residential use. Noise must be kept to a minimum,
and a 24-hour phone number must be provided in case there are problems that arise.
Because the site is already developed with a four-bedroom single-family residence,
the proposed use for a vacation rental should be in character with the surrounding
area.

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 Rural Residential .

3. Permit Review Criteria. Under Table 3.2 of SJCC 18.30.040 and
comment 10 thereof, as well as SJCC 18.40.270(H), vacation rentals established after
June 1, 1997 are allowed as conditional uses. SJCC 18.80.100(D) governs
conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the
performance standards of Chapter 18.40 SJCC. SJCC18.40.270 contains detailed
standards for vacation rentals. The criteria for conditional use permits (SJCC
18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied
through corresponding conclusions of law.

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

1 **Vacation Rentals of Residences Criteria**

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

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

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

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

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

19 7. There is parking available for five cars on the property.

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 8. No food service is proposed in the application.

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

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

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.

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

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

living units must remain unrented.

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

SJCC 18.40.270(H): *In all activity center land use districts, rural residential, and 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. The applicant is applying for a conditional use permit as authorized by Table 3.2 of SJCC 18.30.040 instead of a provisional use permit because the proposal is the first vacation rental of the property.

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

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

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

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

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 the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.*

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

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

16. There is no accessory dwelling unit on the property.

Conditional Use Permits – Criteria for Approval

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;*

1 17. This proposal is conditioned to be consistent with the SJCC and the
2 Comprehensive Plan, as detailed above. Clearly, vacation rentals are permitted under
3 the SJCC subject to obtaining a conditional use permit. The vacation rental is
4 consistent with the Comprehensive Plan, which allows for tourism-related businesses
5 and activities within the context of maintaining a diverse and balanced economy
6 while minimizing the related negative impacts.

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

10 18. The proposed use does not alter the general use of the structure as a
11 residence, and the character of the site will be maintained consistent with the
12 conditions of approval imposed hereunder. Adverse impacts are minimized and
13 compatibility is maximized through the conditions of approval. The criterion is
14 satisfied.

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

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

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

25 20. The property will continue to appear and function in a manner similar to
the existing single-family residential use, 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;

21 21. The residence is in an existing development and according to staff has
22 been shown to meet these requirements.

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

22. 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.

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;*

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

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

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

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*

25. 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.*

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

27. Private Covenants. Neighbors have asserted that use of the project will violate private CC&R’s imposed by the homeowner’s association. The Examiner has no authority to enforce CC&R’s and they have no relevance to the permit criteria for a conditional use permit.

DECISION

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

Dated this 17th day of November, 2010.



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 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.