

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): J. Starr Farish
P.O. Box 370
Eastsound, WA 98245

in care of agent
Jeff Otis, Otis Land Use Consulting
393 Bobbyann Road
Eastsound, WA 98245

File No.: PEXTHX-15-0002

Request: Revision of Shoreline Substantial Development Permit
/Shoreline Conditional Use Permit 09SJ008

Parcel No: 271451012

Location: 118 Main Street, Orcas Island

Summary of Proposal: An application for a one year extension of an approved
shoreline substantial development permit to construct a
conference center at 118 Main Street, Orcas Island

Shoreline Designation: Eastsound Village Commercial

Public Hearing: October 15, 2015

Applicable Policies and Regulations: WAC 173-27-100 Revisions to Permits
SJCC 18.80.110(M) Procedures for Revisions to Shoreline
Permits

Decision: Approved subject to conditions of original permit

S.J.C. DEPARTMENT OF
NOV 02 2015
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

S.J.C. DEPARTMENT OF

OCT 02 2015

COMMUNITY DEVELOPMENT

In the Matter of the Application of

J. Starr Farish, Applicant

NO. PEXTHX-15-0002
[09SJ008]

for approval of a revision for extension of
time of an approved shoreline permit
09SJ008 to construct a conference
Center at 118 Main Street, Orcas Island

Outlook Inn Events Center

SUMMARY OF DECISION

The request for a one year extension of approved shoreline permit 09SJ008 (shoreline substantial development/shoreline conditional use permit) allowing construction of a conference center at 118 Main Street, Orcas Island is **APPROVED** subject to compliance with the conditions of the original permit.

SUMMARY OF RECORD

Request:

J. Starr Farish (Applicant) requested a one year extension of approved shoreline permit 09SJ008 (shoreline substantial development/shoreline conditional use permit) allowing construction of a conference center at 118 Main Street, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on October 15, 2015.

Testimony:

At the open record public hearing, the following individual presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Jeff Otis, Otis Land Use Consulting, Applicant Representative

Exhibits:

The following exhibits were admitted in the record:

*Findings, Conclusions, and Decision
San Juan County Hearing Examiner
Outlook Inn Events Center SSDP/SCUP Extension PEXTHX-15-0002*

1. Department of Community Development Staff Report to the Examiner, dated October 1, 2015
2. Request for Time Extension, dated July 24, 2015
3. Legal Advertisement/Notice of Hearing, published September 23, 2015
4. First Extension Approval (PEXTHX-13-01), dated December 30, 2014
5. Staff Report for HE35-09/09SJ008, dated September 4, 2009
6. Findings, Conclusions, and Decision, HE35-09/09SJ008, dated October 6, 2009
7. Memorandum regarding parking credits, dated October 14, 2015

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. On October 6, 2009, shoreline permit (SSDP/SCUP) 09SJ008 was approved, authorizing construction of a conference center at 118 Main Street, Orcas Island. Condition 6 of the permit required development to commence within two years and to be substantially complete within five years. The Applicant submitted a building permit application in August 2012. In December 2012, the County requested an archeological survey and a FEMA flood certification, which request paused the clock on the five year approval. Archeological review resulted in the Applicant's being required to apply for an excavation permit from the State. The archeological review was completed and it was anticipated that construction would be able to begin by mid-2014. Because the permit was set to expire on October 6, 2014, the Applicant requested a one year extension of the approval. The extension of approval was approved December 30, 2014, extending approval through October 6, 2015. *Exhibits 1, 2, 4, 5, and 6.*
2. Approval of the submitted building permit application was delayed as a result of the County's non-issuance of required parking credits. In 1999, the Applicant dedicated tidelands and an easement of the public and visual access tidelands to the County in exchange for parking credits. The scheme was authorized under the terms of the Eastsound Waterfront Access Plan, adopted in 1996, and pursuant to San Juan County Code (SJCC) 16.55.300(C)(3)(a-g). The Applicant intended to apply a portion of the resulting parking credits to the parking requirements of the approved shoreline permit for conference center, as was noted in the October 2009 SSDP approval. However, as of the hearing date the County has yet to issue the parking credits. The Applicant has been unwilling to undertake construction pursuant to the building permit without issuance of the parking credits. *Exhibits 2, 6, and 7; Otis Testimony.*
3. Because approval was set to expire on October 6, 2015, the Applicant requested another one year extension of the SSDP approval on July 25, 2015, well before the SSDP

approval expired. The delay of getting the request to hearing was not the result of any Applicant action. No change to the existing permit aside from expiration is proposed. *Exhibits 1 and 2; Thompson Testimony.*

4. At hearing, the County offered a memorandum characterized in Planning Staff testimony as evidence that the parking credits issue was resolved or on the brink of resolution. The memo stated:

The Outlook Inn Events Center is required to provide parking for eight vehicles, per permit 09SJ008 Finding of Fact #9. Two of those spaces are to be provided on-site, while the other six were supposed to be provided by parking credits the Applicant thought he had. After review by the County's Prosecuting Attorney's Office, it was discovered that the Applicant only had four parking credits, thus needing two more parking spaces.

Per San Juan County Code 16.55.300(B)(11), Off-Street Parking, General Requirements, the Administrator may authorize reduced parking space requirements as follows:

- a) For uses with differing peak periods the total number of parking spaces required may be reduced to the number required to meet the greater of peak needs; or
- b) For uses with similar or overlapping peak periods the combined required parking may be reduced by 15 percent for each additional use sharing the parking; provided the total is not less than that required for the greatest peak use considered individually and the combined peak requirement is not reduced by more than 33 percent.

The Events Center is located across the street from the Outlook Inn and owned by the same person. The administrator determined that these two uses have differing peak periods, so the total number of parking spaces required may be reduced to the 68 spaces required for the Inn.

Exhibit 7; Thompson Testimony.

5. The Applicant is not completely satisfied with the County's response as to the question of parking credits owed to the Applicant as a result of the tidelands dedication; however, at hearing the Applicant representative stated that the question appears to be sufficiently answered to allow the instant shoreline development to proceed. Both parties agreed that the building permit is ready to be issued. The Applicant is confident that moving forward with the building permit would proceed expeditiously within the one year extension period. *Otis Testimony; Thompson Testimony.*

6. Pursuant to San Juan County Code (SJCC) 18.80.110.G.7, construction or substantial progress toward construction of an approved SSDP must be undertaken within two years of permit approval. Substantial progress toward construction is defined as including the letting of bids, making of contracts, purchase of materials involved, utility installation and site preparation, but shall not include use or development inconsistent with the master program or the terms of permit approval. The code provision also says that the hearing examiner may extend the two-year time period for a reasonable time, at his or her discretion. *SJCC 18.80.110.G.7.*
7. According to the Applicant representative, the Applicant complied with this requirement by developing construction plans and submitting the building permit application. Planning Staff concurred that the delay resulted from the County's deliberation on the question of parking credits and was not the fault of the Applicant. *Exhibit 2; Otis Testimony; Thompson Testimony.*
8. Notice of the request for approval extension was issued consistent with the requirements of County code. There was no agency or public comment on the request. *Thompson Testimony; Exhibit 3.*
9. Upon review, Planning Staff submitted that approval of the time extension would be consistent with County Code and the previous shoreline permit approvals. Staff recommended approval of the extension through October 30, 2016 without condition. Staff noted that the SSDP would remain subject to the conditions in the October 2009 permit (09SJ008). *Thompson Testimony; Exhibit 1.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide applications for revisions to approved shoreline permits pursuant to San Juan County Code 2.22.100(1) and 18.80.110(M), and Revised Code of Washington 36.70.970.

Criteria for Review

Revisions to Approved Shoreline Permit

Pursuant to SJCC 18.80.110(M), when an applicant seeks to revise a shoreline permit, an application in a form prescribed by the administrator together with detailed plans and text describing the proposed changes shall be filed with the administrator. Following receipt of this information, the administrator shall schedule a public hearing on the request.

1. The administrator shall ensure that notice of the hearing is published in a newspaper of general circulation within the County prior to the hearing. The administrator shall submit to the hearing examiner all of the written documents referred to above. At the beginning of the hearing, the recommendation of the administrator shall be read into the record.
2. If the hearing examiner determines that the proposed changes are within the scope and intent of the original permit, as defined by WAC 173-27-100(2), the revision shall be

granted.

3. If the hearing examiner determines that the proposed changes are not within the scope and intent of the original permit, then the applicant must apply for a new shoreline permit.
4. Any permit revision approved by the hearing examiner shall become effective immediately. Within eight days of the hearing examiner's action, the approved revision shall be submitted to the Washington Department of Ecology. In addition, the administrator shall submit a copy of the examiner's decision to all parties of record to the original permit action.
5. Appeals shall be in accordance with WAC 173-27-220 and SJCC 18.80.140.

Pursuant to WAC 173-27-100(2), "Within the scope and intent of the original permit" means all of the following:

- a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
- b. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
- c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
- d. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
- e. The use authorized pursuant to the original permit is not changed; and
- f. No adverse environmental impact will be caused by the project revision.

Conclusions Based on Findings

1. Notice was given, the required hearing was conducted and attended by an Applicant representative, and the Department of Community Development recommendation was read into the record. *Findings 1, 3, 7, 8, and 9.*
2. The proposed extension of approval is within the scope of the original permit. No additional physical improvements are proposed, and extension would not alter the design previously improved. The use as permitted would be unchanged. The proposal's compliance with applicable regulations and policies of Shoreline Master Program would remain unchanged. *Findings 1, 2, 3, 4, 7, and 9.*
3. The Applicant has demonstrated substantial progress towards construction in completing design and construction plans and in submitting the building permit application. The

record contains no evidence of delay resulting from Applicant actions. *Findings 1, 2, 3, 7, and 9.*

DECISION

Based on the preceding findings and conclusions, the request to extend the approval period for shoreline substantial development permit/shoreline conditional use permit 09SJ008 for construction of the Outlook Inn Events Center through October 30, 2016 is **APPROVED** subject to compliance with the conditions of the original permit.

Decided October 29, 2015.

By: 

Sharon A. Rice
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 requirements 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.