

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Wendy Shinstine
PO Box 1445
Eastsound, WA 98245

File No.: PCUP00-14-0015

Request: Conditional Use Permit (CUP)

Parcel No: 271457302

Location: 230 Orcas Road
Orcas Island

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family residence.

Land Use Designation: Eastsound Residential 2 du/acre

Public Hearing: December 10, 2014

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

DEC 26 2014

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Wendy Shinstine 5 Conditional Use Permit 6 (PCUP00-14-0015)	7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION
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9 **INTRODUCTION**

10 The applicants have applied for approval of a conditional use permit for the vacation rental of a single-family residence. The application for the conditional use permit is approved with conditions.

11 **TESTIMONY**

12 Julie Thompson, senior San Juan County planner, entered the staff report.

13 **EXHIBITS**

- 14 Ex. 1: Staff report
15 Ex. 2: Application materials.

S.J.C. COMMUNITY

16 **FINDINGS OF FACT**

DEC 26 2014

17 **Procedural:**

DEVELOPMENT & PLANNING

- 18 1. Applicant. The applicant is Windy Shinstine.
19 2. Hearing. The Hearing Examiner conducted a hearing on the subject
20 application on December 10, 2014 at 10:00 am at the Islander Bank Annex, 225 Blair
21 Ave, Friday Harbor.

22 **Substantive:**

- 23 3. Site and Proposal Description. The applicant proposes the vacation rental
24 of a four bedroom single family home. The home only has building permit approval
25 for two bedrooms, so approval will be contingent upon the approval of meeting
 building code requirements for four bedrooms. On-site parking is available for five
 vehicles. No outdoor advertising or food service is proposed. There are no guest
 houses or accessory dwelling units on site.

1 4. Characteristics of the Area. The site is in a small lot subdivision
developed with a mix of residential and commercial development.

2 5. Adverse Impacts of Proposed Use. There are no adverse impacts resulting
3 from the proposed use. As conditioned, the proposed use should not interfere with
4 the residential use of neighboring properties. Noise must be kept to a minimum and a
5 24-hour phone number must be provided in case problems arise. Since no exterior
alterations are proposed and no change in use, the proposal is not incompatible with
any airport activity.

7 CONCLUSIONS OF LAW

8 Procedural:

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

11 Substantive:

12 2. Zoning Designations. Eastsound Residential 2/du acre

13 3. Permit Review Criteria. SJCC 16.55.240(D)(5) authorizes transient
14 housing in the ESR/2 district with site plan review if guest rooms are limited to two in
15 number and located in the primary residence of the operator. SJCC 16.55.240(D)(6)
16 provides that other allowable nonresidential uses shall be subject to conditional use
17 permit approval. SJCC 16.55.045 defines transient lodging "*as a commercial
enterprise which provides lodgings for transient occupancy for any period of less
than 30 consecutive days.*" Since the proposal involves more than two guest rooms,
the applicant must acquire a conditional use permit.

19 Vacation Rentals of Residences Criteria

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

22 4. The project is conditioned to limit the total number of guests to three per
bedroom.

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

5. The conditions of approval of the permit have been imposed to prevent
any unreasonable disturbances. These conditions limit the number of guests; require

1 posting of rules of conduct which specifically mention prohibition of trespassing and
2 identifying property lines; require provision of a 24-hour contact phone number to
3 neighbors in case problems may arise; and require maintenance of a written log of
4 complaints.

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

8 6. There are no parking standards for residential use in the Eastsound
9 Residential/2u zoning designation. Precedent sets the parking requirement at one
10 space per bedroom. This standard is met as the proposal provides for 5 parkign
11 spaces.

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

14 7. No food service is proposed in the application.

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

16 8. No outdoor advertising is proposed.

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

20 9. There is no ADU.

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

24 10. There is no ADU.

25 **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.*

11. Not applicable because the proposal is the first vacation rental of the
premises.

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

3 12. This will be required as a condition of approval.

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

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

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

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

16 15. There is no ADU.

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

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

20 16. The proposal is consistent with the SJCC for the reasons stated above.
21 The proposal is consistent with the San Juan County Comprehensive Plan, which
22 provides that vacation rentals should be classified as residential uses and subject to
23 standards similar to those that apply to hospitality commercial establishments. See
24 Land Use Element, Section 2.2A(10). The detailed standards adopted into the SJCC
25 for vacation rentals provide protections to residential uses that are more detailed than
those typically associated with hospitality establishments located in residential areas.
As previously noted, the subject residence has only received building permit approval
for two bedrooms, so the proposal will be conditioned on meeting building code
standards for the two additional proposed guest rooms.

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;

17. The proposal will not alter the exterior appearance of the home, which is a
single family home and is thus compatible and appropriate in design, character and

1 appearance with the surrounding single family homes and applicable goals and
2 policies thereto. The criterion is satisfied.

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*
5 *approval;*

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

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

13 19. The property will continue to appear and function in a manner similar to
14 the existing use with no significant adverse impacts, and further similar requests will
15 not produce significant adverse impacts to the environment.

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

18 20. The proposal is in an existing development and according to staff has been
19 shown to meet these requirements.

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

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

25 **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;

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

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

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

1 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
2 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
3 *36.70.547); and*

4 24. Since no exterior alterations or changes in use are proposed, the proposal
5 does not create any compatibility issues with airports or airfields.

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

8 25. As an existing development site, the proposal is consistent with Chapter
9 18.60 SJCC.

10 **DECISION**

11 The application is approved as conditioned below. As conditioned below, the
12 proposal is consistent with all the criteria for a conditional use permit:

- 13 1. This permit allows vacation rental of 4 rooms located on tax parcel 271457302, 230
14 Orcas Road, located on the attached approved site plan and as conditioned herein.
Initially, 2 bedrooms may be used and during that time the number of guests is limited
15 to 6. After written approval from the Building Division is received for use of the 2
16 additional bedrooms, all 4 bedrooms may be used and the number of guests will
increase to a maximum of 12.
- 17 2. No more than twelve (12) guests shall be accommodated at any one time when the
18 main house is rented.
- 19 3. If an accessory dwelling unit is built, it shall not be rented per SJCC 18.40.270(L).
- 20 4. Prior to operation, evidence shall be presented to the Department that the driveway
21 has been approved for emergency vehicle access.
- 22 5. The vacation residence shall be operated in a way that will prevent unreasonable
23 disturbances to area residents. Prior to operation, the applicants shall:
 - 24 a. Provide copies of this decision to property owners within 300 feet of the subject
25 property, along with a 24-hour local contact phone number, so that complaints can be
dealt with in a timely manner. A log of complaints shall be kept by the contact.
 - b. Prominently mark the boundaries of the subject property so that it is clearly evident to
guests where those boundaries are.
 - c. Provide notice to the tenants regarding rules of conduct and their responsibility not to
trespass on private property or 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 the warning not
to trespass.

- 1 d. Provide copies to the Department of the rules of conduct and the 24-hour contact
2 phone number.
- 3 6. No food service is to be provided.
- 4 7. No outdoor advertising signs are allowed.
- 5
- 6 8. Vacation accommodations must meet all local and state regulations, including those
7 pertaining to business licenses and taxes.
- 8 9. No use shall be made of equipment or material that produces unreasonable vibration,
9 noise, dust, smoke, odor, or electrical interference to the detriment of adjoining
10 property.
- 11 10. Since the County is not a party to private covenants, it is not in a position to enforce
12 private covenants between property owners that may prohibit use of a residence as a
13 vacation rental. However, issuance of a permit for a vacation rental does not license
14 the owner to violate private restrictions.
- 15 11. If the conditions of approval are not complied with, the resulting impacts may change
16 a typical residential area to one with frequent incidents of trespass, noise, and traffic
17 from strangers who have no investment in maintaining civil relations with
18 neighbors. For this reason, it is emphasized that failure to comply with conditions of
19 approval is grounds for revocation of this permit.
- 20 12. The proposal shall meet all standards of SJCC 16.55.240 Eastsound Residential 2/acre
21 and 16.55.300 General Standards.
- 22 13. Failure to comply with the conditions of this permit may result in revocation.
- 23 14. Upon the determination by the Director of CDPD that any conditions listed above
24 have been violated, following issuance of a Notice of Violation, the Director of CDPD
25 may, in addition to its other code enforcement remedies, revoke the conditional use
permit.

Dated this 24th day of December, 2014.


Phil A. Olbrechts

County of San Juan Hearing Examiner

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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.