

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Betsy Koelzer
2687 West Valley Road
Friday Harbor, WA 98250

Stephanie Johnson O'Day, attorney
PO Box 2112
Friday Harbor, WA 98250 -2112

File No.: PCUP00-13-0005

Request: Conditional Use Permit

Parcel No: 463632007

Location: 2687 West Valley Road
San Juan Island

Summary of Proposal: Conversion of Bed and Breakfast to In-House Treatment Facility

Land Use Designation: Agricultural Resource 10

Hearing Date: May 8, 2013

Application Policies and Regulations: SJCC 18.80.100(D)

Decision: Approved with conditions.

S.J.C. COMMUNITY

JUN - 6 2013

DEVELOPMENT & PLANNING

1 property, currently. The types of animals include sheep, alpacas, llamas, and chickens. There
2 are two legal parcels, but they are separated for tax reasons only. It is not easy to operate a
3 farm on San Juan Island. The property is being hayed in several sections, but the main
4 enterprise is the bed and breakfast. The property owners, Mr. and Mrs. Smith, have obtained
5 over nine permits in the past to operate the bed and breakfast. Presently, the bed and breakfast
6 is approved for ten bedrooms. The property is 64 acres in its entirety. It is not successful as a
7 farm, and, if Mr. Smith is unable to change to the rehabilitation center, he will have to divide
8 the parcel. According to Ms. O'Day, the Belluomini property is to the northwest of the bed
9 and breakfast. The Belluomini property is very far from the subject site. The bed and
10 breakfast is reached via West Valley Road, but the Belluomini property is off another road.
11 The application was submitted for fifteen people, but the applicants have agreed to downsize
12 to nine people. This is a non-conforming use change.

13 Joe Koelzer, co-founder and CEO, stated he runs a social purpose corporation. A social
14 purpose corporation is neither non-profit nor profit-based. Decisions are not made based on
15 maximizing shareholder wealth. The property will be used as a post-detox, holistic,
16 residential healing center. Post-detox means that the guests arrive clean and sober. The
17 facility does the counseling-side of treatment. They work with the guests mentally,
18 physically, emotionally, and spiritually. The facility will treat guests for life transition issues
19 such as loss of job or loved ones, help with addictive behaviors such as gambling, and work
20 with eating disorders. The facility will not work with sex offenders, violent people, or
21 mentally unstable people. The corporation is licensed by four groups in Washington State
22 including the Mental Health Agency and the Department of Health (DOH). Participants are
23 normally over 30 years of Age, professionals, well-educated, and focused on getting better.
24 The application process includes a criminal background check. The applicants would rather
25 leave a spot empty than bring in residents who do not fit into the program. The footprint of
the facility is less than that of the bed and breakfast. The program is 28 days. There is 24/7
staff supervision. Residents leave the property on Sundays for different outings. All
activities in the community are supervised by staff. The applicants have held two open houses
to explain the facility to the neighbors and surrounding community. They do not expect to
have any negative impacts on the community and will have a scholarship program for local
residents. In regard to economic impact, it will be approximately 400,000 dollars. This will
come from buying local supplies, community outings, and paying salaries to employees. The
facility will increase the mental health options on the island.

Mr. Koelzer has worked over twenty years as an executive and has a Masters in spiritual
psychology. His partner, Dr. Scott Alpert, has degrees in both clinical and spiritual
psychology. In their opinion, this facility is the best alternative to conserve the agricultural
land as the bed and breakfast has not been successful. The building is too large for use as a
single-family home. In regard to the agricultural use, it cannot function as a stand-alone farm,
and the variety of animals will be utilized for animal therapy at the treatment facility. At
fifteen participants, the facility would be less resource intensive than the bed and breakfast.
At nine participants, it is much less than the bed and breakfast. The facility is a less intensive,
modification of a non-conforming use with no development. They used the 2011 water

1 inventory sheet to determine that the treatment facility would be less intensive than the bed
2 and breakfast. Additionally, ag-resource allows for an 8-person residential care facility. In
3 regard to neighbor concerns about water use, the facility will not use more water than the bed
4 and breakfast, and there will be less waste water with nine participants. In regard to neighbor
5 concerns about security, there is an intensive application process with a criminal background
6 check, the owners are on site, and 24/7 staff surveillance. Mr. Koelzer is not a venture
7 capitalist, and there is no outside investment in the company. Many neighbors support the
8 project because it brings new mental health options to the island.

9 Betsy Koelzer, co-founder, testified that, in regard to traffic, the average number of monthly
10 entrance and exits while the site is a bed and breakfast is approximately 819. The treatment
11 facility would transport guests in groups, greatly reducing the number of trips. Most of the
12 trips expected for the facility are employee activity. The average number of monthly entrance
13 and exits would be reduced to approximately 613 (for 15 participants). The number is even
14 lower for nine participants. They utilized a one-year analysis (from 2011) to determine the
15 average numbers for the bed and breakfast. The septic tank is very large and has been re-
16 certified.

17 Francine Shaw, land use planner with law office of Stephanie O'Day, stated that the project
18 complies with the goals and policies of San Juan County's Comprehensive Plan. The property
19 has operated as a bed and breakfast since 1989; however, since that time, the code was
20 modified and the land use designation for the site changed. The bed and breakfast was
21 allowed to continue as a non-conforming, non-residential use. The applicants would like to
22 change the site to a residential treatment facility. This use is not specifically addressed under
23 ag-resource destination. Thus, this proposal is non-conforming, non-residential use. The
24 comprehensive plan does not address non-conforming use in resource designated land, except
25 for section 5.2a, dealing with special needs population. Therefore, county code must be
followed in addressing questions of non-conforming use on ag-resource land. The code
allows for non-conforming use to be changed to another non-conforming use as long as there
is no new development and the use is not more intensive. This project meets these
requirements. The only difference in the two uses is that instead of coming for vacation,
guests will be coming to the site to improve themselves. One of the CUP criteria for non-
conforming use change is to be consistent with land-use designations, but this is impossible
when a use is non-conforming. Water and sewage supply is adequate. In regard to parking,
there are no parking standards in the code, but the Koelzers did a parking analysis. There are
22 parking stalls available, and the facility will need 19. There will be no change to the
natural environment. In regard to the human environment, the facility will be highly regulated
by the state. Additionally, the application process is very elaborate and ensures guests fit the
atmosphere of the facility. There is little potential for cumulative impacts because not many
properties have the amenities necessary for a residential treatment facility. In regard to
performance standards, there are none for residential treatment facilities; however, the facility
does meet those set for commercial uses. The facility will not increase traffic or the number
of people, thus there will be less noise and other disturbances. In regard to categorizing the
site as a residential care facility, this is an allowed use in the ag-resource zone. A residential

1 care facility is defined broadly as a facility that provides care for 5-15 people. The criterion
2 include that classification must be identified through registration and state licensing must be
3 provided. If the project cannot be considered a non-conforming use change then it should be
4 approved as a 8-person residential care facility. This second option is a lesser use and only
5 requires a provisional use permit. Provisional use permit only require consistency with the
6 code and the shoreline management act, not the comprehensive plan.

7 Stephanie O'Day noted that the treatment facility will preserve the Agricultural land for future
8 use. If this project is not approved, the land will be divided for individual, residential use.

9 Public Testimony

10 Peggy Bill, ag-resource coordinator for Agricultural Resource Committee, stated that the ARC
11 has not reviewed the project. She asked for more time to review the project and provide the
12 committee's opinion on the matter.

13 Steve Belluomini testified that, in reviewing the intensity of use statistics, he used the 15-
14 participant plan with 28-day treatment periods, and 7-day off periods (plus 7 employees).
15 This works out to 292 nights of occupancy with 22 people per night. This works out to 6,424
16 occupants per year without visitors. He believes there will be too many people using the
17 facility. The bed and breakfast does not attract nearly as many guests as this facility will have.
18 This project is not smart growth and is urbanization of an Agricultural zone. 6,424 occupants
19 per year works out to ten families living on the property full-time. There is no backup water
20 source for the residence, nor a backup sewer treatment system. This site is part of a critical
21 area watershed which could be damaged by improper sewage treatment. The Department of
22 Health re-permitted the water facility two years Ago, and the site barely passed. The building
23 infrastructure should be reviewed to ensure it is up to code. Additionally, emergency response
24 time is at least 15 minutes to the site location. The parcel is adjacent to a Category II wetland.
25 The water quality in the valley is questionable and often requires treatment. This facility does
not belong in this location.

18 Mike Pickett stated that he is a member of the Agricultural Resource Committee and lives near
19 the subject site. He is concerned with the water situation. He was previously told that the
20 current well is too close to an existing stream and would have to be decommissioned. He is
21 unsure if there are other places to build new wells with adequate water. Additionally, he does
22 not believe the project qualifies as a residential care facility. The property could be made into
23 a successful farm.

22 Mark Hetrick stated that he lives close the property and strongly supports the operation. The
23 facility will bring high-end jobs to the island. He would rather see this project than the land
24 divided into multiple residential lots.

25 Jim Sherman commented that he lives near the subject property. He is concerned that, if an
exception is made for this proposal, other exceptions to the ag-resource designation will be
made in the future.

Staff Rebuttal

1 Lee McEnergy stated that RCW provides a definition of a residential care facility for
2 functionally disabled people. The description of the guests attending the facility given by the
3 applicants does not meet the definition of a functionally disabled person provided by RCW.
4 The tax map parcel number on the front page of the staff report should be 46362007. There is
5 a single, legal, 42-acre parcel involved in this project. The facility does not meet the
6 definition of a cottage enterprise. The proposal is not consistent with the land-use designation
and cannot be approved. Finally, approval of this project does not mean the land will not be
divided.

7 Applicant Rebuttal

8 Stephanie O'Day noted that those against the project believe the facility is a good idea, just
9 not in this location. This change from one non-conforming use to another is appropriate under
10 the conditional use permit criteria. The facility is compatible with the ag-resource
11 designation, and the farmland will be preserved. The hearing examiner should approve the
project on the reduced scale of nine guests.

12 **EXHIBITS**

13 Exhibit 1 Staff Report

14 Exhibit 2 Application Materials

15 Exhibit 3 Email from Steve Marler March 20, 2013

16 Exhibit 4 Public Comment Letters

17 James and Matilda Sherman dated May 6, 2013

18 Ed Smith dated May 2, 2013

19 Beth Geiger dated May 3, 2013

20 Stephen Belloumini and Louise Lelevich dated April 22, 2013

21 Dave Carlin dated May 1, 2013

22 Shelly Skyhawk dated April 30, 2012

23 Memo from Rachel Dietzman, county engineer dated April 26, 2013

24 Peggy Mauro dated May 6, 2013

25 Letter from Mark and Beth Hetrick

Letter from Amber Berg dated May 7, 2013

Conditional Use Permit

- 1 Exhibit 5 Memos from Francine Shaw and Stephanie Johnson O'Day dated May 7, 2013
2 Exhibit 6 Environmental Health Services email dated May 8, 2013
3 Exhibit 7 Letter from Arlene Taylor dated May 2, 2013
4 Exhibit 8 11x17 Photograph of the premises
5 Exhibit 9 Regulatory Analysis of Project
6 Exhibit 10 Intake Form for Facility
7 Exhibit 11 Large aerial photograph
8 Exhibit 12 5/13/13 staff response to applicant analysis and project revisions
9 Exhibit 13 Comment letter from Agricultural Resources Committee of San Juan County
10 Exhibit 14 5/17/13 applicant rebuttal

FINDINGS OF FACT

Procedural:

- 13 1. Applicant. Betsy Koelzer
14
15 2. Hearing. The Hearing Examiner conducted a hearing on the subject
16 application on May 8, 2013 at 10:00 am at the Islander Bank Annex, 225 Blair Ave,
Friday Harbor. A site visit was conducted on the same day after the hearing.

Substantive:

- 18 3. Site and Proposal Description. The proposal is to operate a live-in
19 treatment facility from a building that has been used for a nine guest room bed and
20 breakfast building, called the States Inn, located adjacent to a barn and other
21 agricultural buildings on a 42 acre parcel. The facility will house people seeking
22 assistance with recovery from various emotional issues. Treatment will include
23 persons recovering from drug and alcohol addiction. Each session will have a
24 maximum of 9 participants living on the property for 28 days. Following each
25 session there will be 7 days without any patients on the site. There will be 10
sessions per year. Sessions will consist of on and off-site activities. Activities off the
site will be contracted to local providers with group transportation provided by the
applicant on Sundays. Some of the on-site activities will also be led by local
providers, under contract. Outdoor activities on the site will include animal care, art,
woodworking, gardening, and exercise.

1 Round trip group transportation will be provided from Seattle for each session.
2 Participants may ask to drive a personal vehicle for arrival and departure, but during
3 the treatment session, use of that vehicle will not be permitted. Three meals a day
4 will be served to participants and employees.

5 Daily traffic will be generated by 9¹ full-time employees, two of whom (the
6 applicants) reside on-site. The site contains 22 parking spots.

7 As a healthcare treatment facility, participants are subject to privacy regulations so
8 the property will have a gate located near the administrative office. The small
9 building where the administrative offices are proposed was formerly operating as a
10 “store” but has since ceased to operate. The existing store use has been abandoned,
11 though eggs will still be sold to the public. Private horse activities no longer occur on
12 the site.

13 The proposal includes interior renovation of the kitchen and construction of a new
14 meeting room in the barn loft. It is assumed the proposed meeting room will be for
15 use of the program only, not for use by non-participants/the public. The application
16 mentions an animal sanctuary onsite, and this report does not review that.

17 Before its makeover as “States Inn” and before the Willard estate divided the land,
18 this building was part-time home to Dick Willard and his family, who operated
19 Blazing Tree Ranch (cattle) here and in Ellensburg. After its sale the large holding
20 was divided and the residential building on this 42-acre parcel was converted to a bed
21 and breakfast. Over the years a number of requests were made to increase the Inn’s
22 capacity, as briefly described above. The bed and breakfast has 9 or 10 guest rooms
23 and a detached manager’s quarters (modular home.)

24 There is a large old barn (hay loft, stables below) with an attached living space and
25 office space, a covered key-hole shaped arena, another smaller one-story horse barn,
fenced pastures, and a pond near the Inn building.

4. Characteristics of the Area. The surrounding neighborhood is composed
of larger lots, many of which were originally part of Blazing Tree. They are mostly
developed with residences. The subject site lies near the low point of the area,
adjacent to and below the County road. The proposal is not adjacent to an airport.

5. Adverse Impacts of Proposed Use. There are no significant adverse
impacts reasonably discernible from the record.

¹ This number is based upon the 7 full time employees referenced in the application and the two on-site residents. The May 7, 2013 memo submitted by the applicant references 8 full time employees. It’s unclear whether this includes the two on-site residents. It’s possible that the number of employees residing off-site were reduced by one in order to account for the proposed reduction in participants from 15 to 9, but this is not clear from the record.

1 Traffic will not be appreciably increased by the proposal and will likely be less. The
2 staff report concludes at p. 6 that "*if participants are transported as a group, traffic*
3 *generation and safety are not likely to be an issue.*" The applicants state that
4 participants will not have access to their vehicles during the treatment programs and
5 off-site outings will be conducted in groups by van. The traffic generation statistics
6 provided by the applicants during the hearing show a marked reduction in traffic
7 generation from current bed and breakfast use. Even if participants do each drive their
8 own vehicle, there is nothing to suggest that the roads serving the facility lack the
9 capacity to handle the traffic caused by eight participants and the staff necessary to
10 support them. The staff report concluded that for the initial proposal of 15 treatment
11 participants that road access was adequate, although a memo from the County
12 Engineer, Ex. 4, states that the applicants must acquire an access permit. An access
13 permit will be made a condition of approval. In written rebuttal the staff notes that
14 use of facility (and thus traffic generation) could exceed that of the current bed and
15 breakfast because of assumed low occupancy of the bed and breakfast during the non-
16 summer months. However, as noted by the applicants the maximum occupancy of the
17 treatment facility will probably be half that of the bed and breakfast and in
18 making a comparison to current use it cannot be assumed that the treatment facility
19 will always be operating at maximum capacity. Further, as noted by the applicants
20 their operations schedule includes one week of no occupancy after every four week
21 treatment program.

22 The SJCC does not provide for any parking requirements for this type of facility.
23 SJCC 18.60.120, Table 6 requires five parking spaces plus one per 6 beds for
24 residential care facilities and two parking space plus one per guest room for bed and
25 breakfasts. The proposal's 22 parking spaces for eight guest rooms meets both of
these standards and more than addresses the fact that bed and breakfasts use less
employees than that needed for the proposed treatment facility.

There are no compatibility issues with the site or anything that would cause any
excess noise, light or odor. The proposal is on a 42 acre parcel and the buildings are
hundreds of feet from the nearest residences. As to compatibility, it is important to
recognize that the site still accommodates a barn, horse pastures and a variety of farm
animals through an existing animal sanctuary on-site that currently includes 15 sheep,
48 chickens, 8 goats, 7 alpacas and 1 lama. The applicants also testified that the
surrounding fields are used for haying. No exterior alterations to the currently
existing buildings are proposed. It is unlikely that neighbors will be able to recognize
that the facility is used for a treatment program, except for the use of the two facility
vans and the moderate increase in traffic caused by the employees of the facility.
Some limited outdoor activities are proposed, such as exercise, egg harvesting,
woodworking and animal therapy. These activities are not significantly different
from those associated with agricultural activities, especially when viewed from
several hundred feet away. Ultimately, the proposed use integrates agricultural use of
the property into the treatment program without detracting significantly from the
agricultural character of the property.

1 The proposal is served by adequate sewer, water, fire protection and stormwater
2 control. Sewer and water is currently provided for a nine unit bed and breakfast and
3 no exterior alterations, including increases in impermeable surface, are proposed.
4 The proposal is being approved for only eight treatment participants. The staff report
5 concluded that there is adequate sewer, water, fire protection and stormwater control
6 for the proposal when 15 participants were proposed. As noted in Ex. 6, the County
7 health department has reviewed the water system and found it to be in compliance
8 with applicable regulations. As shown in Ex. 9, the applicants have provided an
9 analysis from a stormwater engineer that the existing stormwater facilities have
10 adequate capacity for stormwater generated by the proposal.

11 For the reasons noted above, it is also concluded that the proposed treatment facility
12 will not result in any appreciable increase in intensity or impacts over the current bed
13 and breakfast use. There are no significant adverse impacts associated with the
14 proposal and nothing to suggest that impacts or intensity will increase except for,
15 potentially, a moderate increase in traffic.

16 It is also relevant to note that the proposal has a beneficial impact in that it facilitates
17 the maintenance of large lot agricultural parcels used in a manner compatible with
18 agricultural practices, as encouraged by the Agricultural Resources Committee in Ex.
19 13.

20 Since no exterior alterations are proposed, there is no impact to critical areas.

21 CONCLUSIONS OF LAW

22 Procedural:

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

26 Substantive:

27 2. Zoning Designations. Agriculture Resource 10.

28 3. Fair Housing Act/American With Disability Act². The applicants argue in
29 their May 17, 2013 memo that the proposal is protected by the Fair Housing Act.

30 _____
31 ² The issue of ADA and FHA compliance is only addressed in a highly superficial manner in this
32 decision because it only tangentially applies to the application of permit review criteria. The legal
33 citations are designed to serve as a starting point for those inclined to do more intensive legal research
34 on the applicability of the ADA and FHA to this application, which in fact involves some very
35 complicated and detailed legal issues. An excellent overview of the applicability of the FHA and ADA
36 to zoning is the law review article (available on-line) *Not in My Backyard: The Disabled's Quest for
37 Rights in Local Zoning Disputes Under the Fair Housing, the Rehabilitation, and the American With
38 Disabilities Acts*, Valparaiso University Law Review, Volume 23, Number 2, p. 581-642.

1 More likely, the facility is protected by the American With Disabilities Act. In either
2 case, the result is the same – care must be taken that the treatment facility is not
discriminated against because it treats people who have disabilities.

3 The Fair Housing Act (“FHA”), 42 USC § 3601 *et seq*, prohibits discrimination on
4 the basis of disability in the zoning of dwelling units. *See City of Edmonds v. Oxford*
5 *House*, 514 US 725 (1995). Title II of the American With Disabilities Act, (“ADA”),
6 42 USC §2131-65, prohibits discrimination against the disabled in zoning for uses
7 other than dwellings. *See Bay Area Addiction Research and Treatment, Inc. v. City of*
Antioch, 179 F.3d 725 (1999). As recognized in both the *Oxford* case and the *Bay*
Area case, persons recovering from alcohol and drug addiction are considered to have
disabilities protected from discrimination in zoning ordinances by the FHA and ADA.

8 As noted previously, the FHA is limited to protecting against discrimination in the
9 zoning of dwellings. A seminal court opinion on the interpretation of dwelling used a
10 dictionary definition of residence, finding that a dwelling is a “*temporary or*
11 *permanent dwelling place, abode or habitation to which one intends to return as*
12 *distinguished from the place of temporary sojourn or transient visit.*” *United States v.*
13 *Hughes Memorial Home*, 396 F. Supp.2d 1158 (1975). The participants of the
14 proposed treatment program will only reside at the project site for 28 days. Such a
15 brief stay would most aptly be described as a “temporary sojourn”. Consequently, the
16 project site would probably not be considered a “dwelling” of the participants and the
FHA would probably not apply. However, as previously noted, the ADA steps in on
issues of zoning disability discrimination where the FHA leaves off. Since the
proposal involves the treatment of recovering alcoholics and drug addicts, the ADA
protects the proposal from discriminatory zoning provisions. As shall be discussed,
this issue becomes relevant when considering the fact that residential treatment
facilities are allowed in the AR-10 zone.

17 4. Nonconforming Use. The proposed treatment facility is authorized by conditional
18 use permit as a modification of a nonconforming use under the County’s
19 nonconforming use regulations.

20 SJCC 18.40.310(F) allows for the modification of a nonconforming use as follows:

21 *Expansion, modification, or intensification of a nonresidential nonconforming use is*
22 *allowable subject to a conditional use permit, provided:*

- 23 1. *A nonconformance with the standards of this code shall not be created or increased;*
24 2. *The proposal shall comply with the standards of this code to maximum extent feasible;*
25 *and*
3. *The proposal shall not have an adverse impact on an environmentally sensitive area.*

1 *If no exterior structural alterations or additions are made, a nonconforming use may be*
2 *changed to another nonconforming use; provided, that the proposed use is equally or*
3 *more appropriate to the district than the existing nonconforming use. Such a change of*
4 *use shall be subject to conditional use permit approval. In no case shall a nonconforming*
5 *use be changed to another nonconforming use which is more intensive or has greater*
6 *impacts than the existing use.*

5 The proposed change in nonconforming use is authorized by the final paragraph of
6 SJCC 18.44.310(F). No exterior alteration is proposed and the proposed use is
7 equally as appropriate in the AR-10 district as the bed and breakfast. As determined
8 in Finding of Fact No. 3, the proposed use is not more intense than the bed and
9 breakfast, has no significant greater impact, is compatible with adjoining uses and
10 integrates well into the agricultural use of the property. All of these factors establish
11 that the proposal is equally “appropriate” to the existing bed and breakfast.

11 An additional significant factor is that residential care facilities with up to 8 persons
12 are authorized by SJCC Table 3.2 as a provisional use in the AR-10³ district. This
13 denotes a legislative determination that residential care facilities are an “appropriate”
14 use in the AR-10 zone. A residential care facility is defined by SJCC 18.20.180 as a
15 facility that provides care to 5 to 15 “functionally disabled” persons outside a group
16 home setting. The proposed treatment facility is almost identical in terms of land use
17 impacts to a residential treatment facility except that the disabilities involved may not
18 qualify as “functional” disabilities. To distinguish the disabilities of the proposed
19 treatment center because they are not functional disabilities arguably violates the
20 ADA, because the distinction discriminates on the basis of disability. The issue is
21 arguable, however, because since the disabilities are not functional, it is more likely
22 that participants will engage in outdoor activities and travel to and from the project
23 site. That is probably why the definition limits disabilities to “functional” disabilities.
24 However, as determined in Finding of Fact No. 3, traffic and exterior activities will
25 be limited for the type of treatment facility proposed. Participants will not have
access to their vehicles during the 28 day program and off-site outings are only
scheduled for Sundays and travel is done in a group by van. As further determined in
Finding of Fact No. 3, outdoor activities are largely indistinguishable from
agricultural activities. For all of these reasons, the functionality of the disabilities for
the proposed treatment program does not result in any appreciable increase in adverse
land use impacts.

22 The allowance for residential care facilities in the AR-10 zone is also significant in
23 that it shows that the County Council determined that such facilities have to be

24 ³ The applicants argue that they qualify as a residential care facility. It is questionable whether all of
25 the participants in any given treatment center would have the required “functional” disability, since the
disorders treated by the applicants include grieving and other types of mental distress that may not
impair the functionality of the individual. The issue is ultimately not addressed in this decision since
the proposal is approved on other grounds.

1 limited to eight participants to be appropriate in the AR-10 zone. The proposal will
2 be conditioned accordingly.

3 Allowing a change in nonconforming use would violate SJCC 18.40.310(F)(1), which
4 prohibits the creation of a nonconforming use. However, this provision conflicts with
5 the final paragraph of SJCC 18.40.310(F), which expressly authorizes the creation of
6 a nonconforming use when there are no exterior alterations involved. Since the final
7 paragraph of SJCC 18.40.310(F) is the more specific of the two conflicting
8 provisions, its application prevails in this application.

9 All remaining provisions of SJCC 18.40.310(F) are satisfied because the proposal
10 does not affect critical areas and as determined in other parts of this decision the
11 proposal is compliant with all other applicable regulations.

12 5. Permit Review Criteria. As determined in Conclusion of Law No. 4, the
13 proposed change in use is authorized as a conditional use by SJCC 18.40.310(F).
14 The criteria for conditional use permits are governed by SJCC 18.80.100(D), which
15 are quoted below in italics and applied via corresponding conclusions of law.

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

18 6. Comprehensive Plan Element 2, Land Use, 2.3D addresses the goals and
19 policies of lands designated as Agricultural Resource. No other comprehensive plan
20 policies are directly and substantially implicated by the proposal. Those 2.3D goals
21 and policies are focused upon preserving agricultural use of land suited for that
22 purpose. The proposal is not contrary to this objective. The majority of the 42 acre
23 parcel of the project site will continue to be used for (or at least will continue to be
24 available for) agricultural use and treatment participants will participate in activities
25 associated with this agricultural use. At the least, the proposal will not decrease the
agricultural use of the property from its current bed and breakfast use.

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;*

7. For the reasons stated in Conclusion of Law No. 4 (as it addresses “appropriate”
use) and 6 and the findings on compatibility in Finding of Fact No. 5, the proposal is
appropriate in design, character and appearance with the goals and policies for the
Ag-resource designation.

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

1 8. As determined in Finding of Fact No. 5, the proposal will not create any
2 significant adverse impacts.

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

6 9. The proposal involves a conversion from one nonconforming use to
7 another where there is no appreciable increase in adverse impacts and arguably a
8 reduction in such impacts. For this reason, there are no cumulative adverse impacts
9 associated with the proposal.

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

12 10. As determined in Finding of Fact No. 5, the proposal is served by
13 adequate infrastructure and public services.

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

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

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

22 12. No significant increases in pedestrian or vehicular traffic are anticipated
23 for the proposal.

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

As conditioned, all Chapter 18.40 SJCC standards are met. Parking
standards are met as determined in Finding of Fact No. 3. The commercial
development standards of SJCC 18.40.110 are met as outlined in page 5 of the staff
report. Since the proposal may qualify as a residential care facility, the conditions of
approval require compliance with the standards applicable to those facilities, SJCC
18.40.210(B).

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

14. 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.*

15. The staff report concludes that the proposal conforms to the development standards in Chapter 18.60 SJCC. Since the proposal involves no exterior alterations and there is no evidence to the contrary, the staff's conclusions on this criterion are determinative.

DECISION

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

1. Treatment participants shall be limited to eight as limited for residential care facilities in AR 10 lands in Table 3.2.

2. Prior to occupancy the applicants shall demonstrate to staff compliance with state licensing requirements and file a facility registration as required for residential care facilities by SJCC 18.40.210(B).

3. Authorization under this permit shall be void if the use is discontinued for 24 consecutive months.

4. Failure to comply with the conditions of this permit may result in revocation.

5. Prior to occupancy, the applicants shall schedule a site inspection if found necessary by staff to assure compliance with this decision.

6. Prior to occupancy the applicants shall acquire access permits as referenced in the April 26, 2013 memo from the County Engineer, Ex. 4.

Dated this 6th day of June, 2013.


Phil A. Olbrechts

County of San Juan 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 Conditional Use Permit

1 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
2 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.

3 This land use decision is final and in accordance with Section 3.70 of the San Juan
4 County Charter. Such decisions are not subject to administrative appeal to the San
Juan County Council. See also, SJCC 2.22.100.

5 Depending on the subject matter, this decision may be appealable to the San Juan
6 County Superior Court or to the Washington State Shorelines Hearings Board. State
7 law provides short deadlines and strict procedures for appeals, and failure to timely
8 comply with filing and service requirement may result in dismissal of the appeal. See
9 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.

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