

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Melissa Widner
P.O. Box 34628
Seattle, WA 98124

File No.: PCUP00-09-0001

Request: Conditional Use Permit (CUP)

Parcel No: 152050010

Location: Lot EC-10
Decatur Northwest
Lower East Cove Road

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

Land Use Designation: Rural Residential 5

Public Hearing: Held April 1, 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

APR 23 2010

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Melissa Widner	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
5 Conditional Use Permit	
6 (PCUP00-09-0001)	

7
8 **INTRODUCTION**

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

12 **TESTIMONY**

13 San Juan County Community Development and Planning Department staff member,
14 Lee McEnery, summarized the staff report and answered questions posed by the
15 Hearing Examiner. She acknowledged receipt of comments opposing the application,
16 but noted that they concerned violations of private restrictions, which must be
17 handled and enforced privately.

18 The applicant was not present at the hearing, but her agent, Bob Quarry, was present
19 and testified in support of the application. He noted that the application meets all
20 County code requirements for approval, and it should not be denied based on a
21 “popularity” contest created by certain neighbors in opposition to the application. He
22 added that permitting rentals does not impact the quality or lifestyle of the
23 neighborhood. Finally, he concluded that “fears” are much greater than reality.

24 Bob and Lyndi Taylor, husband and wife, testified repeating the issues raised in the
25 comment letters attached to the staff report concerning the lack of public ferry
26 service, limited public safety, utilities and services, imposition on community
27 provided services, the unique nature of the community, and ownership structure of
28 common properties.

29 Ms. McEnery noted that the concerns expressed were private matters among the
30 applicant, her neighbors and Decatur NW Board. She argued that the unique aspects
31 of the community should not merit different consideration from the County,
32 especially because the County’s experience has been that vacation rentals do not
33 cause unusual disturbance to the community. She concluded that the County code

1 should apply equally whether or not they have made a decision to reside in a unique
2 community.

3 Mr. Quarry noted it is the community that has to deal with how property owned in
4 common is used. He added that property owned in common is not unique to Decatur
5 NW, but a common feature in most subdivisions. Whether it is the property owner,
6 her guest or renter, the imposition on community's services is similar - that of a single
7 family. He volunteered to check with the applicant on whether she would be open to
8 conditioning the CUP to expire with the sale of the property.

9 The hearing was recorded, and it is part of the record. For more details on oral
10 testimony received, refer to recording.

11 EXHIBITS

12 See documents attached to the March 18, 2010 staff report. In addition, the following
13 documents have been entered into the record:

- 14 Exhibit 2: Zucker email dated March 31, 2010.
15 Exhibit 3: Taylor email dated March 23, 2010.
16 Exhibit 4: Duecy letter dated February 1, 2010.
17 Exhibit 5: Rentals and Guests Policy.
18 Exhibit 6: Duecy email dated March 23, 2010.

19 FINDINGS OF FACT

20 Procedural:

- 21 1. Applicant. The applicant is Melissa Widner.
22 2. Hearing. The Hearing Examiner conducted a hearing on the subject
23 application on April 1, 2010. The hearing was left open for the applicant's agent to
24 inquire of his client (not present) whether she would agree to have the permit expire
25 upon a change in ownership. She did not agree.

Substantive:

3. Site and Proposal Description. The applicant requests a conditional use
permit to allow short-term vacation rentals of her three-bedroom single family
residence located on Decatur Island.
4. Characteristics of the Area. The subdivision provides for individual
ownership of the small circular lots and shared ownership of the surrounding common
area and facilities. The surrounding parcels are residential in nature.

1 5. Adverse Impacts of Proposed Use. As the County noted, the concerns
2 expressed by project opponents are mostly the result of unique conditions created and
3 imposed by the community that own properties and reside at Decatur NW. They
4 concern violations of private restrictions and burdens upon private resources and
5 should, therefore, be enforced privately, and not through the County's permitting
6 process, which must be carried out with consistency throughout the County. The
7 unique private conditions of the community can be handled privately through
8 amendments to covenants and other private action. Evidence supports the County's
9 and applicant's position that vacation rentals do not cause unreasonable disturbance
10 to communities in general. The Examiner finds that the proposed project, as
11 conditioned, will have no significant adverse impacts that cannot be addressed
12 privately. The conditions recommended by staff will minimize noise and other
13 adverse impacts associated with short term rental of the property.

14 CONCLUSIONS OF LAW

15 **Procedural:**

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

19 **Substantive:**

20 2. Comprehensive Plan and Zoning Designations. The subject property is
21 designated as Rural Residential 5, and the existing land use is Residential.

22 3. Permit Review Criteria. Under Table 3.2 of SJCC 18.30.040 and
23 comment 10 thereof, vacation rental is an allowed use, subject to a conditional use
24 permit (unless the property qualifies for a provisional permit), for properties such as
25 the subject one located in land use district zoned Rural Residential. SJCC 18.40.270
and 18.80.110 establish the criteria for approval for vacation rental and conditional
use permit, respectively. They are quoted in italics below and addressed through
conclusions of law. Furthermore, SJCC 18.80.020(C)(5) and (6) require evidence of
adequate water and septic service for a proposed use. In this case, the proposed use
will occur in an existing single family residence which, according to staff, is
adequately served with water and septic service.

4. Notice. SJCC 18.80.030(A)(2)(a) requires publication of a notice of
application. This application was published on January 13, 2010. SJCC
18.80.030(A)(2)(b) & (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.

Vacation Rentals of Residences Criteria

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

3 5. There are 3 bedrooms available on the site, which would accommodate
4 nine guests. This shall be a condition of approval.

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

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

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

18 7. The property is not on a ferry served island. Because tenants cannot bring
19 their own vehicles to the property, the above criterion does not apply.

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.

10. 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.

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

2 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
3 *conservancy land use districts, the vacation rental of a residence or accessory*
4 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
5 *lessee demonstrates that the residence or accessory dwelling unit in question was*
6 *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.

7 12. This property does not appear to qualify for a provisional permit;
8 therefore, as noted above, a conditional use permit is being required and requested.

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

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

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

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

16 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*
17 *to the tenants regarding rules of conduct and their responsibility not to trespass on*
18 *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.

19 15. This section has been included as a condition of approval of the permit.

20 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
21 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

25 **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;

17. This proposal is conditioned to be consistent with the SJCC and the Comprehensive Plan, as detailed above.

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 conditions of approval imposed hereunder. As such, the proposal site is already 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.

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;*

19. Mitigation measures for vacation rental impacts, such as noise and trespassing, have been added as conditions of approval. Therefore, the use, as conditioned, should not cause significant or unreasonable adverse impacts on neighbors or surrounding environment. Again, impacts identified by project opponents are the result of private arrangements created among property owners at Decatur NW; likewise, they should be resolved privately among the parties through agreements, CC&R's and/or civil action.

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

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. Again, impacts identified by project opponents are the result of private arrangements created among property owners at Decatur NW; likewise, they should be resolved privately among the parties through agreements, CC&R's and/or civil action.

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

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

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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. As noted above, the property is located in a non-ferry-served island; therefore, traffic, pedestrian or vehicular traffic should not be a concern.

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.

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 21st day of April, 2010.



Phil Olbrechts
County of San Juan Hearing Examiner

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

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3 Hearing examiner decisions become effective when mailed or such later date in
4 accordance with the laws and ordinance requirements governing the matter under
5 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.

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

8 Depending on the subject matter, this decision may be appealable to the San Juan
9 County Superior Court or to the Washington State shorelines hearings board. State
10 law provides short deadlines and strict procedures for appeals and failure to timely
11 comply with filing and service requirement may result in dismissal of the appeal. See
12 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.

13 Affected property owners may request a change in valuation for property tax purposes
14 notwithstanding any program of revaluation.
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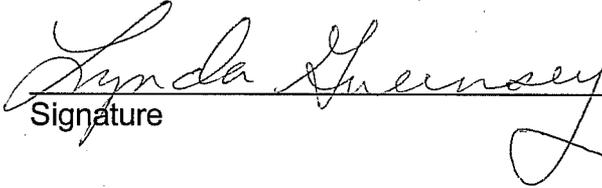
San Juan County Community Development & Planning

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Declaration of Mailing and Posting on the County Website

I hereby certify and declare under penalty of perjury under the laws of the state of Washington that on this day I mailed a true and correct copy of the decision to (1) the persons identified as a party of record (2) those person who have made a written request for a copy of this decision; and (3) the County Assessor; and further states that he or she has arranged for a true and correct copy of this decision to be posted on the county website.

Dated this 23rd day of April, 2010 at Friday Harbor, Washington.



Signature