



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250
(360) 378-2354 | (360) 378-2116 | FAX (360) 378-3922
cdp@sanjuanco.com | www.sanjuanco.com

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

**FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR
HOLLAND CONDITIONAL USE PERMIT**

FILE NUMBER: PCUP00-16-0008

OWNER: TERESA HOLLAND
5729 65TH AVE. NE
SEATTLE, WA 98105

APPLICATION: CONDITIONAL USE PERMIT –
TO AUTHORIZE VACATION RENTAL OF A 2-BEDROOM
SINGLE-FAMILY RESIDENCE

SITE ADDRESS: 1361 YACHT HAVEN ROAD, SAN JUAN ISLAND

TAX PARCEL NUMBER: 462650005

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

SUMMARY OF DECISION: *APPROVED – SUBJECT TO CONDITIONS*

DATE OF DECISION: JUNE 27, 2016

S.J.C. DEPARTMENT OF

JUN 29 2016

COMMUNITY DEVELOPMENT

I. INTRODUCTION

Teresa Holland, the owner of a 1.2-acre property with a 2-bedroom single family house and a garage on the site, has applied for a Conditional Use Permit to authorize vacation rental of the house. The CUP granted in this Decision only applies to the 2-bedroom house on the site, and not any structures that might subsequently be constructed or altered to provide for residential occupancy, if permitted by then-applicable development regulations. The site is zoned "Rural Residential". Residential and Shoreline uses surround the site. While the property is located along the shoreline, on a part of Mitchell Bay, the Staff Report explains that the house addressed by this CUP is located "well above" the Ordinary High Water Mark (OHWM). The applicant also owns the separate parcel of property adjacent to the property that is addressed in this Decision. The CUP granted in this Decision only applies to Lot 5 of the Yacht Haven subdivision, and not the Holland's adjacent property, identified as Lot 4. (*Staff Report, Project Data, Description of Site; Ex. 3; Ex. 4; Ex. 11; Ex. 12*).

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

Lee McEnery, the County's planner assigned to review the pending application, provided testimony under oath, summarizing her review, proposed conditions, and recommendation of approval. She responded to questions from the Examiner, addressing points raised during public comment.

Teresa Holland, the applicant, appeared at the hearing on her own behalf, and provided testimony under oath in support of her application, and responding to comments and questions raised by surrounding property owners. Ms. Holland explained that she and her family are responsible owners, and intend their rental agreement with future vacation renters to include terms that should cover Mr. Hodgkin's concerns expressed in his written comments. She wanted to note that Mr. Hodgkin does not live adjacent to the property addressed in the pending application.

George Holland, the applicant's husband, also appeared at the hearing, to make brief remarks under oath, in support of the pending application.

Christopher Hodgkin provided testimony, after affirming that he intended his testimony to be truthful. Mr. Hodgkin explained that he knows the Hollands to be nice people, and good neighbors, responsive to issues that he has brought to their attention on previous occasions. He stated that he lives in the area near the Holland property, separated by another parcel. He generally asserted that the Holland's application was incomplete, and should have been rejected by County staff, claiming the checklist included as Exhibit 13 was not satisfied, then noting objections and concerns, most of which were detailed in his previous written comments that are included in the record as Exhibits 9 and 10. If approved, he requested more specific conditions than those recommended by staff, focusing on removal of outdoor speakers, prohibition of outdoor fires, and no pets at the vacation rental. He also sought clarification regarding the County's enforcement process, how property owners could be held

accountable for vacation renters who violated conditions of approval, and how any permit could be revoked, due to violations.

Mark Dayvincent provided testimony under oath, expressing his agreement with Mr. Hodgkin's comments and concerns.

EXHIBITS:

1. Staff Report, prepared by Project Planner, Lee McEnery, dated May 3, 2016;
2. Land Use Permit Application cover sheet, reflecting receipt stamp, dated Feb. 25, 2016;
3. Site Plan, showing house and garage on Lot 5;
4. Vicinity map, aerial photo, from SJCo GIS system, showing parcel addressed in this CUP application, and surrounding tax-parcels;
5. Floorplan, 3 pages, marked to show that garage is "not to be used by renters", and that site has 5 parking spaces;
6. Applicant's signed acknowledgment that she has read the applicable performance standards for Vacation Rentals (SJCC 18.40.270) and that she agrees to abide by such provisions, stamped received on Feb. 25, 2016;
7. Septic System Design, Permit, and Wastewater Inspections for the site (Lot 5), including "Memorandum" note reading "Finalized – Drainfield Located on Lot 4";
8. Posting/mailling materials, submitted by applicant, 6 pages;
9. Written comment (3 pages) submitted by Christopher Hodgkin, dated April 18, 2016, re: Objection to DCD finding of a complete application;
10. Written comment (6 pages) submitted by Christopher Hodgkin, dated April 18, 2016, re: Response to the Holland's vacation rental application and request to provide testimony;
11. Email response from the applicant, Ms. Holland, addressing Mr. Hodgkin's "Request to Provide Testimony", dated May 2, 2016;
12. Email response from the applicant, Ms. Holland, addressing Mr. Hodgkin's objections to her application, dated May 2, 2016; and
13. Vacation Rental Permit Application Checklist, submitted by Mr. Hodgkin's during his testimony at the hearing.

III. APPLICABLE LAW

Jurisdiction.

Under SJCC 18.80.090(C), if a development application is processed as a Conditional Use Permit application, "the Hearing Examiner is the decisionmaker." SJCC 18.80.100(C), captioned "Decisionmaking Authority", provides that "[t]he hearing examiner has the authority to approve or deny conditional use permit ... applications, and to impose conditions of approval on such permits."

Conditional Use Permit required for vacation rentals.

The “allowability” of various land uses, including “vacation rental of a residence or accessory dwelling unit” is found in a table codified as SJCC 18.30.040. Properties identified under the Rural Residential land use designation are required to obtain a Conditional Use Permit for a vacation rental. See “Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations Table”, at SJCC 18.30.040.

Standards for vacation rentals; Criteria for CUP approval.

San Juan County’s Unified Development Code includes specific standards that apply to all vacation (short-term, less than 30 days) rentals of single family residential units and accessory dwelling units or portions thereof. These standards are found at SJCC 18.40.270, and include a lengthy list of items numbered A through N. The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner.

Burden and Nature of Proof.

Under SJCC 18.80.040(B), “[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied her burden of proof to satisfy the criteria for Conditional Use Permit approval?

Short Answer: Yes.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.
2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.
3. The applicant submitted a Vacation Rental Permit application to the San Juan County Community Development & Planning Department on or about February 25, 2016. *Exhibit 2.*

4. The application materials establish that the property at issue (Lot 5) is 1.2152 acres, and includes two buildings on the site, a 2-bedroom single family home, and a garage. *Staff Report; Ex. 3; Ex. 5.*
5. In the Staff Report, Ms. McEnery represented that notices and publication required for the application were provided in accord with applicable county requirements. County staff determined that the application is exempt from SEPA review. *Staff Report, at page 4.*
6. The County received two written comments from Mr. Hodgkin regarding the pending application, included in the Record as Exhibits 9 and 10. *Testimony of Ms. McEnery and Mr. Hodgkin; Staff Report, at pages 4-5; Exhibits 9, 10.*
7. At the hearing, County staff described the application, noted there were public comments and responses from the applicant, and that staff recommended approval with standard conditions. *Testimony of Ms. McEnery.* Ms. Holland spoke in support of her application, and responded to questions and comments made by Mr. Hodgkin. Mr. Hodgkin summarized his written comments, and requested more specific conditions, and Mr. Dayvincent supported his remarks. The Hollands did not object to potential conditions that would prohibit outdoor speakers, outdoor fires, and pets at the vacation rental. Ms. Holland wanted to clarify that conditions should not apply to her family's use of the property, because they own it. She also noted that Mr. Hodgkin is not an adjoining property owner.
8. Septic service is provided by an onsite septic system, which was apparently permitted, developed, and satisfactorily inspected over the years. *Exhibit 7.*

Facts establishing compliance with Vacation Rental Standards.

9. SJCC 18.40.270 lists a number of standards that apply to all Vacation Rentals (short-term/less than 30 days) of single family residential homes and accessory dwelling units, or portions thereof. The standards are numbered "A" through "N", and their application and relevance to the pending CUP is discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable standard. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 2 and 3:
 - A. No more than three guests per bedroom shall be accommodated at any one time.
There are two bedrooms in this house, so no more than six people may be accommodated at any one time. Conditions of Approval are included to require compliance with this standard.
 - B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.
Noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be adequately mitigated by conditions limiting the number of occupants to 6, requiring the posting of rules of conduct specifically mentioning that trespassing is not allowed, the identification of property lines, and providing neighbors with a 24-hour contact phone number as well as requiring the contact to keep a written log of complaints.

- C. At least one additional off-street parking space shall be provided for the vacation-rental use in addition to the parking required for the residence or accessory dwelling unit.
Parking is available for at least five cars on the property. See Exhibit 5, at page 3, depicting space for 5 cars on the site.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
No food service is proposed.
- E. No outdoor advertising signs are allowed.
No outdoor advertising signs are proposed.
- F. The owner or a long-term lessee may either rent the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both;
The CUP approved in this Decision shall only allow for rental of the 2-bedroom house, and not the garage located on the property. Public comments seeking to apply this provision to somehow regulate the adjacent parcel (Lot 4), which is also owned by the applicant, or restrict rentals on Lot 5 (the parcel that is subject to the CUP addressed in this Decision), run counter to the express language found in SJCC 18.20.010, which defines an "Accessory Dwelling Unit" to mean a living area that is accessory to the principle residence, located on the same lot. The applicant's ownership of the neighboring Lot 5, though located in the same subdivision, is a separate legal lot, which is specifically given its own San Juan County Tax Parcel number than Lot 4, which is addressed by the CUP granted in this Decision. See Exhibits 3 and 4. As the code is written, the applicant's ownership of the neighboring Lot 4 does not serve as a basis to impose restrictions on a vacation rental proposed to occur on Lot 5. The Examiner recognizes that some confusion may remain, so long as the two lots (4 and 5) are apparently identified by the same, common address, as shown on Exhibit 4. (See "1361" placed on both lots that front Yacht Haven Road).
- G. Where there are both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.
There is no accessory dwelling unit on Lot 5. The application and this CUP does not apply to the garage on the site.
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the transient rental of a residence or guest house may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or guest house 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.
This property is in the Rural Residential land use district which requires a conditional use permit. It has not been rented previously.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
If this application is approved, the applicant will be required to obtain a business license or work through a property management company.
- J. Owners of vacation rentals must file with the Administrator a 24-hour contact phone number.

A 24-hour contact phone number will be included in the rules of conduct when the unit is rented.

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. *This standard is specifically addressed in the conditions of approval.*

L. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application. *A notice of application for Conditional use permit for vacation rental was published on 3/30/2016. Comments received are included as part of the record.*

M. SJCC 18.80.030(A)(2)(b)&(c) 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. *The applicant submitted notice of mailing and posting as required by this standard.*

N. SJCC 18.50.330.E.5 says that shoreline vacation rentals are subject to the permit process set in Table 3.2, SJCC 18.30.040. *This vacation rental proposal is within the County's regulated shoreline area. Table 3.2 requires a conditional use permit for the Rural Residential designation.*

10. The Record establishes that the applicant has met her burden to satisfy the criteria for approval of a Conditional Use Permit, found in SJCC 18.80.100(D)(1-10). The 10 items listed as approval criteria are listed and discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable requirement. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 3 and 4:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;

As conditioned, the requested CUP will be consistent with the SJCC and the Comprehensive Plan.

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;

The proposed use would be in an existing dwelling unit, would not change the appearance of the structure, and with conditions would continue to function in a manner similar to the existing use of the building. Therefore, the residential character of the site would be maintained.

Additionally, the proposal meets or can be conditioned to meet the applicable standards of sections 18.40 and 18.60 of the SJCC.

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;

Vacation rental applications often generate complaints regarding trespassing, noise and parking, but staff has determined that such concerns can be dealt with through conditions of approval. The CUP is conditioned to enable neighbors to report problems and possible violations of any conditions of approval to the owner, or their required contact.

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;

The use would continue to appear and function in a manner similar to the existing single family residential use.

5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;

The proposed use is in an existing structure that has been shown to meet these requirements.

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;

As a single-family residence it has not interfered with allowable development or use of neighboring properties. Nothing will change from the outside so no new interference should occur.

7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;

Staff has determined that vacation rentals can generate pedestrian and vehicular traffic that is often described as "inconsiderate" of the existing residents, but it is not often described as hazardous.

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;

As conditioned, the proposal will be in compliance with SJCC 18.40.270.

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);

There is no airport or airfield adjacent to this property.

10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

As an existing developed site, the proposal is consistent with SJCC 18.60.

11. Comments regarding the application included questions about the process that might be used to enforce any permit conditions, and whether future property owners would be held accountable (or “vicariously liable”) for potential permit violations committed by “vacation renters” who may not have the same personal motivations to be as considerate or respectful of neighbors, as long-term residents might be. After the Examiner pressed the issue, Ms. McEnery finally cited to a newer portion of the San Juan County Code, 18.100.210, which details the process for Suspension or Revocation of a Permit.

12. The applicant, future owners of the property covered by this CUP, and affected neighbors may also be interested to know that SJCC 18.100.060(E) already mandates that “in all cases, the property owner shall be named as a responsible party in an enforcement action.” Accordingly, the Hollands, or any subsequent owner of the property to which the CUP issued under this Decision applies, shall be named as a responsible party in any County code-enforcement action undertaken to enforce a specific condition of the CUP and/or a notice of violation to apply penalties or other measures based upon a violation of any CUP condition of approval.

13. Under SJCC 18.100.030(B), the County’s “Enforcement” Chapter applies to code violations, including but not limited to “Failure to comply with the terms or conditions of a permit...”, which includes any term or condition of the CUP issued by this Decision.

14. Finally, comments seeking to invalidate the pending application as “incomplete” must fail, because the County Code is very clear about the discretion the Director has with respect to such matters. *See* SJCC 18.80.020(C)(18) “The director may waive specific submittal requirements determined to be unnecessary for review of a project permit application required by this code;” 18.80.020(D)(1), the Director has 28 days to determine if any application is complete or incomplete; and 18.80.020(D)(3)(b), if submittal requirements are not met, the Director may still deem application complete and request additional information if needed. Under SJCC 18.80.020(D)(5), “A project permit application shall be deemed complete [] if the director does not timely notify the applicant that the application is incomplete.” Here, far more than 28 days passed since the application was submitted, and the Director never notified the applicant that her application was incomplete. The application is deemed complete on that basis.

15. Standing alone, the application is, in fact, complete for purposes of processing and issuing the underlying CUP addressed herein. The Staff Report, the Application materials, including without limitation the site plan, vicinity map with parcel numbers shown on the subject property and surrounding lots, the proof of mailing/posting notices, and other details shown in the record, are all in substantial compliance with submittal requirements for the requested permit. Any omission or deficiency noted in public comments is not material to the situation, and has not prevented a fair, full, and public airing of relevant issues, in excess of that typically experienced for similar vacation rental permits in San Juan County.

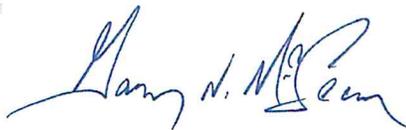
VI. CONCLUSIONS of LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Conditional Use Permit for a vacation rental conforms to all applicable land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, CUP application meets the standards necessary to obtain approval by the County.
2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.
3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the Holland vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 27th Day of June, 2016



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

*Holland Vacation Rental CUP
1361 Yacht Haven Road, Lot 5, San Juan Island
File No. PCUP00-16-0008*

1. The 2-bedroom house may be operated as a vacation rental as described in the application materials, except as modified by these conditions.
2. The 2-bedroom residence on the site may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of three people per bedroom (six guests total) shall occupy the residence at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. Adequate parking is required.
4. The rentals must meet all local and state regulations, including those pertaining to business licenses and taxes. Approval of this permit does not authorize the owner to violate private covenants and restrictions.
5. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor or electrical interference to the detriment of adjoining properties.
6. Outdoor speakers shall be removed and may not be used on the property at any time it is operated as a vacation rental.
7. Outdoor fires shall be prohibited on the property at any time it is operated as a vacation rental.
8. No pets shall be allowed on the property at any time it is operated as a vacation rental.
9. A 24-hour non-message, non-recording contact number shall be provided to Department of Community Development and to all neighbors within 300 feet of the property. A log of complaints shall be kept and a copy provided to DCD upon request.
10. Written rules of conduct shall be submitted to DCD prior to the first rental. Those rules of conduct shall be posted in the house and given to all the neighbors within 300 feet of the property boundary.
11. Failure to comply with the conditions of this permit may result in revocation.
12. Upon determination by the Director of DCD that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to any other code enforcement remedies, revoke the conditional use permit. For specific Code Enforcement information, see SJCC 18.100.210 [Suspension and Revocation of a Permit]; SJCC 18.100.030 [violations include but are not limited to failure to comply with the terms or conditions of a permit];

and SJCC 18.100.060(E) [in all cases, the property owner shall be named as a responsible party in an enforcement action].

13. These conditions apply to the use and operation of the 2-bedroom residence located on the property as a Vacation Rental. Under SJCC 18.20.220, the term “Vacation Rental of a Residence” means a single-family residential unit that is rented for periods of less than 30 days. Accordingly, these Conditions shall not be applied or construed to limit or restrict the use of the property by current or future owners at any time they or members of their family occupy or make use of the property as owners, and not vacation rental occupants, subject to compliance with all current and applicable laws, including without limitation any zoning, development, and use regulations that apply to other property owners in the area and/or throughout San Juan County.

EFFECTIVE DATE, APPEALS, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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