

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Joseph and Noel Whatley 618 128th Avenue NE Bellevue, WA 98005	
File No.:	PCUP000-16-0019	S.J.C. DEPARTMENT OF
Request:	Conditional Use Permit (CUP)	AUG 11 2016
Parcel No.:	160852106	COMMUNITY DEVELOPMENT
Location:	7008 Olga Road, Orcas Island	
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family home	
Land Use Designation:	Residential	
Public Hearing:	July 21, 2016	
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria	
Decision:	Approved subject to conditions	

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

In the Matter of the Application of)
Joseph and Noel Whatley)
For approval of a conditional use permit)
to allow vacation rental of the three)
bedroom residence at 7008 Olga Road)
San Juan Island)

NO. PCUP000-16-0019

S.J.C. DEPARTMENT OF
AUG 11 2016
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the three bedroom residence at 7008 Olga Road, Orcas Island as a vacation rental is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Joseph and Noel Whatley (Applicants) requested a conditional use permit to authorize vacation rental use of the three bedroom residence located at 7008 Olga Road, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on July 21, 2016. At the conclusion of the proceedings, the record was held open for five business days to allow the Applicant an opportunity to respond to the voluminous document offered during public comment. The Applicant's response was timely submitted and admitted as Exhibit 12.

Testimony:

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

Julie Thompson, Planner, San Juan County Department of Community Development
Joseph Whatley, Applicant
Norene Nealy, Neighbor

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated July 1, 2016
2. Application Materials, received April 27, 2016

3. Comment Letter from Eric and April Heyn, neighbors
4. Comment Letter and Information Packet, from Jess and Norene Nealy, neighbors
5. Legal Advertisement, published May 18, 2016
6. Notification and Posting Materials, mailed on May 17, 2016 and posted on May 30, 2016
7. Septic Inspection Report from Orcas Sewage Design, dated September 9, 2015
8. Conditional Use Permit HE-07-03/02CU035 authorizing Vacation Rental of 7018 Olga Road, TPN 160852015, issued February 19, 2003
9. Orcas Sewage Design invoice for service of septic system at 7008 Olga Road, dated July 20, 2012
10. Packet of Information (9 tabbed exhibits), from Jess and Norene Nealy, offered at hearing
11. Nealy hearing comments, July 21, 2016
12. Applicant response to Nealy comments, prepared by the Wagner Law Offices, dated July 28, 2016

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

FINDINGS

1. The Applicants requested approval of a conditional use permit to authorize the use of the three bedroom residence located at 7008 Olga Road, Orcas Island as a vacation rental.¹ The 0.14-acre parcel in Olga Hamlet is developed with a three bedroom, single-family residence and does not have shoreline access. *Exhibits 1 and 2.*
2. The subject property has a Residential land use designation; the surrounding neighborhood is rural and residential in nature. The subject property abuts residential development on all sides and is not located near an airfield or airport. *Exhibits 1 and 2.*
3. The subject property has existing access from Olga Road. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*
4. The existing residence is served by a community water system and an on-site septic system. The septic system, approved in 2002, partially encumbers the neighboring

¹ The subject property is known as Assessor Parcel number 160852106. *Exhibit 1.*

property owned by the Nealys. The Nealys' septic system also encroaches onto the subject property. *Exhibits 1, 4, 10, 11, and 12.*

5. The proposed conditional use would allow up to three persons per bedroom at a time to rent the three bedroom residence, for a maximum of nine overnight guests at once. The parcel has off-street parking for at least three vehicles shown on the site plan. No outdoor advertising signs or food service are proposed. *Exhibits 1 and 2; Thompson Testimony.*
6. Planning Staff noted that noise and trespass impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom; requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; Thompson Testimony.*
7. The Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.* The Applicant indicated that they would retain the services of a management company. *Whatley Testimony.*
8. The application was submitted April 27, 2016 and determined to be complete on the same date. Notice of the application was mailed to surrounding property owners on May 17, 2016, published on May 18, 2015, and posted on-site on May 30, 2016. *Exhibits 1, 2, 5, and 6; Thompson Testimony.*
9. The County received public comments on the proposal. Eric and April Heyn, owners of an adjacent property, expressed concern based on their assertion that their house sits 20 feet from the subject residence and their kitchen/dining area is only five feet from the Whatleys' back deck and fence. The Heyns contended that, given that close proximity, a vacation rental of the subject property would be disruptive to their residence. Further, they submitted that the Olga Hamlet Plan was developed to maintain the existing ambiance of Olga, and that long term residents are necessary in order to maintain the sense of community that makes Olga unique. They argued that increasing the number of existing vacation rentals in the neighborhood would slowly destroy this sense of community. *Exhibit 3.*
10. The County received two packets of information from owners of adjacent property at 7018 Olga Road, Jess and Norene Nealy, one prior to and one at the public hearing. The submittals document the mutually burdened nature of the two parcels, each of which contains drainfield laterals of the neighbors' septic system, resulting - in the Nealys' words - in a shared septic system. The Nealys contended that the subject property's septic system is too small to accommodate vacation rental use and that the Applicants cannot be relied upon to abide by vacation rental regulations. *Exhibits 4 and 10.* In her

documents and testimony, Ms. Nealy pointed out that the two parcels contain 12,900 combined square feet together, which is insufficient to meet the minimum land requirement for two septic systems pursuant to state regulations in Washington Administrative Code (WAC) 246-272A, which is 12,500 square feet per septic system. Ms. Nealy asserted that while the subject property's septic system has been inspected twice, it has never been pumped and was never subjected to an hydraulic load test and that because the Whatleys have not lived there full time, it is not known whether the system can accommodate continuous use. Further, in considering the system's capacity the Nealys noted that, pursuant to WAC 246-272A-0230, on-site septic systems are required to be designed with operating capacity for two people per bedroom (45 gallons per day per capita with two people per bedroom), whereas the County's vacation rental authorizes up to three people per day. Due to the small size of the parcel, the two person per bedroom operating capacity upon which the Applicants' septic approval was based, and the fact that the system has not been intensively used for many years, the Nealys submitted that the County does not know whether the system can handle vacation rental use. Because any problems arising with the subject property's septic system would manifest in the Nealys' backyard, she opposed approval of the permit. *Nealy Testimony; Exhibits 4, 10, and 11.*

11. In September 2015, the Applicants' septic system was inspected and found to be in proper working order. *Exhibit 7.*
12. In the Applicants' response to the Nealys' concerns, legal counsel for the Applicants noted that the Applicants' 2002-approved system pre-dates WAC 246-272A, which was adopted in 2005. Further, the state regulations provided an exception for legal lots smaller than this minimum on which local governments had approved septic systems (WAC 246-272A-0010).² Applicants' counsel noted that both the Applicants' and the Nealys' parcels contain wholly independent septic systems with components located within easements on each other's parcels. Counsel contended that the terms and enforcement of easements are outside the scope of conditional use permit review and outside the County's Hearing Examiner's authority. *Exhibit 12.*
13. Planning Staff concurred that the two septic systems are separate and are not shared. The application was reviewed by the County Health & Community Services Department, which agency found no problem with vacation rental of the subject property using the septic system as is. The Applicants' septic system was found to be adequate for three bedrooms when its design was approved. *Thompson Testimony.*

² Per WAC 246-272A-0010, "Conforming system" means any on-site sewage system or component, meeting any of the following criteria: (a) In full compliance with new construction requirements under this chapter; or (b) Approved, installed and operating in accordance with requirements of previous editions of this chapter; or (c) Permitted by the waiver process under WAC 246-272A-0420 that assures public health protection by higher treatment performance or other methods.

14. Planning Staff submitted that existing developed site is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1*. Considering all materials submitted, Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1*.
15. In conclusion, the Applicant noted that family parties held at the subject property with up to ten people have tested the septic system to full capacity, without adverse results. The Applicants waived objection to the recommended conditions of approval. *Whatley Testimony*.

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review:

Conditional Use Permit

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or 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;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
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;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
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;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
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
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

Vacation Rental Standards

Pursuant to SJCC 18.40.270, the following standards apply to all vacation rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three overnight guests per bedroom shall be accommodated at any one time.
- 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.
- 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.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- 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.
- 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.
- 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.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.

- 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.
- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

Conclusions Based on Findings:

1. As conditioned, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. Regarding the Heyns' concerns of the close proximity of their kitchen/dining area to the subject parcel's deck, there are no regulations that would support denial of a conforming vacation rental on the subject parcel due to off-site development's close proximity to the subject backyard. With regard to the Nealys' septic concerns: both the subject property's septic system and that on the Nealys' parcel are approved and functioning. There is no persuasive evidence in the record supporting a conclusion that vacation rental use of the subject septic system would result in environmental or public health concerns. There is no evidence supporting a conclusion of adverse cumulative environmental impacts in the event of additional vacation rental request approvals. As conditioned, the proposal would comply with the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring the use would not result in excess demand for public services and facilities. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact for neighbor complaints (among other requirements). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 15.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to nine people. The site is currently served by a community water system and an on-site septic system. The legal, conforming septic system designed for three bedrooms was recently inspected and found to be in good working order. Three off-street parking spaces would be provided. No outdoor advertising, food service, or accessory dwelling unit are proposed. Potential noise, trespass, and parking impacts to surrounding parcels would be mitigated through conditions requiring posted rules of conduct, identification of property boundaries, provision of a 24-hour contact phone number, and the requirement for the contact to maintain a log of complaints. The rules of conduct would specifically be required to prohibit trespass. Conditions would ensure that the Applicants obtain a business license or work through a property management company. *Findings 1, 4, 6, 7, 9, 10, 11, 12, 13, 14, and 15.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the three bedroom residence at 7008 Olga Road, Orcas Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The three bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of nine overnight guests shall occupy the vacation rental at any one time.
3. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.
4. The vacation rental shall be operated in a way that prevents unreasonable disturbances to area residents. To this end, the Applicants shall:
 - A. Provide copies of this decision to property owners within 300 feet of the subject 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.
 - D. Provide copies to the Department of Community Development of the rules of conduct and the 24-hour local contact phone number.
5. No food service is to be provided. No outdoor advertising signs are allowed. At least three off-street parking spaces must be maintained on-site for the life of the vacation rental use.
6. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.
7. 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.

8. Written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be distributed to all renters and also sent to all owners of property within 300 feet of the site boundaries.
9. Since the County is not a party to private covenants, it is not in a position to enforce private covenants between property owners that may prohibit use of a residence as a vacation rental. However, issuance of a permit for a vacation rental does not license the owner to violate private restrictions.
10. If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
11. Upon determination by the Director of the Department of Community Development that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.

Decided August 11, 2016.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

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

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service

requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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