

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s): Kathleen Bartholomew and John Nance  
418 Cessna Ave  
Friday Harbor, WA 98250

File No.: PCUP00-17-0003

Request: Conditional Use Permit (CUP)

Parcel No.: 461350015

Location: 418 Cessna Drive, San Juan Island

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

Land Use Designation: Rural Residential

Public Hearing: April 20, 2017

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals  
SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF  
MAY 12 2017  
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of )  
 )  
**Kathleen Bartholomew and John Nance** ) NO. PCUP00-17-0003  
 )  
 )  
 )  
For approval of a conditional use permit )  
to allow vacation rental of the three )  
bedroom residence at 418 Cessna Drive )  
San Juan Island )

S.J.C. DEPARTMENT OF  
MAY 12 2017  
COMMUNITY DEVELOPMENT

**SUMMARY OF DECISION**

The request for conditional use permit to authorize the use of the three bedroom residence at 418 Cessna Drive, San Juan Island as a vacation rental is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Kathleen Bartholomew and John Nance (Applicants) requested a conditional use permit to authorize vacation rental use of the three bedroom residence located at 418 Cessna Drive, San Juan Island.

**Hearing Date:**

The San Juan County Hearing Examiner held an open record public hearing on the request on April 20, 2017.

**Testimony:**

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

Julie Thompson, Planner, San Juan County Department of Community Development  
Kathleen Bartholomew, Applicant  
John Nance, Applicant  
Bob Jones

**Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated April 6, 2017
2. Application cover sheet, received February 1, 2017
3. Applicants' acknowledgment of the requirements of SJCC 18.40.270

4. Site plan showing parking
5. Floor plan
6. Assessor information (5 pages) showing three bedrooms in main house and one bedroom in detached garage
7. Septic design permit information from San Juan County Health Department
8. Posting and notification materials (11 pages), posted and mailed March 10, 2017
9. Comment letter from Robert Jones
10. Comment letter from Thomas Young, dated March 29, 2017
11. Four mailed notices to surrounding property owners returned to sender
12. Proposed vacation rental rules and guidelines

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 residence located at 418 Cessna Drive, San Juan Island as a vacation rental.<sup>1</sup> The parcel is developed with a three bedroom single-family residence and a detached garage. While the Assessor information (*Exhibit 6*) shows three bedrooms in the house and one in the detached garage, one of the bedrooms in the house has been converted to an office, rendering the remaining three total bedrooms on the property consistent with the approved residential sewage disposal permit. Located in the Roche Harbor Skyways community, the subject property is developed with a private airplane hangar. *Exhibits 1, 2, 4, 5, and 7; John Nance Testimony.*
2. The subject property has a Rural Residential land use designation. At the north end of San Juan island, the parcel abuts residential development to the west, north, and east and is adjacent to Roche Harbor Airport to the south. Roche Harbor Skyways, the surrounding community, is composed of small older subdivision lots predating the regulations, all of which have access to the Roche Harbor airstrip. *Exhibits 1 and 2.*
3. The subject property has existing access from Cessna Avenue, which connects with Afterglow Drive approximately 0.4 miles west of the site. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*

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<sup>1</sup> The subject property is known as Assessor Parcel number 461350015. *Exhibit 1.*

4. The existing residence is served with domestic water and an on-site sewage system. *Exhibits 1 and 7.*
5. Planning Staff submitted that because the subject property is an existing developed residence, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1.*
6. The proposal 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 four vehicles. No outdoor advertising signs or food service are proposed. *Exhibits 1, 2, and 4; Julie Thompson Testimony.*
7. 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.*
8. The Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.*
9. The application was submitted February 1, 2017 and determined to be complete on the same date. Notice of the application was published on February 15, 2017. While drafting the report, Community Development Department staff noticed that the certification of mailing and posting of the notice of application was missing from the original submission, and as such the application was not actually complete. Staff contacted the Applicants, who then posted and mailed the notice of application to surrounding property owners on March 10, 2017, with a revised comment date of April 5, 2017. *Exhibits 1, 2, and 8; Julie Thompson Testimony.* Four of the notices mailed to surrounding property owners were returned to sender by the United States Postal Service as not deliverable. *Exhibit 11.*
10. Planning Staff received a written public comment on this application from a landowner in the Roche Harbor Skyways subdivision, Robert Jones, who raised four issues. First, he had not received mailed notification of the application. Second, he stated that it is against the covenants, conditions, and restrictions (CCRs) of the subdivision to operate a commercial business within the development. Third, he pointed out that this unique neighborhood contains an airfield with a runway, taxiways, and moving aircraft; the main street of the neighborhood, Cessna Avenue, is also a taxiway. Fourth, referencing the fact that there are two separate lots at 418 Cessna Avenue, he asked if the Applicants were seeking to use one or both of those lots as vacation rentals with this application. At hearing, Mr. Jones also testified regarding his view that the requirement to notify

landowners within 300 feet of the subject property is an inadequate radius requirement. He stated there are 58 lots in the airport community, and all of them should have been notified. His primary concern about the proposed vacation rental doesn't pertain to parking, noise, or traffic; he is concerned about safety, given that Cessna Avenue is both a taxiway and a street. He has experienced instances in which: automobiles don't yield to aircraft; there are bicycles and tricycles left parked along the taxiway; and rental guests are noisy all night long. He asserted that, if there is an incident on the taxiway or runway, the airport will be closed down, which is problematic since the airport is needed by the County, given the differing weather of the two harbors and the needs of island air emergency services. Mr. Jones appealed to Mr. Nance as an expert on aviation safety, asking him to withdraw the application due to the safety risks involved. He stated that despite the fact that access to Cessna Avenue is limited because the road is gated, this permit would just add more people to the road. He further expressed the concern that if this permit is approved, other area property owners may seek similar permits for use. *Exhibit 9; Robert Jones Testimony.*

11. The County also received written public comment from Friday Harbor resident, Thomas Young. In his letter, Mr. Young states that he opposes the instant permit for the following reasons: he was not notified of the application; it is against the community's CCRs to run a commercial business within that gated community; based on the uniqueness of Cessna Avenue, in that it is shared by aircraft and motor vehicles; Cessna Avenue is gated in order to separate aircraft from motor vehicle operators who are not trained to drive around aircraft; he expects that incidents of conflict between aircraft and untrained motor vehicle operators would not be dealt with by the vacation rental operators; and it is (in his view) unwise to have aircraft and untrained visitors, including unsupervised children, sharing the area. *Exhibit 10.*
12. John Nance testified in response to these public comments. Pertaining to the failed notification of nearby landowners, he stated that due diligence and more was attempted to find the people whose notification envelopes were returned. The Applicants' assistant searched for the recipients' correct mailing addresses, working from the Roche Harbor Skyways roster and County information. As to how conflicts arising from the vacation rental will be dealt with, the Applicant indicated that they would be using Airbnb rather than a vacation rental agency and complaints would go directly to the Applicants for resolution. With regard to the special nature of the taxiway, he discussed that Cessna Avenue is a residential road when no aircraft are present, and their kids and grandkids have been on the property many times without incident. He stated that all vacation rental guests would be briefed carefully on what to do when they encounter an airplane taxiing on the road, noting that the Applicants share the concerns about airplane traffic safety. He discussed that, although there is a gate at the end of Cessna Avenue, the gate code is known by caretakers, waste management, and other service providers, as well as residents, inferring that access is hardly exclusive. Mr. Nance asserted the wild party mentioned in public comments did not happen on their property, and that the owner of the property in that instance did take care of the disturbance very quickly. Mr. Nance waived objection to the recommended conditions. *Nance Testimony.*

13. Kathleen Bartholomew testified at hearing that no vacation rental guests would be allowed to park their aircraft at the airfield or use their aircraft on the taxiway. She asserted that, if approved, no neighbors would even notice the Airbnb vacation rental is in operation. She explained that the Applicants have eight children and therefore are sensitive to the risks involved in residing next to the airport. She claimed that, as pilots, the Applicants are guardians of the airport and testified that as national safety experts, she and Mr. Nance would not have sought the vacation rental permit if they believed approval would pose a risk to public safety or endanger the airport. *Bartholomew Testimony.*
14. The Applicant submitted vacation rental guest rules and guidelines for the record. In addition to the general rules about check in times, occupancy limits, pet restrictions, avoiding trespass onto adjacent property, parking, noise, et cetera, there is a list of rules entitled "special airfield/taxiway rules", which includes the following (paraphrased/abbreviated) information and instructions: information about Cessna Avenue being primarily an active taxiway unless there are no aircraft present, at which times it doubles as a residential road; information about the fact that aircraft do not have horns and cannot back up or turn around, and thus must always be given the right-of-way; instructions to duck into the nearest driveway anytime aircraft is encountered on the road; instruction to keep speeds at or below 10 miles per hour to facilitate getting out of the way of aircraft; information about the intersecting taxiway one-tenth of a mile east of the gate; information on where to park to avoid obstructing taxiways; and instruction to "under no circumstances" walk along, walk on or within 25 feet of, or cross the runway, day or night, and when walking on Cessna Avenue, to give a wide berth to taxiing aircraft. *Exhibit 12.*
15. Regarding the four returned mailed notices, Planning Staff testified that the Applicants sent more than four notices of application, that notice was also posted on-site and published, that residents outside of the required 300 foot radius, including Mr. Jones, knew about the vacation rental permit application, and that in Staff's opinion, the code requirements for notice were satisfied by the Applicants. In response to public safety concerns resulting from guests and guest motor vehicles sharing a roadway with aircraft, Planning Staff acknowledged that the subject neighborhood is unusual for all of the reasons mentioned and submitted that it would be incumbent on the vacation rental owner to ensure that potential renters understand these issues and are educated about how to avoid problems arising from the property's unique location. In response to Mr. Jones' question regarding the Applicants' two adjacent parcels, nowhere in the instant application is vacation rental use discussed pertaining to the second, adjacent parcel owned by the Applicants. The County asserts that means only parcel TPN 461350015 would be approved for use as vacation rental in the event this application is approved. Pertaining to that claims that the subdivision's CCRs prohibit commercial uses, Planning Staff noted that vacation rentals are considered residential uses by the County and further submitted that the County has no authority to enforce CCRs. *Thompson Testimony.*

16. Upon review of the complete application materials and in light of public comment, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.*

## 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. With regard to the public comment contending that vacation rental of the property would be a commercial use conflicting with the subdivisions CCRs, the County's Comprehensive Plan specifically identifies short term vacation rentals as residential land uses for the purposes of land use regulations. Vacation rentals are allowed in the Rural Residential land use designation upon conditional use permit approval. Approval does not constitute the permitting of an unpermitted commercial activity in a residential zone. Additionally, the County is not authorized to enforce CCRs. With regard to the concerns about potential conflicts between vacation rental guests and aircraft legally using the private roads within the plat, the Applicants have proposed to educate all vacation rental guests as to the safe use of Cessna Avenue and the roads within the subdivision. As a residential use, vacation rental guest traffic would pose no greater incompatibility with aircraft use of the private roads within the plat than does existing resident, delivery, and service traffic. While the neighbors' concerns about special safety hazards for those unfamiliar with the workings of the airport and Roche Harbor Skyways subdivision are understandable, the record does not contain evidence supporting the conclusion that vacation rental guests would be any less capable of following safety instructions than are the residents and delivery and service vehicle drivers who regularly access the roads within the plat. Aircraft use of Cessna Avenue is a unique circumstance, but on the record presented, the potential for conflicts between vacation rental guests and aircraft within the plat does not rise to the level of a "use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield" as contemplated in SJCC 18.80.100.D(9). *Findings 10, 11, 12, 13, 14, 15, and 16.*
2. As conditioned, the proposed vacation rental would be consistent with applicable CUP 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 even when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record 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 there are adequate public services and facilities to serve the proposal. 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. *Findings 1, 2, 3, 4, 5, 6, 7, 9, 10, 14, 15, and 16.*
3. 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 with domestic water and an on-site sewage system. The Applicants would be required to provide a

minimum of three off-street parking spaces at all times the vacation rental is in operation. 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, 8, 10, 14, and 16.*

### DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the three bedroom residence at 418 Cessna Drive, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

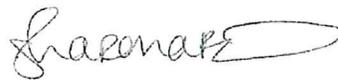
1. The three bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions
2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of nine overnight guests shall occupy the vacation rental at any one time.
3. No food service shall be provided. No outdoor advertising signs are allowed. A minimum of three off-street parking spaces shall be provided on-site at all times while the vacation rental is in operation.
4. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes. 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 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. The Applicants shall 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 and provided to the Department of Community Development upon request.
7. Written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be posted in the vacation rental, distributed to all renters, and sent to all owners of property within 300 feet of the site boundaries. The Applicants shall ensure that all vacation rental guests are informed

of the special access requirements resulting from aircraft use of the roadways within the plat.

8. 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.
9. 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 May 11, 2017.**

By:



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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.