

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Chris Watmore 383 Raccoon Point Road Eastsound, WA 98245
File No.:	PCUP000-17-0008
Request:	Conditional Use Permit (CUP)
Parcel No.:	170743014
Location:	383 Raccoon Point 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:	Rural Residential
Public Hearing:	May 18, 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

JUN 06 2017

COMMUNITY DEVELOPMENT

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

In the Matter of the Application of)
) NO. PCUP000-17-0008
Chris Watmore, Dian Thornbrugh,)
and Kenneth Thornbrugh)
)
for approval of a conditional use permit)
to allow vacation rental of the three)
bedroom residence at)
383 Raccoon Point Road, Orcas Island)

S.J.C. DEPARTMENT OF
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COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the three bedroom residence at 383 Raccoon Point Road, Orcas Island as a vacation rental is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Chris Watmore (Applicant) requested a conditional use permit to authorize vacation rental use of the three bedroom residence located at 383 Raccoon Point Road, Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on May 18, 2017. At the conclusion of the hearing, the record was held open for additional information from Planning Staff and a response from the Applicant, as detailed in the post hearing order. These items were timely submitted and admitted in evidence.

Testimony:

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

Julie Thompson, Planner, San Juan County Department of Community Development
Chris Watmore, Applicant

Exhibits:

The following exhibits were admitted in the record:

- A. Department of Community Development Staff Report, dated April 27, 2017
 - 1. Application materials, received March 3, 2017, including application form, aerial Polaris photo of site, and floor plans

2. Repair Sewage Design Application from San Juan County Health Department, approved January 8, 2015
 3. Legal advertisement, published March 15, 2017
 4. Posting and notification materials, posted and mailed March 14, 2017
 5. Emails between Staff and Applicant regarding number of bedrooms, March 8 and March 16, 2017
- B. Staff review of building permit information, submitted May 19, 2017
- C. Email from Julie Thompson, Planning Staff, to Chris Watmore, Applicant, regarding review of building permit information, dated May 19, 2017
- D. Email response from Chris Watmore, Applicant, to Julie Thompson, Planning Staff, dated May 19, 2017

Also included in the record of this matter is the Post Hearing Order issued May 18, 2017.

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 Applicant requested approval of a conditional use permit to authorize the use of the residence located at 383 Raccoon Point Road, Orcas Island as a vacation rental.¹ The half-acre parcel is developed with a single-family residence and a detached garage. The property has access to the beach via a trail. *Exhibits A and A.1; Chris Watmore Testimony.*
2. The subject property has a Rural Residential land use designation, and the surrounding neighborhood is rural and residential in nature. To the west, south, and southeast, the parcel abuts residential development. The Strait of Georgia forms the parcel's northern boundary. The subject property is not located near an airfield or airport. *Exhibits A and Aa.1.*
3. The subject property has existing access from Raccoon Point Road, which connects with Buckhorn Road approximately 0.4 miles west of the site. No changes to the existing site access are proposed or required. *Exhibits A and A.1.*
4. The existing residence is served by the Eastsound Water Users Association and an on-site septic system. *Exhibits A and A.2.*

¹ The subject property is known as Assessor Parcel number 170743014. *Exhibit 1.*

5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Julie Thompson Testimony; Exhibit A.*
6. The application materials did not clearly specify the number of bedrooms contained in the residence. That information is required to determine how many bedrooms may be rented for vacation rental use and the maximum vacation rental occupancy. *Exhibits A, A.1, and A.5.* At hearing, the Applicant testified that there are three bedrooms (one of which is a loft) in the main residence and another bedroom located above the detached garage. He stated that the bedroom above the garage includes a full bathroom and some elements of a kitchen, including refrigerator, microwave, and small electric stovetop. The Applicant testified he would like to rent as many bedrooms as possible. *Chris Watmore Testimony.* Planning Staff testified that if there are three bedrooms in main residence, vacation rental use should be limited to those three bedrooms based on the code provision that prohibits rental of both primary and accessory dwelling units. However, Staff questioned whether the loft meets Building Code requirements for a bedroom. Staff noted that alternatively, if the room above the garage does not include complete kitchen facilities and is built to Code, it could comprise a third (or fourth) bedroom. The County's septic permitting records show the site's septic system was designed, built, and approved for three bedrooms. Therefore Staff recommended that vacation rental use be limited to a maximum of three bedrooms, in either case. Staff requested to hold the record open to allow review of building permits issued for both the primary residence and the detached garage, in order to determine which bedrooms have been established in accordance with Building Code requirements. *Julie Thompson Testimony.* A timeline for document submittal was established on the record, and a Post-Hearing Order was issued to that effect on May 18, 2017. *Post-Hearing Order.*
7. Staff subsequently submitted a review of the building permits on file and Assessor's information on the property. The building permit for the room above the detached garage expressly excludes use of that addition as a sleeping area; it was approved as an office. Any vacation rental use of the property would be limited to Code-compliant bedrooms in the primary residence. Due to the fact that the primary residence was built in approximately 1969, there is no original building permit on file that establishes the number of bedrooms. Citing original assessment details which describe the residence as having three bedrooms, and because the site's septic permit was approved for three bedrooms, Staff determined the main residence has three bedrooms in total, including the loft. The Applicant accepted Staff's determination that the property comprises a three bedroom residence. *Exhibits B, C, and D.*
8. 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 three vehicles. No outdoor advertising signs or food service are proposed. *Exhibits A and A.1; Chris Watmore Testimony; Julie Thompson Testimony.*

9. Planning Staff noted that noise and trespass impacts to adjacent parcels 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 A; Julie Thompson Testimony.*
10. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit A.* The Applicant testified that self-management was intended. *Chris Watmore Testimony.*
11. The application was submitted March 3, 2017 and determined to be complete on the same date. Notice of the application was posted on-site and mailed to owners of surrounding properties on March 14, 2017, and published on March 15, 2017. The County did not receive comments on the proposal. *Exhibits A, A.1, A.3, and A.4; Julie Thompson Testimony.*
12. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Julie Thompson Testimony; Exhibit A.* The Applicant waived objection to the recommended conditions. *Chris Watmore Testimony; Exhibit D.*

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 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 SJCC Chapters 18.40 and 18.60 , 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. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 8, 9, 11, and 12.*
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 the Eastsound Water Users Association and an on-site septic system. Conditions would

require a minimum of three off-street parking spaces be provided on-site during all vacation rental use. No outdoor advertising, food service, or use of accessory dwelling unit are proposed or would be allowed. 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 Applicant obtains a business license or works through a property management company. *Findings 1, 4, 6, 7, 8, 9, 10, and 12.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the three bedroom residence at 383 Raccoon Point 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 Applicant 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 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 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 properties 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 other code enforcement remedies, revoke the conditional use permit.

Decided June 6, 2017.

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.