SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
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BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR BOURGAIZE CONDITIONAL USE PERMIT

SJC DEPARTMENT OF
MAY 14 2019
COMMUNITY DEVELOPMENT

FILE NUMBER:	PCUP00-18-0008
OWNER/APPLICANT:	BILL BOURGAIZE 271 MCNARY HEIGHTS DR. N. KEIZER, OREGON 97303
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF 3-BEDROOMS
SITE ADDRESS:	LOT 12, WESTCOTT BAY PARK SUBDIVISION, ON SAN JUAN ISLAND (*UPDATED TAX RECORDS SHOW THE ADDRESS AS: 255 WHITE POINT ROAD)
TAX PARCEL NUMBER:	462450012
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS
SUMMARY OF DECISION:	***APPROVED – SUBJECT TO CONDITIONS***
DATE OF DECISION:	MAY 13, 2019

I. INTRODUCTION AND SUMMARY OF DECISION.

Mr. Bourgaize owns a property located on the far north shoreline of, and well inside, Westcott Bay, in the northwest part of San Juan Island, immediately south of Roche Harbor. There is an existing home on the site. At the time of the initial vacation rental permit application, deemed complete in April of 2018, there was no building permit on file, and tax assessor records showed the house as a 4-bedroom structure. The application is only seeking approval to rent 3-bedrooms, so all conditions of approval are limited to such request.

In July of 2018, the applicant did not appear at the public hearing for the pending application, where staff explained that there was a pending code investigation matter for the Bourgaize property, briefly described as an unpermitted remodel on the site. Accordingly, Staff requested that all review for the matter be held in abeyance until after the building permit issues were resolved. On April 15, 2019, Staff advised the Examiner that Mr. Bourgaize finally received his certificate of occupancy for the house, after all work associated with his after-the-fact building permit was completed. Based on such information, a Decision is now in order for the pending vacation rental permit.

Updated tax records now show the house as only a 3-bedroom home, and it has been assigned a street address – 255 White Point Road, in the Westcott Bay Park subdivision on San Juan Island. The land use designation for the site is Rural Residential, as is the shoreline designation for the site. The property is served with an on-site septic system, with water supply provided by the Roche Harbor Water System. *(Staff Report, Project Data; Testimony of Ms. Thompson; San Juan County Tax Assessor online parcel information for the Bourgaize property, as of May 13, 2019).*

The requested permit is hereby approved, subject to conditions of approval set forth below.

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

All witnesses who offered testimony at the public hearing were placed under oath. Julie Thompson, the County's planner assigned to review the pending application, was the only person who appeared and spoke during the public hearing for this application, which was held on July 25, 2018. Again, the applicant did not appear at the hearing, and, as explained above, the application has been held in abeyance until after the applicant's active code investigation / after-the-fact building permit issues and associated construction work were complete and/or concluded. Ms. Thompson explained that Staff reviewed the application materials, applicable codes and regulations, and found that the application merits approval, subject to conditions. No one appeared at the public hearing or submitted any written comments to question or oppose the requested permit.

EXHIBITS:

A. Staff Report, prepared by Project Planner, Julie Thompson, dated July 13, 2018;
1. Application materials, 10 pages, dated March 26, 2018;
2. Sewage design permit;
3. Notice, posting and mailing confirmation materials;
4. Assessor's information for the parcel for the 2016-17 tax year;
5. Map of vacation rental permits issued from 1990 to Feb. of 2018;
6. Legal ad; and
7. Receipt for permit fees.

The Examiner takes official notice of updated property information now available for public access on the San Juan County Assessor's website.

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 now found at SJCC 18.40.275, and include a lengthy list of items numbered A through M. 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 his burden of proof to meet the criteria for Conditional Use Permit approval?

Short Answer: Yes, subject to conditions.

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 March 26, 2018 *(Staff Report at page 1)*. Department staff deemed the application complete for purposes of review on or about April 9, 2018. *(Staff Report, page 1)*.

4. As noted above, this application and the permit issued herein is applicable to a three-bedroom home on the site, which is located on the Rural Residential shoreline of Westcott Bay, in a Rural Residential land use designation area on San Juan Island, now addressed as 255 White Point Road. *(Staff Report, page 1; Updated Assessor's property information for the site, available online)*.

5. In the Staff Report, Ms. Thompson 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 pages 7 and 8; Exhibits 3 and 6, Legal ad and posting/notice verification materials)*.

6. No one opposed the requested permit.

7. The Staff Report explains that the property is served with an on-site septic system. Since the public hearing, the Examiner has been advised that the septic system was part of the work that needed to be completed before the code enforcement/building permit issues could be resolved. *(See Staff Report, Project Data; Updated project information provided by Ms. Thompson)*.

8. As with all permits issued by the County, this permit does not waive or excuse an applicant's obligation to comply with any utility service provider's lawful regulations or requirements, including without limitation electrical, telephone, cable, internet, sanitation, and water service providers.

Facts establishing compliance with Vacation Rental Standards.

9. SJCC 18.40.275 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. These standards 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 - 6:

A. Outside of urban growth areas, one vacation rental is allowed on a property, either in the principal residence or an accessory dwelling. Detached accessory dwelling units permitted on or after June 29, 2007 are not allowed to be vacation rentals.

   The property is located outside an urban growth area. The principal 3-bedroom residence is the only dwelling unit covered by this permit.

B. No more than two (2) overnight guests per bedroom plus additional three (3) overnight guests shall be accommodated at any one time. The number of bedrooms is determined by the approved building permit for the structure. A guest is a person over two (2) years of age.

   There are three bedrooms in this residence so no more than nine (9) people may be accommodated at any time.

C. The vacation rental shall be operated according to rules of conduct approved by the County that prevent the following disturbances to area residents:

   1. Trespassing;
   2. Noise that violates Chapter 9.06 SJCC (Noise Ordinance);
   3. Off-site parking issues;
   4. Vehicle speeds of higher than the posted speed limit, or twenty (20) miles per hour (mph) on private paved roads and fifteen (15) mph on private non-paved roads; and
   5. Outdoor burning that violates the requirements adopted pursuant to SJCC 15.04.070.F.c, including violations of a burn ban

   A complete and accurate set of Rules of Conduct shall be submitted to the Department for its review and approval. This requirement is a condition of approval.

D. Solid waste must be removed from the vacation rental to an approved solid waste facility every two weeks. Solid waste shall be stored in completely enclosed and secured solid waste receptacles or stored completely indoors.

   This requirement is a condition of approval.

E. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.

This requirement is a condition of approval.

F. One (1) on-site parking space shall be provided for each bedroom within the vacation rental.

The proposal is for a three-bedroom home, requiring three parking spaces. The submitted site plan shows sufficient parking spaces, see Exhibit 1. This meets the criteria.

G. Meal service provided by the permit holder or their agents is not allowed.

Meal service is not proposed by this application.

H. All vacation rental permit holders are required to display the address of the residence so that it is clearly visible from the street or access road.

This requirement is a condition of approval.

I. Vacation rental accommodations must meet all applicable local and state regulations, including those pertaining to business licenses and taxes such as Washington State sales, lodging and business and occupation taxes.

This requirement must be a condition of approval.

J. Vacation rental permits vested or approved after the effective date of this ordinance shall expire two (2) years after the date of approval unless the annual certificates of compliance meeting the requirements of subsection (K)(4) of this section are on file with the administrator.

The expiration and filing of annual certificates of compliance meeting SJCC 18.40.275(K)(4) is a condition of approval.

K. All owners of property used for vacation rental shall comply with the following operational requirements:

1. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:
   a. Rules of conduct approved by the County;
   b. Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
   c. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and
   d. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

A property management plan that complies with these criteria must be submitted to and approved by the Director, and then mailed to property owners within 300 feet of the permit site, prior to use of the house as a vacation rental. This is a condition of approval.

2. Prominently display in the rental the rules of conduct and a map clearly depicting the property boundaries of the vacation rental. The map shall indicate if there is an easement that provides access to the shoreline, if so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.

This is included as a condition of approval.

3. Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites.

This requirement is a condition of approval.

4. Annually certify compliance with the conditions of permit approval and with the fire and life safety requirements of the International Fire Code (IFC) as identified by the department on forms specified by the administrator. The annual certification shall be prominently posted on-site; and

Annual certification of compliance with conditions of approval, and the fire and life safety requirements of the IFC is a condition of approval.

5. Certify compliance with the conditions of permit approval within ninety (90) days after the closing date of the sale of the property. Written certification must be submitted to the department on forms specified by the administrator. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:

a. Rules of conduct approved by the County;
b. Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
c. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and
d. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

The requirement to file a certificate of compliance within ninety (90) days after the close date of the sale of the property is a condition 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 in the Journal of the San Juans and the Island Sounder on May 2, 2018 (See Exhibit 4). No one submitted written comments regarding the pending application.

M. SJCC 18.80.030(A)(2)(b) and (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 verification that they posted the property on July 12, 2018, Exhibit 3. Again, Staff confirmed that all notice requirements were satisfied for this application.

N. SJCC 18.50.600 says that shoreline vacation rentals are subject to a substantial development permit in the Rural Residential shoreline designation. SJCC 18.50.040 (D)(1) states that any development, use, structure or activity whose total cost or fair market value, whichever is higher, does not exceed the maximum amount allowed by state law is requires a certificate of exemption. SJCC 18.50.050 (B)(4) states that a certificate of exemption is not required for residential development, including normal residential appurtenances when a project or development permit application is required.

The property is in the County's Rural Residential shoreline jurisdiction. The Staff Report explains that this Conditional Use Permit process obviates the need for a certificate of exemption or other shoreline permitting requirements. (Staff Report, pages 5 and 6, item N; See SJCC 18.50.050(B)(4)).

10. The Record establishes that the applicants have met their 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 6 through 8:

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. See discussion in Staff Report, page 6.

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;

According to the Staff Report, the proposed use would be in an existing dwelling unit on the site, so it would not change the appearance of the structure. Staff indicates that with conditions, the property would continue to function in a manner similar to the existing use of the 3-bedroom structure already on the site. Therefore, the residential character of the site would be maintained. Additionally, the proposal meets or can be conditioned to meet the applicable standards of SJCC Chapters 18.40 and 18.60. Obviously, any owner's failure to operate the vacation rental in compliance with applicable codes, rules and regulations can and should result in revocation of the permit addressed herein.

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 sometimes 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. Such issues can be dealt with through enforcement of the conditions of permit approval including submitting a property management plan as required by SJCC 18.40.275(K) which includes rules of conduct, emergency contact information, and a designated local property representative. Violations of rules can result in revocation of the permit issued herein.

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. The map in Ex. 5 depicts the location of other vacation rentals in the vicinity, and there is no evidence in the record to show that negative cumulative impacts are any problem in the vicinity, or that they should be expected to result from operation of the vacation rental approved by this permit, so long as it complies with applicable county codes and conditions of approval.

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 development site that currently appears to be served by adequate facilities, and/or to receive adequate services; provided, the permit issued by this decision does not and should not be construed to authorize the owner to violate any applicable utility service provider's 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;

The existing single-family residence on the site that is the subject of this application has not interfered with allowable development or use of neighboring properties. As long as occupants comply with applicable codes and rules, no new interference with allowable development or use of neighboring properties 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 vehicular traffic associated with a vacation rental is not often described as hazardous. Guests and visitors are subject to the same traffic regulations as others who live in the area. Rules of conduct will mandate that the vacation rental shall not

be operated in a manner where guests or visitors pose a hazard to pedestrian or vehicular traffic in the area.

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 18.40.275. See discussion on pages 2-6 of the Staff Report.

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.

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, the 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.

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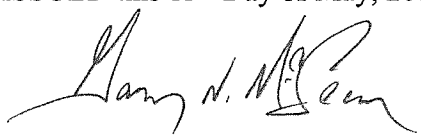
VII. DECISION

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 online site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the Bourgaize vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 13th Day of May, 2019



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Bourgaize Vacation Rental CUP
255 White Point Road, San Juan Island
(Tax Parcel No. 462450012)
File No. PCUP00-18-0008

1. The 3-bedroom house described in the application materials and site plan *(Ex. 1)* may be operated as a vacation rental, subject to compliance with SJCC 18.40.275, except as modified by these conditions.

2. The residence may be rented as a single unit on a short-term basis for periods less than thirty (30) days. A maximum of two (2) people per bedroom plus an additional three (3) overnight guests [nine (9) total guests] may occupy the residence at any one time.
3. The existing accessory dwelling unit on the site may not be rented for periods less than 30-days and is not covered by this permit. All rentals are limited to just 3-bedrooms in the principal residential structure on the site.

4. No food service is allowed.

5. Three (3) parking spaces must be provided as required by SJCC 18.40.275(F) and as shown on the approved site plan.

6. The owner 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.

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. Prior to operation, the applicant shall call the SJC Fire Marshal to have the driveway inspected for emergency vehicle access. Evidence of the Fire Marshal's inspection report must be submitted to the San Juan County Department of Community Development, referencing the permit number for this vacation rental.

9. The property owners shall:

   A. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:

      1. Rules of conduct meeting the requirements of SJCC 18.40.275(C) and approved by the County;

      2. The Unified Business Identifier number for the vacation rental unit, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;

3. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and

4. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

B. Prominently display in the rental the rules of conduct and a map clearly depicting the property boundaries of the vacation rental. The map shall indicate if there is an easement that provides access to the shoreline, if so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.

C. Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites.

D. Annually certify compliance with the conditions of permit approval and with the fire and life safety requirements of the International Fire Code (IFC) as identified by the Department of Community Development on forms specified by the administrator. The annual certification shall be prominently posted on-site.

E. Certify compliance with the conditions of permit approval within ninety (90) days after the closing date of the sale of the property. Written certification must be submitted to the Department of Community Development on forms specified by the administrator and must reference the permit number.

F. Given that this site is located along the shoreline of Westcott Bay, the property owner must ensure that the septic system serving the property is properly operated and maintained (cleaned-out, repaired, and the like), for the duration of this permit. Accordingly, prior to operating the house as a vacation rental, the property owner must obtain an inspection by a qualified septic system professional to certify that the on-site septic system for the property has been properly maintained/cleaned-out so as to provide adequate capacity to serve all vacation rental guests authorized to use the home. Such certification must be submitted for review and approval by the Director prior to operating the house as a vacation rental. Further, the septic system for this property will need on-going inspections to certify proper operation and system-capacity on an annual basis, unless more frequent inspections are required by the Director or local Health Officer. Again, all certifications mandated by this condition must be submitted for review and approval by the Director. Failure to comply with this or any other condition of approval is grounds for revocation of this permit.

10. This permit shall expire two (2) years after the date of approval unless the annual certificates of compliance meeting the requirements of SJCC 18.40.275(K)(4) are on file with the administrator.

11. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.

12. Outdoor burning of anything other than charcoal in a grill, or seasoned wood provided for use in a designated fire pit, is expressly prohibited. Guests shall be fully advised in writing of any applicable burn bans in effect for any portion of a vacation rental.

13. Solid waste must be removed from the vacation rental to an approved solid waste facility every two weeks. Solid waste shall be stored in completely enclosed and secured solid waste receptacles or stored completely indoors.

14. Upon determination by the Director of DCD that any condition listed above has been violated and following issuance of a Notice of Violation, the Director may, in addition to other code enforcement remedies, revoke the conditional use permit.

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.