



SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT

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

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

**FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR
ROHLOFF ESTATE, NOW SIEVERT, CONDITIONAL USE PERMIT**

SJC DEPARTMENT OF
MAY 06 2020
COMMUNITY DEVELOPMENT

FILE NUMBER: LANDUSE-20-0015

OWNER/APPLICANT: ORIGINAL: ROHLOFF ESTATE, LORI SILVER, TRUSTEE
AFTER SALE: STEFAN SIEVERT

AGENT: FRANCINE SHAW, PLANNING AND PERMIT SERVICES, LLC
P.O. BOX 868
FRIDAY HARBOR, WA 98250

APPLICATION: CONDITIONAL USE PERMIT –
TO AUTHORIZE VACATION RENTAL OF A 3-BEDROOM HOUSE

SITE ADDRESS: 529 NEIL BAY DRIVE, SAN JUAN ISLAND

TAX PARCEL NUMBER: 461451038000

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

SUMMARY OF DECISION: *APPROVED – SUBJECT TO CONDITIONS*

DATE OF DECISION: MAY 6, 2020

I. INTRODUCTION

The applicant owns a 3-bedroom house located at 529 Neil Bay Drive, on the shoreline of Neil Bay and Spieden Channel in a Rural Residential land use and shoreline designation on the far north end of San Juan Island. (*Staff Report; site maps*). Through the applicant's local agent of record, Francine Shaw, the applicant requests Conditional Use Permit approval to operate a 3-bedroom house as a short-term vacation rental (less than 30 days). During the review process for this requested permit, the original applicant, the Rohloff Estate, Lori Silver Trustee, sold the property to a new owner, Stefan Sievert, who verified that he wanted the application process to move forward, with Ms. Shaw continuing as the applicant's agent. (*Staff Report, at page 3; Exhibits 13, 14, and 15*). The Staff Report thoroughly summarizes the details associated with this application and demonstrates how it complies with applicable approval criteria, subject to conditions. As explained below, the pending application is approved, subject to conditions of approval.

II. CONTENTS OF RECORD

Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the County and may be requested or reviewed by contacting the Community Development Department during regular business hours. Given the Covid-19 health proclamations issued by the Governor and local authorities, the hearing occurred on March 25, 2020, using teleconference equipment operated by county staff. Staff confirmed that no members of the general public appeared at the site designated for the public hearing in public notices, and that no one other than hearing participants mentioned herein contacted staff to express an interest in providing testimony or participating in the public hearing. Julie Thompson, the designated County Planner assigned to review the pending application, appeared and provided testimony under oath during the hearing. Francine Shaw, with Planning and Permit Services, LLC, the applicant's designated agent, also testified under oath during the hearing. Ms. Shaw did not question or challenge any of the analysis or recommended conditions included in the Staff Report. Without objection, Ms. Shaw added an additional *Exhibit No. 15* into the record, the same Agent Authorization form already included in the record as *Exhibit 14*, but now showing Stefan Sievert's signature. No one opposed the application, at the hearing or in writing.

The Staff Report, prepared by Ms. Thompson, with 10 pages, dated March 9, 2020, and the 14 Exhibits attached to and described on page 10 of such report, are included as part of the Record for this matter. As noted above, *Exhibit No. 15* was accepted into the record at the public hearing. There were no written comments of any kind from any neighboring property owners. (*Staff Report, page 8; Testimony of Ms. Thompson*).

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, particularly the unchallenged Staff Report, the undersigned Examiner issues the following findings, conclusions and Decision.

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 applicant’s property is located in the county’s Rural Residential land use designation. The table found at SJCC 18.30.040 provides that Vacation rentals are allowed in the rural residential land use designation, subject to a Conditional Use Permit.

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. 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 [their] burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed.”

Moratorium on most Vacation Rental operations during COVID-19 Emergency.

Vacation rental operations, like that authorized by this permit, fall within the County’s definition of “Transient accommodations,” which means “a commercial or residential use involving the rental of any structure or portion thereof for the purpose of providing lodging for periods less than 30 days.” (SJCC 18.20.200, “T” definitions).

By order of the San Juan County Health Officer, most vacation rentals and other transient accommodation operations are suspended for the duration of the COVID-19 Emergency. (See *Health Officer Orders posted on the County’s website*). **This permit mandates full compliance with any and all orders on this subject issued by County, State or Federal officials with jurisdiction over vacation rental operations.** The County Health Officer’s initial Order, which was in effect at the

time of the public hearing, has been extended through May 31, 2020, by Order No. 2020-3, issued on May 22, 2020, which reads in relevant part as follows:

3. Transient Accommodations. Owners and operators of transient accommodations or campground and camping facilities located in San Juan County, as defined in San Juan County Code Chapter 18.20, shall provide such accommodations or facilities only to persons for whom such accommodations or facilities are required (1) to conduct or participate in essential activities, (2) for employment in essential business services, or (3) for any other purposes authorized by Statewide Orders, such as employment in certain construction or outdoor recreation businesses. Notwithstanding any contrary provision of this order, **owners and operators of transient accommodations or campground and camping facilities located in San Juan County shall not provide accommodations for purposes of recreation, leisure, or sightseeing.** Nothing in this order requires the removal of persons who are already staying in transient accommodations or campground and camping facilities at the time this order is made. *(Emphasis added).*

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

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.

1. 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.
2. As noted above, the applicant owns a 3-bedroom house located at 529 Neil Bay Road, on the far north end of San Juan Island. *(Staff Report; site maps)*. Through his local agent of record, Francine Shaw, the applicant requests Conditional Use Permit approval to operate an existing 3-bedroom house as a short-term vacation rental (less than 30 days).
3. There is no detached accessory dwelling unit on the site. The applicant is hereby fully advised and informed that vacation rental of both a principal residence and an ADU on the same property is expressly prohibited by current county codes. *(See SJCC 18.40.275(A))*.
4. The house is served by an on-site septic system, and water is provided by the Roche Harbor Water System. *(Staff Report, Project Data on page 1;)*. The Staff Report (at page 7) explains that a December 2019 inspection found that the septic system was failing, and that if this permit is approved, no vacation rentals should be allowed until after repairs are complete. The applicant's agent included notes to this effect on *Exhibit 8*, the septic system inspection report. Given these circumstances, and

county requirements mandating regular inspections and regular maintenance for septic systems, the owner needs to have the system properly repaired and inspected as soon as possible, and must provide a written confirmation of such repairs and a favorable inspection by County Health officials to the Community Development Department before the house can be used as a vacation rental. This is included as a condition of approval.

5. The Staff Report thoroughly explains how: a) the applicants' proposed vacation rental can be operated and conditioned to satisfy all applicable performance standards for Vacation (short-term) rentals, found in SJCC 18.40.275 (*See Staff Report, pages 3 – 6*); and b) how the pending application satisfies all approval criteria for the requested Conditional Use Permit (SJCC 18.80.100(D)), subject to conditions (*See Staff Report, pages 6 - 8*). Staff determined that the pending application is exempt from SEPA review under SJCC 18.80.050. (*Staff Report, page 8*).

6. The applicant's property is on the waterfront, and lies within the County's shoreline jurisdiction, in a Rural Residential (RR) shoreline designation. Table 18.50.600 of the County's Shoreline Master Program expressly allows "vacation rental" uses in the RR shoreline designation, subject to compliance with any Shoreline Substantial Development Permit (SSDP) requirements. Based on the longstanding code interpretation by county staff without objection from the Department of Ecology, proposed vacation rentals (which are classified as a residential use in Sec. 2.2.A.12 of the County's Comprehensive Plan) of existing single-family homes – that do not involve alteration, new construction of a house, or changes to existing residential structures on a site – do not trigger the requirement to obtain a Substantial Development Permit (*See SJCC 18.50.040, particularly .040(D)(1); RCW 90.58.030; and WAC 173-27-030*). There is no dispute that this applicant's requested vacation rental use does not require a separate SSDP, because there are no proposed changes or alterations needed for the existing house to be used for vacation rental purposes.

7. There is no evidence in the record that would serve as a basis to deny the requested permit. Instead, the analysis and explanation provided in the Staff Report and the thorough application materials, with supporting exhibits, constitutes a preponderance of evidence demonstrating how the requested permit complies with all applicable approval criteria. If the applicant fails to comply with any conditions of approval, it could result in revocation of the permit addressed in this decision.

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.

9. Again, violations of any condition of approval may be grounds for issuance of a Notice of Violation and possible revocation of the conditional use permit addressed herein.

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.

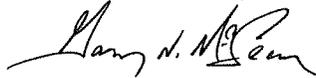
2. The Department's recommended conditions of approval as set forth in the Staff Report and modified in this Decision are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.

3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

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

ISSUED this 6th Day of May, 2020



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

*Sievert Vacation Rental CUP
529 Neil Bay Drive, Parcel No. 461451038000
File No. LANDUSE-20-0015*

1. The existing 3-bedroom house on the property may be operated as a vacation rental as described in the application materials and site plans included in the record as part of Exhibits 1 and 4, subject to compliance with SJCC 18.40.275, except as modified by these conditions.
2. The existing 3-bedroom house 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. No food service is allowed.
4. Three (3) parking spaces must be provided as required by SJCC 18.40.275(F) and as shown on the site plan provided in the application materials.
5. 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.
6. 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.
7. Prior to operation, the applicant shall call the SJC Fire Marshal to have the driveway inspected for emergency vehicle access. Written confirmation of the Fire Marshal's inspection must be submitted to the San Juan County Department of Community Development, which must include the file number for this permit (LANDUSE-19-0166) on such document.
8. Prior to operation, the applicant shall have the on-site septic system inspected, repaired and serviced (as needed) by a qualified septic system inspector/maintenance professional. Written confirmation of such inspection and current servicing/repair/maintenance work on the septic system for this property shall be filed with the Department as soon as possible. The house shall not be used as a vacation rental until all septic system inspection and any necessary maintenance or repair work is complete, and written proof of such work is filed with the Department.
9. The property owners shall:
 - A. Prior to operation, submit and 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, including without limitation provisions addressing the following:
 - a) Trespassing;
 - b) Noise that violates Ch. 9.06 SJCC (Noise Code);
 - c) Off-site parking issues;
 - d) Vehicle speeds higher than the posted speed limit; and
 - e) Outdoor burning that violates the requirements found in SJCC 15.04.070(F), including violations of any burn ban.

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 house 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. Display the address of the residence so that it is clearly evident from the street or access road.
- D. Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites.
- E. 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.
- F. 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.
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 ban 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.
 15. **[New Condition Added by the Examiner]** – This permit shall not be read or construed to authorize any activity or operation in violation of any applicable order issued by government officials with jurisdiction over any aspect of the vacation rental use addressed herein. This expressly includes, without limitation, the permit holder's obligation to remain informed and updated on the effect of any order, proclamation, or other directive issued to address the COVID-19 public health emergency.

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.