



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
MCILVAINE CONDITIONAL USE PERMIT**

FILE NUMBER:	LANDUSE-20-0083	SJC DEPARTMENT OF AUG 05 2020 COMMUNITY DEVELOPMENT
OWNER/APPLICANT:	MCILVAINE LLC COLE MCILVAINE 210 CHUCKANUT POINT ROAD BELLINGHAM, WA 98229	
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF AN EXISTING 2-BEDROOM HOUSE	
SITE ADDRESS:	173 PEAPOD LANE, ORCAS ISLAND	
TAX PARCEL NUMBER:	173631008000	
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS	
SUMMARY OF DECISION:	<i>APPROVED – SUBJECT TO CONDITIONS</i>	
DATE OF DECISION:	AUGUST 5, 2020	

I. INTRODUCTION

The applicant owns a property located at 173 Peapod Lane, located in an inland area located west of Kangaroo Point and northeast of Doe Bay on Orcas Island. The property is in the Rural Residential Land Use Designation. The site does not have access to the shoreline. The applicant requests Conditional Use Permit approval to operate their existing 2-bedroom single family house as a short-term vacation rental (less than 30 days). 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 June 24, 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. The applicant representative, Cole McIlvaine, participated in the hearing, providing sworn testimony focused on responses to specific concerns raised by two area property owners in written comments that are included in the record as *Exhibits 8 and 9*. Mr. McIlvaine emphasized that guest rules should serve to prevent noise problems, and that he would be happy to help local residents maintain the road that serves their area, noting that his house is the 3rd property along the road, so it does not generate much impact on portions of the road moving away from his property. He expressed a sincere commitment to complying with all rules for the vacation rental operation, and noted that the applicant only wants the permit to rent the property on a short-term basis from time to time so that his family can use the house when they want to do so. He did not question or challenge any of the analysis or recommended conditions included in the Staff Report. No one spoke at the public hearing in opposition to the pending application, but the two written comments in the record were not supportive of short-term vacation rentals in their area.

The Staff Report, prepared by Ms. Thompson, with 10 pages, dated June 8, 2020, and the 13 Exhibits attached to and described on page 10 of such report, are included as part of the Record for this matter.

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.”

Vacation Rental Operators must comply with all orders or proclamations issued regarding the ongoing 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). Earlier this year, the San Juan County Health Officer issued an order suspending most vacation rentals and other transient accommodation operations for the duration of the COVID-19 Emergency. Orders have been modified since that time, permitting some rentals at 50% of maximum occupancy. (See most current Health Officer Orders posted on the County’s website). Going forward, **this permit mandates full compliance with any and all orders or**

proclamations related to the ongoing COVID-19 public health emergency issued by County, State or Federal officials with jurisdiction over any aspect of vacation rental operations.

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 property located at 173 Peapod Lane, located in an inland area located west of Kangaroo Point and northeast of Doe Bay on Orcas Island. The property is in the Rural Residential Land Use Designation. The site does not have access to the shoreline. The applicant requests Conditional Use Permit approval to operate their existing 2-bedroom single family house on the site as a short-term vacation rental (less than 30 days).
3. During the public hearing, the applicant representative, Cole McIlvaine explained that his family has owned the property for three years and updated the home after purchasing it. They only seek this short-term rental permit so his family can still use the house from time to time. Mr. McIlvaine expressed a sincere commitment to ensure that guests comply with rules of conduct, addressing hours, noise restrictions, traffic and the like. He enthusiastically offered his help working with neighboring property owners to maintain the road serving their properties.
4. The house is served by an on-site septic system, and water is provided by the Doe Bay Water Users Association. (*Staff Report, Project Data on page 1*). As with all properties served by on-site septic systems, County Health regulations require regular inspections and service as needed. The applicant is hereby advised and informed that compliance with such regulations is a requirement of this permit.
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 – 5*); 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 6-7*). Staff determined that the pending application is exempt from SEPA review under SJCC 18.80.050. (*Staff Report, page 7*).

6. Following public notices, posting, and mailing information as required by county processes, two area residents submitted written comments included in the record as *Exhibits 8 and 9*. No one appeared during the public hearing to question or challenge the requested permit. Mr. McIlvaine offered credible and detailed testimony at the public hearing, explaining how he intends to operate a vacation rental on the property that is in full compliance with applicable County codes and conditions of approval, all intended to ensure that guests do not cause noise problems or create other issues for surrounding residents.

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. This includes operating a vacation rental property in a manner that violates any then-applicable order or similar restriction issued by any County, State, or other government official with jurisdiction over any aspect of vacation rental operations during this COVID-19 public health emergency.

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.

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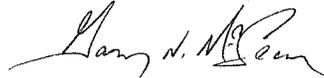
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VII. DECISION

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 McIlvaine vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and modified herein.

ISSUED this 5th Day of August, 2020



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

***McIlvaine Vacation Rental CUP
173 Peapod Lane, Orcas Island
Parcel No. 173631008000
File No. LANDUSE-20-0083***

1. The 2-bedroom single family residence 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 2-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 [seven (7) total guests] may occupy the residence at any one time.
3. No food service is allowed.
4. Two (2) 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. 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.

8. 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.
9. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.
10. 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.
11. 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.
12. 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.
13. **[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.