

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Mark Hoepfner PO Box 967 Kekaha, HI 96741 and 3690 Pua Kenikeni Street Kalaheo, HI 96741	S.J.C. DEPARTMENT OF MAR 15 2016 COMMUNITY DEVELOPMENT
File No.:	PCUP000-15-0032	
Request:	Conditional Use Permit (CUP)	
Parcel No:	463550017	
Location:	458 DeHaro Lane, San Juan Island	
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family home	
Land Use Designation:	Rural Residential	
Public Hearing:	February 18, 2016	
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria	
Decision:	Approved subject to conditions	

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

In the Matter of the Application of

Mark Hoepfner

for approval of a conditional use permit
to allow vacation rental of the two
bedroom residence at 458 DeHaro Lane,
San Juan Island

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S.J.C. DEPARTMENT OF

MAR 15 2016

COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the two bedroom residence at 458 DeHaro Lane, San Juan Island as a vacation rental is APPROVED subject to conditions.

SUMMARY OF RECORD

Request:

Mark Hoepfner (Applicant) requested a conditional use permit to authorize vacation rental use of the two bedroom residence located at 458 DeHaro Lane, San Juan Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on February 18, 2016. At the close of the record, Staff agreed to extend the decision issuance deadline through March 10, 2016 to allow more time for deliberations; however, due to unforeseen circumstances arising after the hearing, decision issuance was further delayed for reasons unrelated to the proceedings.

Testimony:

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

Lee McEnery, Planner, San Juan County Department of Community Development
Jennifer Bryan
Dale Marble
Jonathan Bryan
Chris Grifo, San Juan Property Management

Exhibits:

The following exhibits were admitted in the record:

1. Staff report, dated January 27, 2016

2. Application cover sheet
3. Aerial site plan
4. Floor plan (two pages)
5. Vacation rental standards
6. Sewage permit, 2011803
7. Legal advertisement, posting and mailing information
8. Comment letters (Zygocki, Noste, Marble, Bryan)
9. Mark Hoepfner's response to comments
10. Health and Community Services response to comment letters
11. Five photos and real estate advertisement
 - a. Photo 1 – decking on dock – newer plywood is starting to buckle
 - b. Photo 2 – upper level deck – no railing, decorative chains – hazardous deck
 - c. Photo 3 – deck base – supports upper deck
 - d. Photo 4 – neighbor's fix on ramp falling off on dock
 - e. Photo 5 – depicts fall from deck – can see how close next residence is
12. Dale Marble's hearing comments
13. Jonathan Bryan's comments

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 two bedroom residence located at 458 DeHaro Lane, San Juan Island as a vacation rental.¹ The waterfront parcel is developed with a single-family residence and a dock. It is located in the Mitchell Bay Playgrounds subdivision in the Yacht Haven Neighborhood. *Exhibits 1, 2, and 3; McEnery Testimony.*
2. The subject property has a Rural Residential land use designation. The parcel abuts residential development on three sides, comprised of small lots predating the adoption of current zoning regulations. The subject property is not located near an airfield or airport. *Exhibit 1.*

¹ The subject property is known as Assessor Parcel number 463550017. *Exhibit 1.*

3. The subject property has existing access from DeHaro Lane, a public road, which connects with Yacht Haven Road. No changes to the existing site access are proposed or required. *Exhibits 1.*
4. The existing residence is served by an individual well and on-site sewage system. *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. *McEnergy Testimony; Exhibit 1.*
6. The proposal would allow up to three persons at a time to rent the two bedroom residence, for a maximum of six guests per rental. While the Staff Report indicates that the parcel has off-street parking "for at least two vehicles", at hearing Staff testified that there is room for additional parking on the loop driveway. No outdoor advertising signs or food service are proposed. *Exhibit 1; McEnergy Testimony.*
7. Planning Staff noted that noise and trespassing impacts could be expected to replicate those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom; requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; McEnergy Testimony.*
8. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
9. The application was submitted December 8, 2015 and determined to be complete on the same date. Notice of the application was posted on-site and mailed to surrounding property owners on December 18, 2015, and was published on December 23, 2015. *Exhibits 1 and 7; McEnergy Testimony.*
10. Written public comments were received prior to hearing from four individuals with concerns regarding noise, traffic, impacts to neighborhood character, potential for crime and/or trespass, and renter safety regarding both the on-site drinking water supply and the deteriorated condition of the deck, hand rail, and dock. *Exhibits 1 and 8.*
11. At hearing, there was additional testimony on similar concerns. One neighbor, who was friends with the former owners and is familiar with the property, testified that the house was built 40 years ago by the former owner who was a "do it yourselfer", and the systems he built required constant maintenance. When his health was failing, he let things slide, and there has been next to no maintenance of the property since his death more than four

years ago. This neighbor submitted photos depicting the following: plywood repairs to dock that are buckling; no railing but only decorative chains around an upper level outdoor deck, creating a fall hazard; supports under the same deck showing wear/deterioration; and a neighbor's attempted fix on dock access ramp failing, risking the dock disconnecting from its abutment in tides or weather. Regarding domestic water on-site, several neighbors attested to the fact that all the wells in the neighborhood pull brackish water. Because of this, the previous owner developed a catchment system to provide water to the house. It has not been maintained and is likely unsanitary. Several neighbors asserted that the house is not to code, and that vacation rental standards requiring compliance with all local regulations should necessarily require compliance with building codes. Neighbors expressed strong concern that the house in its current condition is unsafe for renters and urged the County to deny the permit or to require correction of these conditions prior to approval, arguing potential County liability for approving the use despite knowledge of human health and safety hazards. *Jennifer Bryan Testimony; Exhibit 11; Jonathan Bryan Testimony; Dale Marble Testimony.*

12. One neighbor contended that the dock is attached to the house and questioned whether that places the house in the Conservancy shoreline environment, which would prohibit vacation rental use. The same person asserted that at highest tide of the year, the water goes up to the house and that the beach was filled in and should be considered Conservancy. *Dale Marble Testimony; Exhibit 12.*
13. Neighbors testified about the impacts to neighborhood character from existing transient rentals in the neighborhood. They asserted there is one permitted vacation rental and one unpermitted and that there is no effective management of the renters, so the neighbors are left to deal with the temporary people. Testimony included that neighbors have often had problems late at night with renters walking on private docks, exploring private front yards and gardens, picking apples from neighbor's trees, that rentals often exceed the occupancy limit, and that the 24/7 complaint number often goes to a recorded message and there is no help for immediate problems. Neighbors stated it is difficult to get the police to respond. They asserted that the County's complaint system is not working and that the County has no code enforcement staff even if complaints were submitted to the Department. They contended that having three vacation rentals in the immediate area would impact property values. *Dale Marble Testimony; Jonathan Bryan Testimony; Exhibit 13.*
14. There was public comment from an agent of a local property management company (that has not signed contracts with the Applicant), who provided testimony about the way the company he works for manages properties. San Juan Vacation Rentals advertises the area of allowed use with each vacation rental and provides an emergency number both online and in the welcome book given to each renter. The number goes to a recording, but the message is then broadcast to all staff; pressing issues are addressed right away. His company states to potential guests that occupancy limits are enforceable and that renters will be evicted for exceeding the limit. This agent had spoken with the Applicants, and he testified to his understanding that they have ordered materials to

improve the safety railing on the deck. He acknowledged that the dock and the railings going downstairs inside could use some work, and stated that he is concerned by the conditions depicted in evidence, because renting unsafe properties is a headache. He noted that the current owners of the subject property live out of state and that absentee owners tend to use management agencies, so the health and safety hazards might be a "self-limiting situation" that prevents retention of a rental agent. *Chris Grifo Testimony.*

15. Planning Staff responded to neighbor concerns both in the staff report and in testimony. Regarding potable water, Planning Staff reported that Health and Community Services reviewed the comment about drinking water and responded, indicating that San Juan County Code (SJCC) 8.06 requires a certificate of water availability for building permits for new buildings, not for "after the fact" (post-construction) permits; thus if the vacation rental permit does not require an after the fact building permit, no water availability approval is required. Planning Staff indicated that vacation rental criteria do not require after the fact building permits. *Exhibits 1 and 10; McEnery Testimony.*
16. Regarding vacation rental impacts including noise, traffic, and occupancy limits, Planning Staff restated that the number of renters is addressed by conditions of approval, and that noise and traffic generation are considered to be the same as for any other residential use. Staff is not aware of which residences are existing vacation rentals in the neighborhood and is unaware of complaints about them, as the Department does not receive many, if any, complaints regarding vacation rentals. Aside from regulations requiring occupancy limits and the Department's practice of requiring rules and a complaint log process, the County's land use regulations don't address these complaints and do not address the alleged potential increase in crime. Required rules of conduct prohibit trespass. Complaints on such issues would be forwarded to code enforcement, if there was personnel; in the absence of code enforcement staff, the County Sheriff is the appropriate authority for trespass and related complaints. Character of the neighborhood can be considered under SJCC 18.80.100.D.4 (cumulative impacts.) If information had been presented showing a concentration of vacation rentals, with a record of reports of infringements or violations, the instant application could possibly be determined to have the potential to result in cumulative effects not be controllable with conditions. However, Planning Staff submitted that the factual documentation to support such a conclusion has not been presented in this case. *Exhibit 1; McEnery Testimony.*
17. On the remaining issues, Planning Staff stated that impacts to property values are not a consideration in the land use permitting process. Maintenance of the property is a private issue. Vacation rental approval standards do not include Building Official review of safety features. The Conservancy shoreline lies below the ordinary high water mark, and the residence is on dry land well above that location. *Exhibit 1; McEnery Testimony.*
18. Upon review of the complete application materials and after considering all public comment, Planning Staff determined that the proposal can comply with applicable criteria and recommended approval with conditions. *McEnery Testimony; Exhibit 1.* In failing

to appear or send a representative to the hearing, the Applicant waived objection to the recommended conditions.

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 Rentals

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 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 or function of the structure. Conditions would ensure that even when rented it continues to function like a residence, resulting in impacts to neighborhood character consistent with typical residential use. There is no evidence that adverse cumulative environmental impacts would result from additional vacation rental request approvals. The proposal meets or can be conditioned to meet the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact number 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 for the proposal to impact. *Findings 1, 3, 4, 5, 7, 8, and 11.*

2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to six people. The site currently has an approved on-site well and sewer system. 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 that contact to maintain a log of complaints, which the County can request to see. The rules of conduct would specifically be required to prohibit trespass. The site would provide more than two off-street parking spaces. No outdoor advertising, food service, or accessory dwelling unit are proposed. Conditions would ensure that the Applicant obtains a business license or works through a property management company. Because the Applicant resides out of state, it is likely the rental would be managed by a property management company. *Findings 1, 3, 4, 6, 7, 8, and 11.*
3. Regarding water supply safety, SJCC 18.60.020.B requires each new use of land that requires potable or nonpotable water ...for which the County has approval authority to provide documented evidence of available and adequate water quantity and quality for the intended use. The Code stipulates that water supply is available and adequate when data show that the source meets the source approval requirements of the water wells and water systems code at SJCC Chapter 8.06. Neighbors' concerns about the site's water supply's safety were expressly reviewed by the Health Department, which is the agency charged with interpretation, application, and enforcement of SJCC 8.06. Health Department personnel indicated that water source approval requirements in Chapter 8.06 are not triggered by the instant application. In other words, the residence has an approved water source. Planning Staff submitted, and a read of the regulations supports the position, that vacation rental application does not trigger the requirement to provide proof that the approved water supply meets any specific water quality standards. Regarding concerns about the deck railing, staircase handrails, and dock, the applicable current vacation rental standards do not trigger Building Official review of existing residences. Planning Staff's responses to public comment essentially amount to allowing the vacation rental market to sort out whether the property is rentable, and this position was essentially seconded by a representative from the property management industry. Under existing code, no more is required. *Findings 10, 11, 12, 13, 14, 15, 16, 17, and 18.*

DECISION

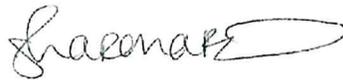
Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the two bedroom residence at 458 DeHaro Lane, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two-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 less than 30 days. A maximum of three people per bedroom (six guests) shall occupy the residence at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. At least three off-street parking spaces must be maintained for the life of the use.
4. The use 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.
5. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor or electrical interference to the detriment of adjoining properties.
6. A 24-hour non-message, non-recording contact number shall be provided to Department of Community Development (DCD) and to all neighbors within 300 feet of the property. A log of complaints shall be kept and a copy provided to DCD upon request.
7. Written rules of conduct shall be submitted to DCD prior to the first rental. Those rules of conduct shall be posted in the house and given to all the neighbors within 300 feet of the property boundary, in addition to any other method of delivery to renters.
8. Upon determination by the Director of DCD that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.

Decided March 14, 2016.

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.