

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): David and Sarah Moore
116 Rossell Lane
Eastsound, WA 98245

Agent: Teri Williams
PO Box 1001
Eastsound, WA 98245

File No.: PCUP00-13-0015

Request: Conditional Use Permit (CUP)

Parcel No: 170751011

Location: 116 Rossell Lane
Eastsound, WA 98245

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family residence.

Land Use Designation: Rural Residential

Public Hearing: February 12, 2014

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals
SJCC 18.80.100(D) CUP Criteria

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

FEB 28 2014

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: David and Sarah Moore 5 Conditional Use Permit 6 (PCUP00-13-0015)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION S.J.C. COMMUNITY FEB 28 2014
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7 **INTRODUCTION**

8 DEVELOPMENT & PLANNING

9 The applicants have applied for approval of a conditional use permit for the vacation
10 rental of a three bedroom residence. The application is approved with conditions.

11 This vacation rental has generated more neighborhood opposition than any vacation
12 rental reviewed by San Juan County in several years. However, there has been no
13 concrete evidence presented that vacation rentals have or will create any unreasonable
14 disturbances to surrounding neighbors. It is very noteworthy that the San Juan
15 County Superior Court reversed a denial of a vacation rental in the same
16 neighborhood in 1999, *Green v. San Juan County*, Cause No 99-2-05195-6. In that
17 case Judge Hancock correctly concluded that community displeasure cannot serve as
18 the basis for denial of a land use permit application and also that a conditional use
19 permit cannot be denied if it can be conditioned to make a use as compatible as uses
20 permitted outright at the project location. Those two principles are equally
21 determinative in this case: (1) the extensive neighborhood opposition, absent more,
22 does not justify denial of the permit; and (2) there is nothing to reasonably suggest
23 that the conditions imposed for this vacation rental will be insufficient to minimize
24 impacts to the level generated by other typical single family use.

25 It is important for neighbors to recognize that the conditions of approval provide a
powerful tool to ensure that guests of vacation rentals do not unreasonably disrupt
their neighborhood. If the guests create unreasonable noise, park on the street or
engage in any other conduct in violation of the Rules of Conduct that applies to them,
the neighbors have a complaint line to call to compel compliance. If the applicant
fails to enforce the Rules of Conduct, the neighbors should contact the San Juan
County Department of Community Development and Planning, who have the
authority to revoke the conditional use permit for permit violations and/or levy fines.
Also, as noted by the applicant, the neighbors may be able to amend their CC&Rs to
prohibit additional vacation rentals. Even if unanimity is required, the neighbors may
be able to persuade the existing vacation rental owners to agree to the amendment if
their rentals are "grandfathered" against the prohibition.

TESTIMONY

1
2 Julie Thompson stated that the application is for a conditional use permit for a three-
3 bedroom vacation rental on Orcas Island. The application meets the standards for
4 permit approval; however, the County has received several public comments
5 expressing concern about the project. The next-door neighbor is asking for a limit of
6 six people renting at a time, rather than the standard of nine.

7 Applicant Testimony

8 Terry Williams, Permit Resources, testified that there is vegetation on the Hopkins
9 side of the Moore property. In addition to the vegetation, the boundaries of the
10 Moore property are fenced. When Ms. Williams spoke with Mr. Hopkins, she said
11 his main topic of concern was that the Moore home is too close to his property. The
12 Moore home was built in its current location because of the septic tank buffers. The
13 road leading to the property is not well-maintained and has no ditching. There is
14 plenty of parking for guests. There are two parking spots on the property and an
15 additional spot in the garage. In regard to trespassing, the homes in the
16 neighborhood are mostly fenced. The Moore home was vacant for many years, thus
17 the neighbors are not used to the property being utilized. Ms. Williams submitted a
18 letter from Karen Speck dated August 11, 1999 which addresses issues in regard to
19 vacation rental permit issues in the neighborhood (part of exhibit 13). Many of the
20 neighbors' comment letters reference Ms. Speck's rental management business. Ms.
21 Williams has not heard of any formal complaints to the County about Ms. Speck's
22 management practices. Additionally, Ms. Williams submitted an email exchange
23 between herself and the County Assessor's Office. The neighbors' comment letters
24 expressed concern about property values being affected by vacation rentals. The
25 Assessor's Office noted that vacation rental permits do not add or take away value
from a property, and Ms. Williams interpreted this as meaning the value of the
neighborhood would not be changed. In regard to noise, there is a noise ordinance,
and there will be rules of the house with a 24hr notice. The boundaries of the
property will be marked, and the address will be clearly marked as well. The
applicant met with the neighbors before making the application to let the neighbors
know about the proposal. Ms. Williams also met with the neighbors after submitting
the application to address concerns. She noted that the conditions of approval give
the neighbors avenues of enforcement and encouraged the neighbors to meet with the
County Compliance Officer. When the Moore family purchased the property in
2005, there were no CCNRs saying the neighborhood preferred not to have vacation
rentals in the area. There is no beach access on the property, but Buckhorn County
Road does dead end in a public access to the beach. The Moores will provide renters
with a clear map about the location of this beach access.

David Moore, applicant, stated he has owned the property since 2005. The site is his
retirement home, and he has invested a lot of money and time into the property. It is
furnished with his personal belongings, and his four children and their families visit
the home often. He does not intend to allow renters to abuse the home or

1 neighborhood. He has hired an experienced real estate manger to oversee the rental
2 of the home. The property manager will ensure there is a 24/hr phone notice line and
3 will use discretion in choosing who to allow to rent the home. In regard to limiting
4 the number of people allowed to rent at a time, Mr. Moore does not wish to restrain
5 the number because it would restrict two families from renting together. He has
6 provided the neighbors with his contact information if there is a problem with
7 renters. At the time he purchased the property, he was not aware of opposition to
8 rental properties in the neighborhood. The subdivision is an outgrowth of the
9 Buckhorn resort so many of the existing homes began as cabins. A number of the
10 houses in the neighborhood are used as informal, unpermitted summer rentals. He
11 recognizes that the permit will be conditional and is comfortable with the conditions
12 listed in the staff report. Since he purchased the home in 2005, he has added a rail
fence and deer netting across the waterfront. He removed a privacy fence to allow
neighbors to enjoy the water view. There will be parking where the old driveway
entered the property with more than three spaces, but there will be no parking space
in the garage. He was unaware that Mr. Hopkins was upset about the placement of
his home. The property had waterfront setbacks and a large drainfield, thus the
home had to be close to the Hopkins property line. The boundaries of the property
are delineated by the fences, and signs will be installed to warn guests about
surrounding private property. The rental will have house rules that will be
prominently displayed.

13 Terry Williams stated that the home involved in the 1999 case is to the left, down
14 two homes, and across the street from the Moore home. This neighborhood's density
15 is not unique for Orcas Island. The density can be compared to the Rosario
16 neighborhood and other areas around East Sound. The lots of the subject property's
17 neighborhood are .5 acres and 100ft-wide. Many of the lots have old vegetation,
fences, and gate entrances. The Moore house sits back from the two houses adjacent
to it, thus the neighbors do not see the home.

18 EXHIBITS

19 Exhibit 1 staff report

20 Exhibit 2 Application materials

21 Exhibit 3 Comment letters:

22 Jan 7, 2014 letter from Dennis McKinney

23 Jan 12, 2014 letter from William Hopkins

24 Jan 17, 2014 letter from Alice Miller and Debra Miller

25 Jan 21, 2014 letter from Burlews

Jan18, 2014 letter from the Greenwells

1 Jan 19, 2014 letter from the Connors

2 Jan 21, 2014 letter from Burden

3 Jan 23, 2014 letter from Terry Williams w/ photographs

4 Jan 21, 2014 letter from Marion Burden

5 Jan 30, 2014 letter from the Hopkins

6 Email exchange between County Assessor and Terry Williams

7 Ex. 4 Transcript of Oral Ruling in Green v. San Juan County, Cause No 99-2-
8 05195-6

9 **FINDINGS OF FACT**

10 **Procedural:**

11 1. Applicant. The applicants are David and Sarah Moore.

12 2. Hearing. A hearing was held on the subject application on February 12,
13 2014 at 10:00 am at the meeting chambers of the San Juan County Council in Friday
14 Harbor. The record was left open for submission of the ruling for *Green v. San Juan
15 County*, Cause No 99-2-05195-6.

16 **Substantive:**

17 3. Site and Proposal Description. The applicant proposes the vacation rental
18 of a three bedroom single family home located at 116 Rossell Lane, Orcas Island.
19 No accessory dwelling unit is on-site. On-site parking is available for three
20 automobiles. There is no guest house or accessory dwelling unit on site. No outdoor
21 advertising or food service is proposed.

22 4. Characteristics of the Area. The surrounding neighborhood is composed
23 of small residential lots that apparently used to accommodate cabins for a resort. No
24 airport adjoins the project site.

25 5. Adverse Impacts of Proposed Use. There are no adverse impacts resulting
from the proposed use. As conditioned, the proposed use should not interfere with
the residential use of neighboring properties. Noise must be kept to a minimum and a
24-hour phone number must be provided in case problems arise. The permit is
subject to revocation and/or the applicant may be fined if the vacation rental violates
the terms of this permit.

Numerous assertions were made that other vacation rentals have generated
unreasonable noise. However, there are no specific instances of noise violations
identified and nothing to suggest that the noise exceeds that typically associated with

1 single family use. It is recognized that one distinguishing feature between vacation
2 rental guests and permanent residents is that the guests are on vacation and for that
3 reason more likely to make noise later into the evening. For this reason music is
prohibited outdoors between 10:00 pm and 8:00 am and a complaint hotline is
required to give neighbors recourse for unreasonable amounts of noise.

4 A distinguishing feature of the vacation rental is its proximity to the northern property
5 line. Given this proximity, it is reasonable for the adjoining property owners to have
6 concern over a different set of guests peering through their windows every week. For
7 this reason the conditions of approval require the applicant to install site obscuring
8 landscaping prior to any rentals to the satisfaction of staff.

9 Another issue of merit raised by neighbors is parking along Rossell Lane.
10 Photographs show that the road is too narrow for on-street parking. The conditions of
11 approval require guests to park on-site.

12 A request has also been made to limit the number of guests to six instead of the nine
13 authorized by the code. Given the small lots of the neighborhood and the proximity of
14 the vacation rental to the northern property line, there is some merit to this request.
15 Unfortunately, legal complications can arise for discriminating against family units
16 with more than six members. Limiting occupancy to one family unit at a time can
17 lead to additional complications over disputes concerning what constitutes a family.
18 For these reasons it is best to apply the three guests per room standard authorized by
19 code.

20 CONCLUSIONS OF LAW

21 **Procedural:**

22 1. Authority of Hearing Examiner. The hearing examiner is authorized to
23 conduct hearings and issue final decisions on conditional use permit applications.
24 San Juan County Code ("SJCC") 18.80.020 Table 8.1; 18.80.100(C).

25 **Substantive:**

2. Zoning Designations. Rural Residential

3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation
rentals in the rural residential district as a conditional use. SJCC 18.80.100(D)
governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the
performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed
standards for vacation rentals. The criteria for conditional use permits (SJCC
18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied
through corresponding conclusions of law.

Vacation Rentals of Residences Criteria

1 **SJCC 18.40.270(A):** *No more than three guests per bedroom shall be accommodated*
2 *at any one time.*

3 4. The project is conditioned to limit the total number of guests to three
4 guests per bedroom.

5 **SJCC 18.40.270(B):** *The vacation rental of a principal residence or accessory*
6 *dwelling unit shall be operated in a way that will prevent unreasonable disturbances*
7 *to area residents.*

8 5. As determined in Finding of Fact No. 5, the proposal will not adversely
9 affect neighboring property owners.

10 **SJCC 18.40.270(C):** *At least one additional off-street parking space shall be*
11 *provided for the vacation rental use in addition to the parking required for the*
12 *residence or accessory dwelling unit.*

13 6. Table 6.4 of SJCC 18.60.120 requires one parking space for single-
14 family homes under 550 square feet and two spaces for homes 550 square feet and
15 greater, which translates into 2 and 3 parking spaces respectively under the criterion
16 quoted above. The project site includes three parking spaces in conformance with
17 these requirements.

18 **SJCC 18.40.270(D):** *If any food service is to be provided the requirements for a bed*
19 *and breakfast residence must be met.*

20 7. No food service is proposed in the application.

21 **SJCC 18.40.270(E):** *No outdoor advertising signs are allowed.*

22 8. No outdoor advertising is proposed.

23 **SJCC 18.40.270(F):** *The owner or a long-term lessee may rent either the principal*
24 *residence or the accessory dwelling unit on a short-term basis (vacation rental), but*
25 *not both.*

9. There is no accessory dwelling unit.

10 **SJCC 18.40.270(G):** *Where there are both a principal residence and an accessory*
11 *dwelling unit, the owner or long-term lessee must reside on the premises, or one of the*
12 *living units must remain unrented.*

13 10. There is no accessory dwelling unit.

14 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
15 *conservancy land use districts, the vacation rental of a residence or accessory*

1 dwelling unit may be allowed by provisional ("Prov") permit only if the owner or
2 lessee demonstrates that the residence or accessory dwelling unit in question was
3 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.

4 11. Not applicable because the proposal is the first vacation rental of the
5 premises.

6 **SJCC 18.40.270(I):** *Vacation rental accommodations must meet all local and state
7 regulations, including those pertaining to business licenses and taxes.*

8 12. This will be required as a condition of approval.

9 **SJCC 18.40.270(J):** *Owners of vacation rentals must file with the administrator a 24-
10 hour contact phone number.*

11 13. This will be required as a condition of approval.

12 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice
13 to the tenants regarding rules of conduct and their responsibility not to trespass on
14 private property or to create disturbances. If there is an easement that provides
15 access to the shoreline, this shall be indicated on a map or the easement shall be
16 marked; if there is no access, this shall be indicated together with a warning not to
17 trespass.*

18 14. This will be required as a condition of approval.

19 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC
20 18.40.240 cannot be separately leased or rented for less than 30 days.*

21 15. There is no accessory dwelling unit on the property.

22 **Conditional Use Permits – Criteria for Approval**

23 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or
24 purposes and regulations of this code or the Comprehensive Plan;*

25 16. This proposal is consistent with the SJCC for the reasons stated above.
The vacation rental is consistent with the San Juan County Comprehensive Plan,
which allows for tourism-related businesses and activities within the context of
maintaining a diverse and balanced economy while minimizing the related negative
impacts.

1 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and*
2 *appearance with the goals and policies for the land use designation in which the*
3 *proposed use is located;*

4 17. The proposal will not alter the exterior appearance of the home, which is a
5 single family home and is thus compatible and appropriate in design, character and
6 appearance with the surrounding single family homes and applicable goals and
7 policies thereto. The criterion is satisfied.

8 **SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*
9 *on the human or natural environments that cannot be mitigated by conditions of*
10 *approval;*

11 18. Mitigation measures for vacation rental impacts, such as noise and
12 trespassing, have been added as conditions of approval. Therefore, the use, as
13 conditioned, should not cause significant or unreasonable adverse impacts on
14 neighbors or surrounding environment.

15 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
16 *(the total of the conditional uses over time or space) will not produce significant*
17 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

18 19. The property will continue to appear and function in a manner similar to
19 the existing use with no significant adverse impacts, and further similar requests will
20 not produce significant adverse impacts to the environment.

21 **SJCC 18.80.100(D)(5):** *The proposal will be served by adequate facilities including*
22 *access, fire protection, water, stormwater control, and sewage disposal facilities;*

23 20. The proposal is in an existing development and according to staff has been
24 shown to meet these requirements.

25 **SJCC 18.80.100(D)(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;

26 21. There will be no alteration to location, size, or any other “outside” feature
27 of the existing property, so no new interference should occur as a result.

28 **SJCC 18.80.100(D)(7):** *The pedestrian and vehicular traffic associated with the*
29 *conditional use will not be hazardous to existing and anticipated traffic in the*
30 *neighborhood;*

31 22. According to the staff report, the pedestrian and vehicular traffic
32 associated with the use will not be hazardous to the neighborhood and there is nothing
33 in the record to suggest anything to the contrary. The criterion is satisfied.

1 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*
2 *forth in Chapter 18.40 SJCC;*

3 23. As conditioned, and discussed above, the proposal will be in compliance
4 with SJCC 18.40.270.

5 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
6 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
7 *36.70.547); and*

8 24. There is no airport or airfield adjacent to this property.

9 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
10 *Chapter 18.60 SJCC.*

11 25. As an existing development site, the proposal is consistent with Chapter
12 18.60 SJCC.

13 **DECISION**

14 The application is approved as conditioned below. As conditioned below, the
15 proposal is consistent with all the criteria for a conditional use permit:

- 16 1. The 3-bedroom vacation rental shall be operated as described in the
17 application materials except as modified by these conditions.
- 18 2. The residence may be rented as a single unit on a short term basis for
19 periods less than 30 days. A maximum of nine guests shall occupy the
20 residence at any one time.
- 21 3. Prior to operation, evidence shall be presented to the Community
22 Development & Planning Department that the driveway has been
23 approved for emergency vehicle access.
- 24 4. The vacation residence shall be operated in a way that will prevent
25 unreasonable disturbances to area residents. To this end, the applicant
shall:
 - A. Provide copies of this decision to property owners within 300 feet of
the subject property, along with a 24-hour local contact phone
number, so that complaints can be dealt with in a timely manner. A
log of complaints shall be kept by the contact.
 - B. Prominently mark the boundaries of the subject property so that it is
clearly evident to guests where those boundaries are.
 - C. Prior to any rental, a proposed written Rules of Conduct along with
the 24-hour contact phone number shall be submitted to and

1 approved by CDPD. The Rules of Conduct shall specifically deal
2 with trespass, property boundaries, noise disturbances and any
3 special items specific to the rental unit or adjoining properties.
4 Upon approval by CDPD a copy of the Rules of Conduct shall be
5 prominently posted in the residence, given to all adult tenants and
6 given to all property owners within 300 feet of the residence.

7 D. The Rules of Conduct shall emphasize that the vacation rental is
8 located in a single-family neighborhood and that guests may not
9 interfere with the peace, quiet and privacy of surrounding
10 neighbors. The Rules shall require that all guests of the vacation
11 rental park their vehicles on-site. The Rules shall prohibit the
12 outdoor playing of music between the hours of 10:00 pm and 8:00
13 am.

14 5. No food service is to be provided. No outdoor advertising signs are
15 allowed. Adequate parking is required.

16 6. The rental must meet all local and state regulations, including those
17 pertaining to business licenses and taxes. Approval of this permit does
18 not authorize the owner to violate private covenants and restrictions.

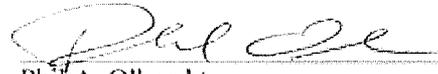
19 7. No use of the property shall be made that produces unreasonable
20 vibration, noise, dust, smoke, odor or electrical interference to the
21 detriment of adjoining properties.

22 8. Compliance with these conditions of approval is essential to maintaining
23 the peace and tranquility of the surrounding neighborhood. The applicant
24 is put on notice that these conditions will be strictly enforced and that
25 failure to comply will serve as grounds for revocation of the permit.

9. Upon determination by the Director of CDPD 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.

10. Prior to any rental, the applicant shall install a landscaping strip along the
north side of the property to the satisfaction of staff that will grow to a
height sufficient to block views from the vacation rental into the adjoining
residence. This condition may be waived upon concurrence of the owner
of the adjoining residence.

Dated this 28th day of February, 2014.


Phil A. Olbrechts

County of San Juan 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 requirement 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.