

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s): Scott and Victoria Zehner  
P.O. Box 3161  
Friday Harbor, WA 98250

File No.: PCUP00-12-0002

Request: Conditional Use Permit (CUP)

Parcel No: 353032016

Location: 3729 Bailer Hill Road  
San Juan Island

Summary of Proposal: An application for a conditional use permit to allow  
vacation rental of a residential dwelling unit

Land Use Designation: Rural Farm Forest

Public Hearing: May 9, 2012

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

MAY 23 2012

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Scott and Victoria Zehner  
5  
6 Conditional Use Permit  
7 (PCUP00-12-0002)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION**

8 **INTRODUCTION**

9 The Applicant has 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 **TESTIMONY**

12  
13 Lee McEnery, senior San Juan County planner, testified that  
14 there was nothing unusual about the proposal. No one else  
15 was present to testify.

16 **EXHIBITS**

17 The April 12, 2012 staff report and attached "application  
18 materials" are admitted as Exhibit 1 and a comment letter  
19 from Gordon and Lori Peterson is admitted as Exhibit 2.

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21  
22 **FINDINGS OF FACT**

23 **Procedural:**

- 24 1. Applicant. The Applicants are Scott and Victoria Zehner.  
25 2. Hearing. The Hearing Examiner conducted a hearing on the subject  
application on May 9, 2012 at 10:00 am at the meeting chambers of the San Juan  
County Council in Friday Harbor.

1 **Substantive:**

2 3. Site and Proposal Description. The Applicant proposes the vacation rental  
3 of a three bedroom single family home located at 3729 Bailer Hill Road. No  
4 accessory dwelling unit is on-site. On-site parking is available for at least three  
5 automobiles.

6 4. Characteristics of the Area. The surrounding neighborhood is rural and  
7 residential in nature.

8 5. Adverse Impacts of Proposed Use. There are no adverse impacts caused  
9 as a result of the proposed use. As conditioned, the proposed use should not interfere  
10 with the residential use of neighboring properties. Noise must be kept to a minimum  
11 and a 24-hour phone number must be provided in case problems arise.

12 **CONCLUSIONS OF LAW**

13 **Procedural:**

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

17 **Substantive:**

18 2. Zoning Designations. Rural Farm Forest.

19 3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation  
20 rentals in the rural farm forest district as a conditional use<sup>1</sup>. SJCC 18.80.100(D)  
21 governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the  
22 performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed  
23 standards for vacation rentals. The criteria for conditional use permits (SJCC  
24 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied  
25 through corresponding conclusions of law.

**Vacation Rentals of Residences Criteria**

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

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<sup>1</sup> Table 3.2 states only a provisional permit is required but the accompanying footnote explains that a provisional permit is only authorized for pre-existing vacation rentals. The footnote otherwise prohibits vacation homes in other land use districts, implying by exclusion that vacation rentals in the RFF district are authorized by conditional use permit.

1 4. The project is conditioned to limit total number of guests for the 3 rooms  
2 at 9.

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

6 5. The conditions of approval of the permit have been imposed to prevent  
7 any unreasonable disturbances. These conditions include limitation of occupants to  
8 twelve guests, required posting of rules of conduct which specifically mention  
9 prohibition of trespassing and identify property lines, provision of a 24-hour contact  
10 phone number to neighbors in case problems may arise, and required maintenance of a  
11 written log of complaints.

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

15 6. There are at least three parking spaces on the property and this has been  
16 determined by staff to meet County parking standards.

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

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

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

21 8. No outdoor advertising is proposed.

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

25 9. There is no accessory dwelling unit.

**SJCC 18.40.270(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.*

10. There is no accessory dwelling unit.

**SJCC 18.40.270(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*

1 *used for vacation rental on or before June 1, 1997. When internal land use district*  
2 *boundaries are adopted for an activity center, this provision will apply to VR and HR*  
3 *districts but not to the activity center in general.*

4 11. The Applicant is applying for a conditional use permit as authorized by  
5 Table 3.1 of SJCC 18.30.040 instead of a provisional use permit because the proposal  
6 is the first vacation rental of the property.

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

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

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

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

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

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

20 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*  
21 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

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.

**SJCC 18.80.100(D)(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;*

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

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

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

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

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

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

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

17 **SJCC 18.80.100(D)(6):***The location, size, and height of buildings, structures, walls*  
18 *and fences, and screening vegetation associated with the proposed use shall not*  
19 *unreasonably interfere with allowable development or use of neighboring properties;*

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

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

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

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

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

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

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

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

8 25. As an existing development site, the proposal is consistent with Chapter  
9 18.60 SJCC.

## 10 DECISION

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

13 1. The 3-bedroom vacation rental shall be operated as described in the application  
14 materials except as modified by these conditions.

15 2. A maximum of nine guests shall occupy the unit at any one time for rentals of 30  
16 days or less.

17 3. No food service is to be provided. No outdoor advertising signs are allowed.  
Adequate parking is required.

18 4. The rentals must meet all local and state regulations, including those pertaining to  
19 business licenses and taxes. Approval of this permit does not authorize the owner to  
20 violate private covenants and restrictions.

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

23 6. A 24-hour non-message, non-recording contact number shall be provided to  
24 Community Development and Planning Department (CDPD) and to all neighbors  
within 300 feet of the property. A log of complaints shall be kept and a copy  
provided to CDPD upon request.

25 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and  
approved by CDPD. The Rules of Conduct shall specifically deal with trespass,  
property boundaries, noise disturbances and any special items specific to the rental

1 unit or adjoining properties. Upon approval by CDPD a copy of the Rules of Conduct  
2 shall be posted in the residence, given to all adult tenants and given to all property  
owners within 300 feet of the residence.

3 8. Authorization under this permit shall be void if the use is discontinued for 24  
4 consecutive months.

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

7 Dated this 22nd day of May, 2012.

8  
9 

10 Phil Olbrechts  
County of San Juan Hearing Examiner

11  
12 **Effective Date, Appeal Right, and Valuation Notices**

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14 Hearing examiner decisions become effective when mailed or such later date in  
15 accordance with the laws and ordinance requirements governing the matter under  
16 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be  
17 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.

18 This land use decision is final and in accordance with Section 3.70 of the San Juan  
19 County Charter. Such decisions are not subject to administrative appeal to the San  
Juan County Council. See also, SJCC 2.22.100.

20 Depending on the subject matter, this decision may be appealable to the San Juan  
21 County Superior Court or to the Washington State Shorelines Hearings Board. State  
22 law provides short deadlines and strict procedures for appeals, and failure to timely  
23 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  
24 promptly review appeal deadlines and procedural requirements and consult with a  
private attorney.

25 Affected property owners may request a change in valuation for property tax purposes  
notwithstanding any program of revaluation.