

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Warren and Tracy Kelly
1301 Rosario Road
Eastsound, WA 98245

File No.: PCUP00-11-0002

Request: Conditional Use Permit (CUP)

Parcel No: 173150011

Location: 1301 Rosario Road
Eastsound, WA

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

Land Use Designation: Rosario Activity Center (Rural Residential)

Public Hearing: Held April 7, 2011

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

APR 22 2011

DEVELOPMENT & PLANNING

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

S.J.C. COMMUNITY

APR 22 2011

3 Phil Olbrechts, Hearing Examiner

DEVELOPMENT & PLANNING

4 RE: Warren and Tracey Kelly 5 Conditional Use Permit 6 (PCUP00-11-0002)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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8 **INTRODUCTION**

9 The Applicants have applied for approval of a conditional use permit for the vacation
10 rental of a three bedroom residential dwelling. The application is approved subject to
11 conditions.

11 **TESTIMONY**

12 No one other than staff and the Applicants and agent were present. The Applicant's
13 agent, Teri Williams, stated that the Applicants concur with the recommendations
14 and that they can agree to a three person nine person limit. The staff report at page
15 2, item 1 states there's an appurtenant structure and there is actually no appurtenant
16 structure. Rules of Conduct have been turned in and will be posted that include no
17 trespassing directions and a contact number. The Applicants called the neighbor
18 who submitted a letter and believes that the rules of conduct will address the
19 neighbor's concerns.

20 Warren Kelly, an applicant, noted that when he finished building his home he had
21 ten people in his home and that's why it was advertised as accommodating ten
22 people. He has no problem complying with the nine person limitation.

21 **EXHIBITS**

22 The 3/11/11 staff report and attached "application materials" are admitted as Exhibit
23 1. In addition a letter from Manuel and Melinda Gatlin, dated 2/2/1/11, is admitted
24 as Exhibit 2.

25 **FINDINGS OF FACT**

Procedural:

Conditional Use Permit –
Vacation Rental

1 1. Applicants. The Applicants are Warren and Tracy Kelly.

2 2. Hearing. The Hearing Examiner conducted a hearing on the subject
3 application on April 7, 2011 at 10:15 am in the San Juan County Council meeting
4 chambers.

5 **Substantive:**

6 3. Site and Proposal Description. The Applicants propose the vacation rental
7 of their three bedroom single family residence located at 1301 Rosario Road,
8 Eastsound. The property does not contain an accessory dwelling unit.

8 4. Characteristics of the Area. The surrounding neighborhood is residential.

9 5. Adverse Impacts of Proposed Use. The Examiner concludes that there are
10 no adverse impacts caused as a result of the proposed use. As conditioned, the
11 proposed use should not interfere with the residential use of neighboring properties.
12 Noise must be kept to a minimum and a 24-hour phone number must be provided in
13 case there are problems that arise. Because the surrounding area is characterized by
14 single family development, proposed use for a vacation rental should be in character
15 with the surrounding area.

16 Neighboring property owners, the Gatlins, expressed concern over the number of
17 occupants using the premises for vacation purposes in their letter admitted as Exhibit
18 2. They noted that the property has been advertised as accommodating ten persons.
19 The Applicants testified that this was an error that has been corrected and that the
20 number of occupants would be limited to nine as required by San Juan County
21 regulations. Warren Kelly noted that he had based the original number on ten
22 occupants because this is the number of relatives that had occupied his home in
23 months past. As demonstrated by the Applicants, ten (and hence nine) occupants
24 would be consistent with the residential use of the neighborhood, since persons such
25 as the Applicants accommodate this number of people in the normal course of
residential use. Further, San Juan County regulations allow up to nine occupants,
establishing a legislative determination that nine occupants is usually compatible
with surrounding residential use. Nothing in the record suggests that there is anything
unusual about the Applicants' property that would necessitate a departure from this
legislative determination. The nine person limit is compatible with surrounding
residential use. The Gatlins also stated that the rules of conduct for the facility should
prohibit trespassing. This will be made a condition of approval.

CONCLUSIONS OF LAW

Procedural:

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

Substantive:

2. Zoning Designations. The subject property is designated as Rosario Activity Center, Rural Residential.

3. Permit Review Criteria. Table 3.2 of SJCC 18.30.040 provides that vacation rentals established after June 1, 1997 are allowed as conditional uses in Rural Residential zones. SJCC 18.30.220©(2) provides that the uses allowed and prohibited in the “Rural Residential” designation in Table 3.2 applies to rural activity centers. 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

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

4. The project is conditioned as limited to a total of nine guests at three guests per bedroom.

SJCC 18.40.270(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.*

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

SJCC 18.40.270(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.*

6. There is parking available for three cars on the property.

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

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

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

3 8. No outdoor advertising signs are proposed in the application.

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

7 9. There is no accessory dwelling unit.

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

11 10. There is no accessory dwelling unit.

12 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
13 *conservancy land use districts, the vacation rental of a residence or accessory*
14 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
15 *lessee demonstrates that the residence or accessory dwelling unit in question was*
16 *used for vacation rental on or before June 1, 1997. When internal land use district*
17 *boundaries are adopted for an activity center, this provision will apply to VR and HR*
18 *districts but not to the activity center in general.*

19 11. The Applicant is applying for a conditional use permit as authorized by
20 Table 3.2 of SJCC 18.30.040 instead of a provisional use permit because the proposal
21 is the first vacation rental of the property.

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

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

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

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

SJCC 18.40.270(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

1 trespass.

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

3 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
4 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

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

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

15 17. The proposed use does not alter the general use of the structure as a
16 residence, and the character of the site will be maintained consistent with the
17 conditions of approval imposed hereunder. Adverse impacts are minimized and
compatibility is maximized through the conditions of approval. The criterion is
satisfied.

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

21 18. Mitigation measures for vacation rental impacts, such as noise and
22 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.

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

19. The property will continue to appear and function in a manner similar to
the existing single-family residential use, and further similar requests will not produce
significant adverse impacts to the environment.

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

3 20. The residence is in an existing development and according to staff has
4 been shown to meet these requirements.

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

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

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

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

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

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

20 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
21 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
22 *36.70.547); and*

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

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


26 25. As an existing development site, the proposal is consistent with Chapter
27 18.60 SJCC.

DECISION

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

- 1 1. This permit allows a 3-bedroom vacation rental in the residence noted in the site
2 plan submitted as part of the application and as conditioned herein.
- 3 2. The rental shall be operated as described in the application materials except as
4 modified by these conditions.
- 5 3. The residence may be rented as a single unit on a short term basis for periods less
6 than 30 days. A maximum of 9 guests shall occupy the residence at any one time.
- 7 4. No food service is to be provided. No outdoor advertising signs are allowed.
8 Adequate parking is required.
- 9 5. The rentals must meet all local and state regulations, including those pertaining to
10 business licenses and taxes. Approval of this permit does not authorize the owner to
11 violate private covenants and restrictions.
- 12 6. No use of the property shall be made that produces unreasonable vibration, noise,
13 dust, smoke, odor or electrical interference to the detriment of adjoining properties.
- 14 7. A 24-hour non-message, non-recording contact number shall be provided to the
15 Community Development and Planning Department (CDPD) and to all neighbors
16 within 300 feet of the property. A log of complaints shall be kept and a copy
17 provided to CDPD upon request.
- 18 8. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
19 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
20 property boundaries, noise disturbances and any special items specific to the rental
21 unit or adjoining properties. Upon approval by CDPD a copy of the Rules of Conduct
22 shall be posted in the residence, given to all adult tenants and given to all property
23 owners within 300 feet of the residence.
- 24 9. Authorization under this permit shall be void if the use is discontinued for 24
25 consecutive months.
- 26 10. Failure to comply with the conditions of this permit may result in revocation.

27 Dated this 19th day of April, 2011.

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29 Phil Olbrechts
30 County of San Juan Hearing Examiner

1 **Effective Date, Appeal Right, and Valuation Notices**

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

6 subject to review and approval by the Washington Department of Ecology pursuant to
7 RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

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

11 Depending on the subject matter, this decision may be appealable to the San Juan
12 County Superior Court or to the Washington State Shorelines Hearings Board. State
13 law provides short deadlines and strict procedures for appeals, and failure to timely
14 comply with filing and service requirement may result in dismissal of the appeal. See
15 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
16 promptly review appeal deadlines and procedural requirements and consult with a
17 private attorney.

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