

BEFORE THE HEARING EXAMINER FOR
SAN JUAN COUNTY
STATE OF WASHINGTON

In Re:)
08APL008)
Brian Martell)
Appeal of Administrative Decision)
_____)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
and ORDER S.J.C. COMMUNITY
HE48-08
OCT 15 2008

FINDING OF FACT DEVELOPMENT & PLANNING

1. The applicant, Brian Martell, received a provisional use permit for a vacation rental on June 16, 2008. The property is located on Pine Ridge Road, Orcas Island. It is designated Rural Farm Forest 5 in the Comprehensive Plan. The proper address for the property is 726 Pine Ridge Road. The property is located on tax parcel #161833003.
2. As part of the provisional use permit approval, findings of facts and recommendation dated June 12, 2008 was prepared. At the time of the approval, the residence had not yet been completed.
3. After the approval, a timely appeal was filed July 2, 2008 by Pierrette Guimond.
4. Testimony received at the hearing on October 1, 2008 as well as that contained in the record of the case revealed the following factual determinations.
5. As of the October 1, 2008 hearing date the house has been completed except for landscaping. The well, catchment system, and sprinklers have all been approved for use in a single family residence. Testing of the well and the sprinkler system have been done and satisfy county requirements.
6. During construction there was damage to the single lane unpaved road designated as Pine Ridge Road. Original construction of the road was done without compliance with any county standards. The road is fragile and likely to be damaged with any kind of moderate to heavy use. When the landscaping on his property is complete, Mr. Martell has promised to adequately repair damage to the road.
7. There is no road maintenance agreement for the road and no requirement for Mr. Martell to participate in one. There is a dispute about the breadth of the easement but that is not relevant to the issues under this appeal.
8. The original building permit application showed six different rooms which were defined by Community Development and Planning Department (CDPD) as bedrooms. In an August 10, 2006 letter the application was modified to limit the number of bedrooms to five. A five-bedroom septic system was permitted, installed and approved.
9. The vacation rental application labeled two bedrooms on the main floor and two bedrooms on the basement level. The provisional use approval was granted for four bedrooms with a maximum of 12 occupants.

10. The proper address is 726 Pine Ridge Drive. That either has been or can easily be corrected and is not significant for purposes of this appeal.
11. There are at least five parking spaces available on the property which satisfies county requirements.
12. No food service is proposed. No outdoor signs are proposed. There is no guest house.
13. Mr. Martell states that it is his intention to rent this second residence through a property management company. Rules of conduct have been drawn up as a condition of the provisional use permit. Those rules meet county requirements. It is Mr. Martell's expectation to rent residence for approximately \$1,000 per day and strictly limit the number of renters to less than the 12 allowable.
14. This is a very large new house in a very small neighborhood. It is clear that the neighbors are concerned about the potentially large impacts of a 12-person 365-day commercial operation at the end of this very limited roadway. The neighbors are likewise concerned about the potential impact to an otherwise very quiet locale.
15. The evidence in this case was that during the construction of this house unwarranted and perhaps illegal actions took place. Communications between Mr. Martell and the surrounding neighbors has been very limited since shortly after construction of the house began. As Mr. King testified, the neighbors are "nervous" about what might happen if the rental permit is approved. They are concerned the property will turn into a high impact use by significantly more than 12 people at a time, all of whom are going to drive individual vehicles back and forth across this single lane, poorly constructed dirt road, occasionally at a high rate of speed and certainly with the maximum noise obtainable.
16. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

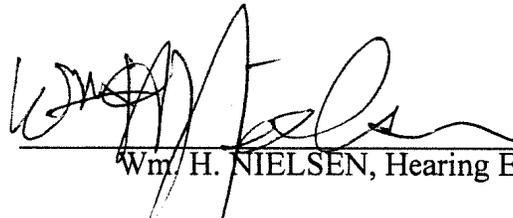
1. The Hearing Examiner has jurisdiction over the persons and the issues properly presented in the appeal.
2. The appeal in this matter was timely and properly filed.
3. The requirement for an open record appeal is set forth in SJCC 18.80.140(B)(3). The hearing on October 1, 2008 is the only open record hearing provided for this dispute. Thus, the hearing is *de novo*.
4. The procedures for provisional use permits are set forth in SJCC 18.80.080. Vacational rentals of a residence in the Rural Farm Forest land use district are covered by provisional use permits, determined administratively.
5. The standards for short term rentals of a single family residence are found in SJCC 18.40.270. All of the standards required under that provision are met and shown by the staff report and administrative decision in granting the provisional use permit.

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6. The only potential standard that could be disputed by the opponents of the vacation rental permit is found in SJCC 18.40.270(B). This standard restricts use of the vacation rental in a way that allows unreasonable disturbances to area residents. While construction disturbances for this single family residence oftentimes equated to unreasonable disturbances to the surrounding neighbors, there is no evidence that the future expected use as a vacation rental, which is the only requirement contained in the code, will cause such unreasonable disturbances. Permit conditions concerning 24 hour live contact phone numbers, codes of conduct to be given to renters and posted on the property, etc. are designed to prevent such disturbances from occurring. It cannot be presumed that those conditions will be violated. The permit is subject to revocation for any established violation of the conditions of approval.
 7. The appellant has not demonstrated either factually or legally that the administrative decision was incorrectly made nor has there been a showing that Mr. Martell has not complied with the requirements set forth in the code regarding short term vacation rentals of a single family residence.
 8. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The appeal is denied. The provisional use permit is upheld.

DATED this 15th day of October, 2008.



Wm. H. NIELSEN, Hearing Examiner

Appeal

Any appeal of this decision shall be to Superior Court pursuant to the Land Use Petition Act, Chapter 36.70 RCW, within 21 days of the issuance of the decision. See Home Rule Charter, Section 3.70.