SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Linda Hume, San Juan Vacation Ventures Inc. PO Box 488 Friday Harbor, WA 98250 on behalf of Neil and Margaret Sharkey 807 Tomihi Drive Eastsound, WA 98245
File No.:	PCUP00-15-0007
Request:	Conditional Use Permit (CUP)
Parcel No:	173123016
Location:	807 Tomihi Drive, Orcas 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:	May 28, 2015
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria
Decision:	Approved subject to conditions

S.J.C. COMMUNITY
JUN 11 2015
DEVELOPMENT & PLANNING

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application of	)	NO. PCUP-15-0007
Neil and Margaret Sharkey	)	
	)	
	)	
for approval of a conditional use permit to allow vacation rental of the three-bedroom residence at 807 Tomihi Drive, Orcas Island	)	

S.J.C. COMMUNITY
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DEVELOPMENT & PLANNING

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the three-bedroom residence at 807 Tomihi Drive, Orcas Island, as a vacation rental is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request:
Linda Hume, on behalf of Neil and Margaret Sharkey (Applicants), requested a conditional use permit to authorize vacation rental use of the three bedroom single-family residence located at 807 Tomihi Drive, Orcas Island.

Hearing Date:
The San Juan County Hearing Examiner held an open record public hearing on the request on May 28, 2015.

Testimony:
At the open record public hearing, no representative for the Applicants attended. The following individual presented testimony under oath:

Lee McEnery, Planner, San Juan County Department of Community Development

Exhibits:
The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner, dated May 13, 2015
2. Land Use Permit Application, received March 31, 2015
3. First and Second Floor interior plans
4. Memorandum from Linda Hume dated March 26, 2015[1]
5. San Juan County GIS parcel map
6. Flyer entitled "How to Get Emergency Help and What to Do When Our Office is Closed"

[1] The Examiner notes that this document offered in evidence addresses only the first three vacation rental criteria under SJCC 18.40.270 and appears to be missing additional pages.

7. Windermere Vacation Rentals vacation rental regulations and rental terms and conditions
8. San Juan County Septic Design Permit record

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 Applicants requested approval of a conditional use permit to authorize the use of the three-bedroom residence at 807 Tomihi Drive, Orcas Island, as a vacation rental.[2] The parcel is developed with a three bedroom single-family residence and accessed by a private road in the Rosario area. The parcel does not have shoreline access. There is no accessory dwelling unit. *Exhibits 1, 2, 3, and 4; McEnery Testimony.*

2. The subject property has a Rural Residential land use designation. It is surrounded on all sides by rural residential development. *Exhibits 1 and 5.*

3. The existing residence is served by an approved on-site septic system and has current domestic water service from Washington Water Company. As an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *McEnery Testimony; Exhibits 1 and 4.*

4. The proposal would allow up to nine persons at a time to rent the three bedroom house. The parcel has off-street parking for at least three vehicles. No outdoor advertising signs or food service are proposed. *Exhibits 1 and 4.*

5. Planning Staff submitted that noise and trespassing impacts could be expected to mimic those associated with traditional residential use of the site. Staff noted that potential disturbance to surrounding properties that could result from temporary occupants could be mitigated by the following measures: restricting the number of occupants to nine; 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 that would require the above measures. *Exhibit 1; McEnery Testimony.*

6. If approved, the Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.*

7. The application was submitted March 31, 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 April 3, 2015. Notice was published on April 15, 2015. The County did not receive comments on the proposal. *Exhibits 1 and 2; McEnery Testimony.*

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[2] The legal description of the subject property is Lot 2, Tomihi 3 Short Plat; also known as Assessor Parcel number 173123016. *Exhibit 1.*

8. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *McEnery Testimony; Exhibit 1*. In not appearing at hearing, the Applicants 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 of the structure. Conditions would ensure that even when rented it continues to function like a residence; the residential character of the

neighborhood would be maintained. There is no evidence in the record of adverse cumulative environmental impacts in the event of 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 from 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 for neighbor complaints (among others). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, and 8.*

2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to nine people. 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 the contact to maintain a log of complaints. The rules of conduct would specifically be required to prohibit trespass. The site has off-street parking for three vehicles. No outdoor advertising, food service, or accessory dwelling unit are proposed. Conditions would ensure that the Applicants obtain a business license or work through a property management company. *Findings 3, 4, 5, 6, and 8.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the three-bedroom residence at 807 Tomihi Drive, Orcas Island, as a vacation rental is **APPROVED,** subject to the following conditions:

1. The three-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 and nine total guests shall occupy the residence at any one time.

3. No food service is to be provided. No outdoor advertising signs are allowed. A minimum of three off-street parking spaces is required to be maintained on-site for the life of the use.

4. The rentals 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 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. The rules of conduct shall identify the property boundaries, clearly prohibit trespass, be posted in the house, and given to all the neighbors within 300 feet of the property boundary.

8. Failure to comply with the conditions of this permit may result in revocation.

9. 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 other code enforcement remedies, revoke the conditional use permit.

Decided June 10, 2015.

By:

Sharon A. Rice
San Juan County Hearing Examiner