

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Howard Jones
5125 NW Crescent Valley Drive
Corvallis, OR 97330

File No.: PCUP00-13-0007

Request: Conditional Use Permit (CUP)

Parcel No: 461451008

Location: 217 Neil Bay Drive
San Juan Island

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: July 18, 2013

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 S.J.C. COMMUNITY
AUG 03 2013 AUG 02 2013
DEVELOPMENT & PLANNING DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Howard Jones 5 Conditional Use Permit 6 (PCUP00-13-0007)	7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION
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9 **INTRODUCTION**

10 The applicant has applied for approval of a conditional use permit to allow for the vacation rental of a three bedroom residential dwelling. The application is approved subject to conditions.

11 **TESTIMONY**

12 Julie Thompson stated the county received a voicemail comment on the application, summarized in Ex. 3. The comment asked that the applicant ensure renters clean up after animals when walking them on Neil Bay Drive. Additionally, the voicemail asked that the renters be notified of the 25mph speed limit on the road. The applicant has no issue with these requests. The county received no other comments. The application is for a three bedroom rental home with a garage. Staff recommends approval of the application.

13 **EXHIBITS**

- 14 Exhibit 1 Staff Report
15 Exhibit 2 Application materials
16 Exhibit 3 Voicemail summary
17 Exhibit 4 Email from Travis Mager to Julie Thompson dated July 16, 2013

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The applicant is Howard Jones.
21 2. Hearing. The Hearing Examiner conducted a hearing on the subject application on July 18, 2013 at 10:00 am in the San Juan County Council meeting chambers.

22 **Substantive:**

1 3. Site and Proposal Description. The applicant proposes the vacation rental
2 of a three bedroom single family residence located at 217 Neil Bay Drive on San Juan
Island. The property does not contain an accessory dwelling unit.

3 4. Characteristics of the Area. The surrounding neighborhood is residential.
4 There is no airport or airfield adjacent to the property.

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

11 **CONCLUSIONS OF LAW**

12 **Procedural:**

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

16 **Substantive:**

17 2. Zoning Designations. The subject property is designated as Rural
18 Residential 5.

19 3. Permit Review Criteria. Under Table 3.2 of SJCC 18.30.040 vacation
20 rentals established after June 1, 1997 are allowed as conditional uses in Rural
21 Residential zones. SJCC 18.80.100(D) governs conditional use criteria. SJCC
22 18.80.100(D)(8) requires compliance with the performance standards of Chapter
23 18.40 SJCC. SJCC 18.40.270 contains detailed standards for vacation rentals. The
24 criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC
25 18.40.270) are quoted below and applied through corresponding conclusions of law.

26 **Vacation Rentals of Residences Criteria**

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

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

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

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

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

10 6. Table 6.4 of SJCC 18.60.120 requires one parking space for single-family
11 homes under 550 square feet and two spaces for homes 550 square feet and greater,
12 which translates into 2 and 3 parking spaces respectively under the criterion quoted
13 above. The staff report notes that there are at least three parking spaces available on-
14 site.

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

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

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

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

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

23 9. There is no accessory dwelling unit.

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

26 10. There is no accessory dwelling unit.

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

1 11. The applicant is applying for a conditional use permit as authorized by
2 Table 3.2 of SJCC 18.30.040 instead of a provisional use permit because the proposal
3 is the first vacation rental of the property.

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

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

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

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

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

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

17 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC
18 18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

23 16. This proposal is consistent with the SJCC for the reasons stated above.
24 The vacation rental is consistent with the San Juan County Comprehensive Plan,
25 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;*

17. The proposed use does not alter the general use of the structure as a
residence, and the character of the site will be maintained consistent with the

1 conditions of approval imposed hereunder. Adverse impacts are minimized and
2 compatibility is maximized through the conditions of approval. The criterion is
3 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
9 conditioned, should not cause significant or unreasonable adverse impacts on
10 neighbors or surrounding environment.

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

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

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

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

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

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

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

22. According to the staff report, the pedestrian and vehicular traffic
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
with SJCC 18.40.270.

2 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
3 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
4 *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. This permit allows a 3-bedroom vacation rental as identified in Ex. 2, subject to
14 these conditions of approval.

15 2. The residence may be rented as a single unit on a short term basis for periods less
than 30 days. A maximum of 9 guests shall occupy the residence at any one time.

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

18 5. 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
violate private covenants and restrictions.

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

22 7. A 24-hour non-message, non-recording contact number shall be provided to the
23 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
24 provided to CDPD upon request.

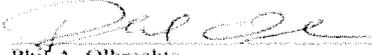
25 8. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
property boundaries, noise disturbances and any special items specific to the rental
unit or adjoining properties. The rules shall also identify the speed limit of Neal Bay

1 Drive, shall note that Neil Bay is a no-wake area¹ and shall note that dog owners
2 should clean up after their dogs when off-site. Upon approval by CDPD a copy of the
3 Rules of Conduct shall be posted in the residence, given to all adult tenants and given
4 to all property owners within 300 feet of the residence.

5 9. Authorization under this permit shall be void if the use is discontinued for 24
6 consecutive months.

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

8 Dated this 1st day of August, 2013.

9 
10 Phil A. Olbrechts
11 _____
12 County of San Juan Hearing Examiner

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

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
18 RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

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

22 Depending on the subject matter, this decision may be appealable to the San Juan
23 County Superior Court or to the Washington State Shorelines Hearings Board. State
24 law provides short deadlines and strict procedures for appeals, and failure to timely
25 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.

¹ Staff shall verify that Neil Bay is a no-wake area. If Neil Bay is not a no-wake area (as required by government regulation or applicable private covenant), the no-wake provision shall not be included in the Rules of Conduct.

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

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