

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Duane Raab
685 Spring Street PMB 187
Friday Harbor, WA 98250

File No.: PCUP00-12-0004

Request: Conditional Use Permit (CUP)

Parcel No: 450350010

Location: 80 Skookum Tom Lane
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 Residential

Public Hearing: June 13, 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

JUL 03 2012

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

| | |
|---|--|
| 4 RE: Duane Raab 5 6 Conditional Use Permit (PCUP00-12-0004) | 7 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 two bedroom residence. The application is approved with conditions.

11 **TESTIMONY**

12 Lee McEnery, Senior San Juan County planner, stated staff has recommended
13 approval of the 2-bedroom vacation rental in the Smuggler's Cove area. The
14 subdivision is older, and the application lot is not unique in any way to her
knowledge as it pertains to vacation rentals.

15 Bob Querry, representing Duane Raab, stated that the house is on Skookum Tom
16 Road which slopes down to the water. The road is a dead-end, and there are not
many vacation rentals in the area.

17 Wendy Wood stated she owns the property adjacent to the applicant's property. She
18 bought her property 11 years ago because of the secluded nature of the area. She
19 also purchased her property because it came with a private beach. She fears that the
20 beach would be negatively impacted if Mr. Raab's property becomes a vacation
21 rental house. Currently, neighbors take care of the beach to protect the environments
22 and feel safe leaving personal items such as kayaks in the cove because of the close
23 ties between neighbors. A vacation rental would allow unknown people to use the
24 beach and ruin the surrounding neighbors' peace of mind. She stated that she does
25 not believe all Smuggler's Cove residents were notified of the proposed change,
despite the change having affected their property investment. She also believes that
these residents should be notified and given a chance for comment before a final
decision on the application is made. There are currently three houses on the road,
allowing it to remain private and quiet. She noted that she does not think Mr. Raab
has ever lived on his property. She added that she would feel uncomfortable leaving
her children by themselves not knowing who was staying at the adjacent property.
When she discussed the property with building officials, according to her, they said

1 most rentals do not cause problems because they are high-end. She does not believe
2 this property would be considered high-end because it does not have a water view.
3 Additionally, she is concerned the property would be rented to more people than
4 presented in the application. It has two bedrooms, but it also has a full basement,
5 allowing for more guests. The property has been on the market for over 861 days,
6 and the owner lives out of state most of the year. She said that this is a short-term
7 gain for Mr. Raab but has long-term consequences for the surrounding property
8 owners. She submitted her comments as exhibit 13.

9
10 Lee McEnery stated she is not aware of any complaints about previous vacation-
11 rental property transitions.

12 Chris Laws, code enforcement officer, noted that the County does receive complaints
13 about vacation rentals. Typically, the issues arise when a property owner advertises
14 for vacation rentals without a conditional use permit. Since receiving his position a
15 year and a half ago, he has received 2 or 3 complaints.

16 Bob Query noted that San Juan changed the vacation-rental rules in 1998. San Juan
17 instituted a requirement that a 24-hr contact number for a property manager be
18 included on file in order to be able to tract complaints. There were about five
19 complaints in the first five years. Typically, there are initial concerns from
20 neighbors, but very few actual complaints arise. There are other vacation rentals
21 being approved along the shoreline of the Smuggler's Cove area. San Juan hasn't
22 been informed of any disruptions from these vacation rentals. He is unaware if
23 renters are considered members of the public or private parties. He does not think
24 renters will use the private beach because there are different beaches closer.

25 Wendy Woods stated that the beach is only 2 minutes walking-distance from the
vacation-rental and located directly below the property. The home is not
aesthetically-pleasing, and the private beach access would be the selling point for the
property.

EXHIBITS

- Ex. 1: Staff Report
- Ex. 2: Application materials.
- Ex. 3: Comment letters.
- Ex. 4: May 27, 2011 email from Gary Copps.
- Ex. 5: Written statement from Wendy Woods.

FINDINGS OF FACT

Procedural:

Conditional Use Permit –
Vacation Rental

1 1. Applicant. The Applicant is Duane Robb.

2 2. Hearing. The Hearing Examiner conducted a hearing on the subject
3 application on June 13, 2012 at 10:00 am at the meeting chambers of the San Juan
4 County Council in Friday Harbor.

4 **Substantive:**

5 3. Site and Proposal Description. The Applicant proposes the vacation rental
6 of a two bedroom single family home located at 80 Skookum Tom Lane, San Juan
7 Island. No accessory dwelling unit is on-site. On-site parking is available for four
8 automobiles.

8 4. Characteristics of the Area. The surrounding neighborhood is rural and
9 residential in nature. The parcels are fairly small in this neighborhood. A private
10 beach serves the neighborhood and is located directly below the subject property.

10 5. Adverse Impacts of Proposed Use. There are no significant adverse
11 impacts associated with the proposal. Approval of the conditional use permit may
12 result in some adverse impact to the use and enjoyment of a private beach. However,
13 the use rights of the beach were privately negotiated. San Juan County does not have
14 the authority to impair or alter the obligations of those privately negotiated terms.

14 The proposal has generated an unusual amount of opposition for a vacation rental.
15 Potential problems with noise and privacy are adequately addressed by the conditions
16 of approval, which limit noise, require a 24-hour complaint phone number and limit
17 occupancy to six renters. The conditions of approval have been developed over the
18 years to address the impacts of vacation rentals and appear on their face to adequately
19 address vacation rental impacts. There is no evidence in the record to suggest that
20 they have not adequately mitigated impacts in the past.

18 One impact that is fairly unique and may not be adequately addressed by the standard
19 conditions of approval is the private beach that serves the surrounding neighborhood.
20 Opening the private beach to renters will erode the ability of residents to distinguish
21 between those who have a right to use the beach from trespassers. This can create
22 safety issues. A condition of approval prohibiting the use of the beach by renters
23 would go a long way in resolving this problem. Unfortunately, such a condition
24 would be legally suspect since it would arguably impair the obligation of contracts in
25 violation of the state and federal constitutions. U.S. Const. art. I, § 10; Const. art. I, §
23. Mr. Raab, by virtue of the private covenants regulating use of the private beach,
has a contractual right to use the private beach. The afore-mentioned constitutional
provisions are applied as follows:

25 *Both [state and federal constitutional provisions] prohibit legislative action
that substantially impairs the obligation of contracts. However, the
prohibition against impairment of contracts is not absolute and is not read*

1 with literal exactness. We will find substantial impairment if the
2 complaining party relied on the supplanted part of the contract and on
3 existing state law pertaining to the contract's enforcement. Even so, if the
4 complaining party entered into the contract with knowledge that the
5 portion subject to impairment is already regulated, then he or she entered
6 into the contract subject to further legislation.

7 (citations omitted). *World Wide Video of Washington v. City of Spokane*, 125 Wn.
8 App. 280 (2005).

9 Access rights to private beaches are rarely, if ever, regulated for public safety
10 purposes by local government. Mr. Raab and all persons entitled to use of the private
11 beach by applicable private covenants would not be reasonably expected to foresee
12 that government would intrude into how they exercise their access rights, especially
13 by making distinctions between guests and renters. If the covenants regulating use of
14 the beach allow renters to use the beach, that is a right that was purchased by Mr.
15 Raab as well as all other persons with access rights to the private beach. Those
16 access rights are part of the "deal" that Mr. Raab and all other users of the private
17 beach entered into when purchasing homes in the surrounding area. It is not the role
18 or place of government to change that "deal" because its terms are not as restrictive or
19 beneficial as some would like.

20 CONCLUSIONS OF LAW

21 **Procedural:**

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

25 **Substantive:**

26 2. Zoning Designations. Rural Residential.

27 3. Permit Review Criteria. Table 3.2, SJCC 18.30.040 authorizes vacation
28 rentals in the rural residential district as a conditional use. SJCC 18.80.100(D)
29 governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the
30 performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed
31 standards for vacation rentals. The criteria for conditional use permits (SJCC
32 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied
33 through corresponding conclusions of law.

34 Vacation Rentals of Residences Criteria

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

1 4. The project is conditioned to limit the total number of guests for the 2
2 rooms to 6 guests.

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*
to area residents.

5 5. The conditions of approval of the permit have been imposed to prevent
6 any unreasonable disturbances. These conditions include limiting the number of
7 guests, required posting of rules of conduct which specifically mention prohibition of
8 trespassing and identifying 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.

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

11 6. Table 300-1 of Chapter 16.55 SJCC requires one parking space for single-
12 family homes under 550 square feet or less and 1.5 spaces for homes over 550 square
13 feet, which translates into 2 and 2.5 parking spaces respectively under the criterion
14 quoted above. The staff report notes that at least four parking spaces are available on-
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 is proposed.

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*
not both.

22 9. There is no accessory dwelling unit.

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

10. There is no accessory dwelling unit.

1 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
2 *conservancy land use districts, the vacation rental of a residence or accessory*
3 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
4 *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.

5 11. Not applicable because the Applicant did not use his premises for a
6 vacation rental prior to June 1, 1997.

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.

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

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

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

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

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

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

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

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

25 **SJCC 18.80.100(D)(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;

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

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

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

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

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

5 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
6 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
7 *36.70.547); and*

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

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

11 25. As an existing development site, the proposal is consistent with Chapter
12 18.60 SJCC.

13 **DECISION**

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

16 1. The 2-bedroom vacation rental shall be operated as described in the application
17 materials except as modified by these conditions.

18 2. A maximum of six guests shall occupy the unit at any one time for rentals of 30
19 days or less.

20 3. No food service is to be provided. No outdoor advertising signs are allowed.

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

24 5. No use of the property shall be made that produces unreasonable vibration, noise,
25 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
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.

1 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
2 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
3 property boundaries, noise disturbances and any special items specific to the rental
4 unit or adjoining properties. Upon approval by CDPD a copy of the Rules of Conduct
5 shall be posted in the residence, given to all adult tenants and given to all property
6 owners within 300 feet of the residence.

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

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

12 Dated this 27th day of June, 2012.

13 

14 Phil Olbrechts
15 County of San Juan Hearing Examiner

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

17 Hearing examiner decisions become effective when mailed or such later date in
18 accordance with the laws and ordinance requirements governing the matter under
19 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
20 subject to review and approval by the Washington Department of Ecology pursuant to
21 RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

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

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25