

## Adam Zack

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**From:** Linda Bannerman <lindaj@teleport.com>  
**Sent:** Sunday, October 10, 2021 3:43 PM  
**To:** Vacation Rental Comments  
**Cc:** Amy Vira  
**Subject:** update on legal research  
**Attachments:** Link to legal research. Call to action Hosting on the Rock newsletter 928 pdf.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear County Council Members, Planning Commissioners, and Deputy Prosecutor Amy Vira,

Recently, I sent a letter summarizing the legal research I have done, all of it suggesting that implementing any caps could open the county up to being legally challenged for having done so, especially in the absence of objective, sound research suggesting that such an action is warranted. You may refer to my previous communication for your review but I include an attachment containing that research in this email as well for your convenience.

However, I have continued my research and wish to draw your attention to two San Juan County decisions that I believe show a local precedent for rejecting caps. In the cases I point you to, decisions to deny permits for a short term rental were reversed or rejected. Here is some of the language from those San Juan County decisions:

[https://www.sanjuanco.com/DocumentCenter/View/7352/PCUP00-13-0015\\_Moore](https://www.sanjuanco.com/DocumentCenter/View/7352/PCUP00-13-0015_Moore)

“However, no concrete evidence was presented that vacation rentals have or will create disturbances to surrounding neighbors. . . . The extensive neighborhood opposition, absent more, does not justify denial of the permit and there is nothing to reasonably suggest that the conditions imposed for this vacation rental will be insufficient to minimize impacts to the level generated by other typical single family use.

It is important for neighbors to recognize that the conditions of the approval provide a powerful tool to ensure that guests of vacation rentals do not unreasonably disrupt their neighborhood. If the guests create unreasonable noise, park on the street or engage in any other conduct in violation of the Rules of Conduct that applies to them, the neighbors have a complaint line to call to compel compliance.”

Green v San Juan County 1999

“the proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval, and whether the cumulative impact of additional requests for like actions, the total of the conditional uses over time or space, as the Code states, will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.”

[In *Sunderland Family Treatment Services v. City of Pasco*] “the city’s denial appeared to rest on neighborhood opposition, and while the Court indicated that opposition of the community may be given substantial weight, it cannot alone justify a local land use decision.”

“In this particular case, there is this whole matter of the character of the neighborhood; the so-called voice of the community, as Ms. Vedder characterizes it, and I think Ms. Vedder has done as good a job as

anyone could possibly do in making much of what is really little as far as any evidence in the record of the potential effects of a transient rental. It is true that there were some letters and some oral testimony that transient rentals generally might have some different effect than simply single family residences occupied by long-term rentals or owners. In the view of the Court, however, there was no substantial evidence, as that term is defined in our law, that would suggest that transient rentals inherently have some different and greater level of impact than the impact of a long-term renter or of a homeowner himself or herself. . . .but no specificity whatsoever as to how many parties there were at these transient rentals as opposed to parties at residences occupied by owners or long-term renters. . . . but in my view there needs to be something more than a general statement that I think does come very close to being the kind of inaccurate stereotype or popular prejudice that was rendered.”

“I do think it would perhaps not be inappropriate for the Court to say that the Board in a situation like this perhaps needs to be more concerned about an objective review of the situation as a whole, rather than doing what it seemingly did, which was to reach a general decision that a denial was appropriate and then to search for reasons that might support that particular denial.. . .The human condition is such that it is not unusual for a person or a group of persons to do that where they have some particular perception of how something should come out, but I did have a concern . . . that there was a result-oriented form of decision making. “

“In looking at the various kinds of impacts that a transient rental may have, we’re really dealing with the kinds of things that ordinary people do when they own a piece of property or rent a piece of property long-term. Perhaps there would be a few more parties on the part of a short-term renter than there would be over a particular span of time by a homeowner or long-term renter, but, again, I don’t think that’s the kind of evidence that would be substantial in terms of determining whether it would be appropriate to deny a conditional use permit like this.”

I ask that you take into account these decisions as you deliberate. I further stress that these decisions were made prior to the establishment of the 2018 regulations which created even stronger means for the management of any concerns over vacation rentals.

At the Planning Commission meeting in July and in public comment in other meetings, you received county data showing that the number of permit applications has actually gone down since the 2018 regulations were implemented. There is no “flood” of vacation rentals permits in San Juan County. There further has been no data backing the claims that vacation rentals are the cause of a drain on affordable housing, neighborhood disturbances, short term rentals being responsible for increased housing value, or use of our resources that exceeds that of any long term resident. What you have heard are the unsubstantiated claims from a vocal group who have repeatedly made these claims. The fact that a group of people call and write often and presented a survey of nationally held objections to vacation rentals (masquarding as a local petition) seems to have left the commissioners with the sense that the number of people in the community in favor of caps is much greater than those opposed.

None of this is true. Data showing that a shortage of affordable housing and increased housing value are a national phenomenon unrelated to vacation rentals, that reported neighborhood disturbances number fewer than three over a three year period, that vacation rentals use no more of our islands' resources than other residents, that over 300 local people signed a letter opposing caps and that callers into public comment period opposing caps often equal those in favor seem to have been ignored.

I urge you to follow the lead of the two other San Juan County rulings that rejected refusal of permits and reject caps. The vacation rental owners suggest there are multiple other means to meet the need for affordable housing and even offer to voluntarily add to the funding of that effort. Vacation rental owners embrace the 2018 regulations and ask for time for the enforcement effort to work. Vacation rental owners wish to make it easy for neighbors to report disturbances and to aid in addressing any complaints. We realize that caps may

even benefit us financially and reject the claims that we should find comfort in that. This is insulting. We are driven by the need to insist policy in our county be based upon data rather than upon personal gain.

We live here too. We care as much as any other member of our community about maintaining our quality of life on our beloved islands. Pointing the finger at vacation rentals is, I would suggest, a current "internet craze" and only distracts all of us from the work that needs to be done to solve problems in our community. We are not Lake Tahoe, or Los Angeles or New York or Aspen.

Please reject caps and help to educate our community about the real reasons why that decision would be the right one. One based upon data and one based upon sound legal analysis.

Thank you,  
Linda Bannerman  
Orcas Island  
Co-Owner of Sea Forever Guest House

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The greatest perk, among countless others, that comes from loving someone right now, just exactly as they are, instead of waiting for them to change, is that you get to love someone right now.

Linda Bannerman  
[www.sea4ever.net](http://www.sea4ever.net)  
360-261-4434  
[lindaj@teleport.com](mailto:lindaj@teleport.com)

## **VR permits cannot be denied based on community displeasure (two rulings in SJC)**

[https://www.sanjuanco.com/DocumentCenter/View/7352/PCUP00-13-0015\\_Moore](https://www.sanjuanco.com/DocumentCenter/View/7352/PCUP00-13-0015_Moore)

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It is important for neighbors to recognize that the conditions of the approval provide a powerful tool to ensure that guests of vacation rentals do not unreasonably disrupt their neighborhood. If the guests create unreasonable noise, park on the street or engage in any other conduct in violation of the Rules of Conduct that applies to them, the neighbors have a complaint line to call to compel compliance.”

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## **Property owners have a federal constitutionally protected right to rent property for profit.**

### **Texas Supreme Court decision out of Austin N0.03-17-00812**

I provide you a link to the entire case below these bullets but, for your immediate consumption, I directly quote the judge here, especially the most relevant language from his decision:

- Nothing in the record supports a conclusion that a ban on type- 2 rentals [type 2 = short term rentals] would resolve or prevent the stated concerns. In fact, many of the concerns cited by the City are the types of problems that can be and already are prohibited by state law or by City ordinances banning such practices.
- To the contrary, the record shows that, in the four years preceding the adoption of the ordinance, the City did not issue a single citation to a licensed short-term rental owner or guest for violating the City’s noise, trash, or parking ordinances. And during this same four-year period, the City issued notices of violations—not citations—to licensed short-term rentals only ten times: seven for alleged over occupancy, two for failure to remove trash receptacles from the curb in a timely manner, one for debris in the yard, and none for noise or parking issues. And the City has not initiated a single proceeding to remove a property owner’s short-term rental license in response to complaints about parties. Further, the record shows that short-term rentals do not receive a disproportionate number of complaints from neighbors. In fact, as the City acknowledges, “short-term rental properties have significantly fewer 311 calls and significantly fewer 911 calls than other single-family properties.”
- Nothing in the record before us suggests that the City’s reasons for banning type-2 rentals address concerns that are particular to type-2 rentals or that the ban itself would actually resolve any purported concerns.
- But even if we were to determine that the City’s ban on type-2 rentals advances a compelling interest . . . would still require us to conclude that the ban is unconstitutionally retroactive.
- The ability to lease property is a fundamental privilege of property ownership. The ownership of land, . . . carries with it the right to . . . lease it to others, and therefore derive

profit. The City's ban on type-2 short-term rentals will result in a loss of income for the property owners.

- Accordingly, based on the record before us and the nature of real property rights, we conclude that owners of type-2 rental properties have a settled interest in their right to lease their property short term.
- Because the record before us shows that the ordinance serves a minimal, if any, public interest while having a significant impact on property owners' substantial interest in a well-recognized property right, we hold that section 25-2-950's elimination of type-2 short-term rentals is unconstitutionally retroactive.

<https://cases.justia.com/texas/third-court-of-appeals/2019-03-17-00812-cv.pdf?ts=1574860549>

## **Property rights cannot be diminished by neighbor complaints when less restrictive means exist**

Tennessee

“The city's ordinance tramples on the constitutional rights of its citizens in an effort to accomplish interests that can be accomplished by less restrictive means,” wrote Moore, attorney for the property owners. “As stated, there are already laws and ordinances to protect citizens and property owners alike from nuisances such as noise restrictions, public drunkenness laws, ordinances regarding maintenance of properties, etc.” Judge Davies went on to say, “Here, the ordinance does not promote the public interest as a whole. Instead, it promotes some private owners' interest over other private owners' interest.” The city's restriction acts as an “unconstitutional infringement upon a property owner's fundamental right to own, lease, and dispose of property in a lawful manner because it destroys the homeowner's right to lease his property on a short-term basis,” the judge concluded.

[https://www.hendersonvillestandard.com/news/judge-finds-city-s-short-term-rental-policy-unconstitutional/article\\_9aa68054-faac-11eb-814a-374ff34c3a92.html](https://www.hendersonvillestandard.com/news/judge-finds-city-s-short-term-rental-policy-unconstitutional/article_9aa68054-faac-11eb-814a-374ff34c3a92.html)

## **Lotteries as a method of granting short term rental permits are illegal.**

See Schroeder v Wilmington

In this instance, the use of a lottery to issue permits in areas where caps had been implemented was challenged. The ruling favored landowners, citing both state and US Constitutional protections from “changing rules in the middle of the game” and from governments “picking winners and losers in private industry.” “A raffle system,” the ruling states, “is unconstitutional. Property rights cannot be simply raffled off for the benefit of one small class of people at the expense of everyone else.” Attorney Ari Bargil, who represented the Schroeders, tells us, “Virtually every state in the country requires that a city

compensate property owners if it takes their property or infringes on their property rights - including the right to rent,” and points out that lotteries are, “inherently arbitrary.”

## **Governments must reimburse land owners when regulations cause a decrease in property value**

Arizona’s Private Property Rights Protection Act. Prop 207. 2006

Prop 207 or the **Private Property Rights Protection Act** requires government to reimburse land owners when regulations cause a decrease in property value. It states that government shall not be allowed to over- regulate in ways that ban, a direction current proposals here in San Juan County appear to be heading. It further stipulates that regulations passed must apply equally to all types of rentals. In other words, if short term rentals must apply for a permit, so must long term rentals. If short term rentals have occupancy limits, septic inspections, 24/7 response from land owners, and so on, so must long term rentals as both are constitutionally protected rights to rent property for profit, the only difference being duration.

The Goldwater Institute has provided the means to draft such legislation in Washington. They have already in place the **Property Ownership Fairness Act** which, they unequivocally state, “can be used to protect citizens in the other 49 states.” In addition to the protections established in the Texas Court of Appeals and Prop 207, this legislation would prevent government from “redesigning neighborhoods to serve the interests of politically powerful developers at the expense of home and small business owners.” While the wording mentions developers, one can reasonably assert it equally applies to other politically powerful entities such as ones here in San Juan County.

Schroeder v Wilmington:

Attorney Ari Bargil stated, “Virtually every state in the country requires that a city compensate property owners if it takes their property or infringes on their property rights. . . including the right to rent.”

## **Vacation rentals are no more commercial than long term rentals.**

Washington state:

Wilkinson v Chiwawa 2014

“Short term rentals do not violate covenants barring commercial use of property.”

Ross v. Bennett (WA Court of Appeals) 2008

“Short term rentals are not a business. The transitory nature of such use by vacation renters does not defeat the residential use.”

Green v San Juan County

“In the Rural Residential zone, cottage enterprises and commercial and industrial uses are prohibited except that home occupations and uses of comparable impact on residential use are permitted. Obviously, transient rentals, as has been pointed out, are conditional uses in the Rural; Residential zone. I do recognize that a transient rental is defined in the Development Code as being a commercial activity, but I don’t think the label is particularly significant.”

Maryland Court of Appeals

**Lowden v Bosley.**

The court determined that, “STRs are no more commercial than LTRs.” Many states have ruled STRs are “residential use” because people live there, duration not changing the residential status. . . . No commercial enterprise is taking place on the property. . . . They are used for ‘habitation,’ the same as apartments, dormitories, and frat houses.”

Wisconsin Supreme Court

Forshee v Neuschwander 2018

“Short term rentals are not commercial activity.”

## **Regulations governing vacation rentals must apply equally to long term rentals.**

Arizona’s Private Property Rights Protection Act. Prop 207. 2006

FL-HB219: Prohibits license and inspections. They are allowed “only if all residential properties must do the same. One cannot single out vacation rentals.”

## **Some states now require all cities and counties to allow short term rentals.**

Arizona, Senate Bill 1350

<https://www.azcentral.com/story/news/politics/arizona/2016/05/12/arizona-forces-cities-allow-airbnb-type-rentals/84299858/>

States prohibiting short term rental bans:

Arizona, Florida (see FL-HBB 219), Idaho, Indiana, Tennessee, Wisconsin

## **HOA’s can’t change the rules in the middle of the game with new regulations.**

Schroeder v Wilmington

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

Applicant(s): David and Sarah Moore  
116 Rossell Lane  
Eastsound, WA 98245

Agent: Teri Williams  
PO Box 1001  
Eastsound, WA 98245

File No.: PCUP00-13-0015

S.J.C. COMMUNITY

Request: Conditional Use Permit (CUP)

FEB 28 2014

Parcel No: 170751011

DEVELOPMENT & PLANNING

Location: 116 Rossell Lane  
Eastsound, WA 98245

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: February 12, 2014

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.

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

3 Phil Olbrechts, Hearing Examiner

4 RE: David and Sarah Moore 5 Conditional Use Permit 6 (PCUP00-13-0015)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</b>  S.J.C. COMMUNITY FEB 28 2014
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7 **INTRODUCTION**

8 DEVELOPMENT & PLANNING

9 The applicants have applied for approval of a conditional use permit for the vacation  
10 rental of a three bedroom residence. The application is approved with conditions.

11 This vacation rental has generated more neighborhood opposition than any vacation  
12 rental reviewed by San Juan County in several years. However, there has been no  
13 concrete evidence presented that vacation rentals have or will create any unreasonable  
14 disturbances to surrounding neighbors. It is very noteworthy that the San Juan  
15 County Superior Court reversed a denial of a vacation rental in the same  
16 neighborhood in 1999, *Green v. San Juan County*, Cause No 99-2-05195-6. In that  
17 case Judge Hancock correctly concluded that community displeasure cannot serve as  
18 the basis for denial of a land use permit application and also that a conditional use  
19 permit cannot be denied if it can be conditioned to make a use as compatible as uses  
20 permitted outright at the project location. Those two principles are equally  
21 determinative in this case: (1) the extensive neighborhood opposition, absent more,  
22 does not justify denial of the permit; and (2) there is nothing to reasonably suggest  
23 that the conditions imposed for this vacation rental will be insufficient to minimize  
24 impacts to the level generated by other typical single family use.

25 It is important for neighbors to recognize that the conditions of approval provide a  
powerful tool to ensure that guests of vacation rentals do not unreasonably disrupt  
their neighborhood. If the guests create unreasonable noise, park on the street or  
engage in any other conduct in violation of the Rules of Conduct that applies to them,  
the neighbors have a complaint line to call to compel compliance. If the applicant  
fails to enforce the Rules of Conduct, the neighbors should contact the San Juan  
County Department of Community Development and Planning, who have the  
authority to revoke the conditional use permit for permit violations and/or levy fines.  
Also, as noted by the applicant, the neighbors may be able to amend their CC&Rs to  
prohibit additional vacation rentals. Even if unanimity is required, the neighbors may  
be able to persuade the existing vacation rental owners to agree to the amendment if  
their rentals are "grandfathered" against the prohibition.

## TESTIMONY

1 Julie Thompson stated that the application is for a conditional use permit for a three-  
2 bedroom vacation rental on Orcas Island. The application meets the standards for  
3 permit approval; however, the County has received several public comments  
4 expressing concern about the project. The next-door neighbor is asking for a limit of  
5 six people renting at a time, rather than the standard of nine.

### Applicant Testimony

6 Terry Williams, Permit Resources, testified that there is vegetation on the Hopkins  
7 side of the Moore property. In addition to the vegetation, the boundaries of the  
8 Moore property are fenced. When Ms. Williams spoke with Mr. Hopkins, she said  
9 his main topic of concern was that the Moore home is too close to his property. The  
10 Moore home was built in its current location because of the septic tank buffers. The  
11 road leading to the property is not well-maintained and has no ditching. There is  
12 plenty of parking for guests. There are two parking spots on the property and an  
13 additional spot in the garage. In regard to trespassing, the homes in the  
14 neighborhood are mostly fenced. The Moore home was vacant for many years, thus  
15 the neighbors are not used to the property being utilized. Ms. Williams submitted a  
16 letter from Karen Speck dated August 11, 1999 which addresses issues in regard to  
17 vacation rental permit issues in the neighborhood (part of exhibit 13). Many of the  
18 neighbors' comment letters reference Ms. Speck's rental management business. Ms.  
19 Williams has not heard of any formal complaints to the County about Ms. Speck's  
20 management practices. Additionally, Ms. Williams submitted an email exchange  
21 between herself and the County Assessor's Office. The neighbors' comment letters  
22 expressed concern about property values being affected by vacation rentals. The  
23 Assessor's Office noted that vacation rental permits do not add or take away value  
24 from a property, and Ms. Williams interpreted this as meaning the value of the  
25 neighborhood would not be changed. In regard to noise, there is a noise ordinance,  
and there will be rules of the house with a 24hr notice. The boundaries of the  
property will be marked, and the address will be clearly marked as well. The  
applicant met with the neighbors before making the application to let the neighbors  
know about the proposal. Ms. Williams also met with the neighbors after submitting  
the application to address concerns. She noted that the conditions of approval give  
the neighbors avenues of enforcement and encouraged the neighbors to meet with the  
County Compliance Officer. When the Moore family purchased the property in  
2005, there were no CCNRs saying the neighborhood preferred not to have vacation  
rentals in the area. There is no beach access on the property, but Buckhorn County  
Road does dead end in a public access to the beach. The Moores will provide renters  
with a clear map about the location of this beach access.

David Moore, applicant, stated he has owned the property since 2005. The site is his  
retirement home, and he has invested a lot of money and time into the property. It is  
furnished with his personal belongings, and his four children and their families visit  
the home often. He does not intend to allow renters to abuse the home or

1 neighborhood. He has hired an experienced real estate manger to oversee the rental  
2 of the home. The property manager will ensure there is a 24/hr phone notice line and  
3 will use discretion in choosing who to allow to rent the home. In regard to limiting  
4 the number of people allowed to rent at a time, Mr. Moore does not wish to restrain  
5 the number because it would restrict two families from renting together. He has  
6 provided the neighbors with his contact information if there is a problem with  
7 renters. At the time he purchased the property, he was not aware of opposition to  
8 rental properties in the neighborhood. The subdivision is an outgrowth of the  
9 Buckhorn resort so many of the existing homes began as cabins. A number of the  
10 houses in the neighborhood are used as informal, unpermitted summer rentals. He  
11 recognizes that the permit will be conditional and is comfortable with the conditions  
12 listed in the staff report. Since he purchased the home in 2005, he has added a rail  
fence and deer netting across the waterfront. He removed a privacy fence to allow  
neighbors to enjoy the water view. There will be parking where the old driveway  
entered the property with more than three spaces, but there will be no parking space  
in the garage. He was unaware that Mr. Hopkins was upset about the placement of  
his home. The property had waterfront setbacks and a large drainfield, thus the  
home had to be close to the Hopkins property line. The boundaries of the property  
are delineated by the fences, and signs will be installed to warn guests about  
surrounding private property. The rental will have house rules that will be  
prominently displayed.

13 Terry Williams stated that the home involved in the 1999 case is to the left, down  
14 two homes, and across the street from the Moore home. This neighborhood's density  
15 is not unique for Orcas Island. The density can be compared to the Rosario  
16 neighborhood and other areas around East Sound. The lots of the subject property's  
17 neighborhood are .5 acres and 100ft-wide. Many of the lots have old vegetation,  
fences, and gate entrances. The Moore house sits back from the two houses adjacent  
to it, thus the neighbors do not see the home.

#### 18 EXHIBITS

19 Exhibit 1 staff report

20 Exhibit 2 Application materials

21 Exhibit 3 Comment letters:

22 Jan 7, 2014 letter from Dennis McKinney

23 Jan 12, 2014 letter from William Hopkins

24 Jan 17, 2014 letter from Alice Miller and Debra Miller

25 Jan 21, 2014 letter from Burlews

Jan18, 2014 letter from the Greenwells

1 Jan 19, 2014 letter from the Connors

2 Jan 21, 2014 letter from Burden

3 Jan 23, 2014 letter from Terry Williams w/ photographs

4 Jan 21, 2014 letter from Marion Burden

5 Jan 30, 2014 letter from the Hopkins

6 Email exchange between County Assessor and Terry Williams

7 Ex. 4 Transcript of Oral Ruling in Green v. San Juan County, Cause No 99-2-  
8 05195-6

### 9 FINDINGS OF FACT

#### 10 Procedural:

11 1. Applicant. The applicants are David and Sarah Moore.

12 2. Hearing. A hearing was held on the subject application on February 12,  
13 2014 at 10:00 am at the meeting chambers of the San Juan County Council in Friday  
14 Harbor. The record was left open for submission of the ruling for *Green v. San Juan*  
15 *County*, Cause No 99-2-05195-6.

#### 16 Substantive:

17 3. Site and Proposal Description. The applicant proposes the vacation rental  
18 of a three bedroom single family home located at 116 Rossell Lane, Orcas Island.  
19 No accessory dwelling unit is on-site. On-site parking is available for three  
20 automobiles. There is no guest house or accessory dwelling unit on site. No outdoor  
21 advertising or food service is proposed.

22 4. Characteristics of the Area. The surrounding neighborhood is composed  
23 of small residential lots that apparently used to accommodate cabins for a resort. No  
24 airport adjoins the project site.

25 5. Adverse Impacts of Proposed Use. There are no adverse impacts resulting  
from the proposed use. As conditioned, the proposed use should not interfere with  
the residential use of neighboring properties. Noise must be kept to a minimum and a  
24-hour phone number must be provided in case problems arise. The permit is  
subject to revocation and/or the applicant may be fined if the vacation rental violates  
the terms of this permit.

Numerous assertions were made that other vacation rentals have generated  
unreasonable noise. However, there are no specific instances of noise violations  
identified and nothing to suggest that the noise exceeds that typically associated with

1 single family use. It is recognized that one distinguishing feature between vacation  
2 rental guests and permanent residents is that the guests are on vacation and for that  
3 reason more likely to make noise later into the evening. For this reason music is  
4 prohibited outdoors between 10:00 pm and 8:00 am and a complaint hotline is  
5 required to give neighbors recourse for unreasonable amounts of noise.

6 A distinguishing feature of the vacation rental is its proximity to the northern property  
7 line. Given this proximity, it is reasonable for the adjoining property owners to have  
8 concern over a different set of guests peering through their windows every week. For  
9 this reason the conditions of approval require the applicant to install site obscuring  
10 landscaping prior to any rentals to the satisfaction of staff.

11 Another issue of merit raised by neighbors is parking along Rossell Lane.  
12 Photographs show that the road is too narrow for on-street parking. The conditions of  
13 approval require guests to park on-site.

14 A request has also been made to limit the number of guests to six instead of the nine  
15 authorized by the code. Given the small lots of the neighborhood and the proximity of  
16 the vacation rental to the northern property line, there is some merit to this request.  
17 Unfortunately, legal complications can arise for discriminating against family units  
18 with more than six members. Limiting occupancy to one family unit at a time can  
19 lead to additional complications over disputes concerning what constitutes a family.  
20 For these reasons it is best to apply the three guests per room standard authorized by  
21 code.

## 22 CONCLUSIONS OF LAW

### 23 **Procedural:**

24 1. Authority of Hearing Examiner. The hearing examiner is authorized to  
25 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).

### 26 **Substantive:**

27 2. Zoning Designations. Rural Residential

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

### 35 Vacation Rentals of Residences Criteria

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

3 4. The project is conditioned to limit the total number of guests to three  
4 guests per bedroom.

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

8 5. As determined in Finding of Fact No. 5, the proposal will not adversely  
9 affect neighboring property owners.

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

13 6. Table 6.4 of SJCC 18.60.120 requires one parking space for single-  
14 family homes under 550 square feet and two spaces for homes 550 square feet and  
15 greater, which translates into 2 and 3 parking spaces respectively under the criterion  
16 quoted above. The project site includes three parking spaces in conformance with  
17 these requirements.

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

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

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

22 8. No outdoor advertising is proposed.

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

9. There is no accessory dwelling unit.

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

13 10. There is no accessory dwelling unit.

14 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*  
15 *conservancy land use districts, the vacation rental of a residence or accessory*

1 dwelling unit may be allowed by provisional ("Prov") permit only if the owner or  
2 lessee demonstrates that the residence or accessory dwelling unit in question was  
3 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.

4 11. Not applicable because the proposal is the first vacation rental of the  
5 premises.

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

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

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

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

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

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

19 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC  
20 18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

25 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 3-bedroom vacation rental shall be operated as described in the  
17 application materials except as modified by these conditions.
- 18 2. The residence may be rented as a single unit on a short term basis for  
19 periods less than 30 days. A maximum of nine guests shall occupy the  
20 residence at any one time.
- 21 3. Prior to operation, evidence shall be presented to the Community  
22 Development & Planning Department that the driveway has been  
23 approved for emergency vehicle access.
- 24 4. The vacation residence shall be operated in a way that will prevent  
25 unreasonable disturbances to area residents. To this end, the applicant  
shall:
  - A. Provide copies of this decision to property owners within 300 feet of  
the subject property, along with a 24-hour local contact phone  
number, so that complaints can be dealt with in a timely manner. A  
log of complaints shall be kept by the contact.
  - B. Prominently mark the boundaries of the subject property so that it is  
clearly evident to guests where those boundaries are.
  - C. Prior to any rental, a proposed written Rules of Conduct along with  
the 24-hour contact phone number shall be submitted to and

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

7 D. The Rules of Conduct shall emphasize that the vacation rental is  
8 located in a single-family neighborhood and that guests may not  
9 interfere with the peace, quiet and privacy of surrounding  
10 neighbors. The Rules shall require that all guests of the vacation  
11 rental park their vehicles on-site. The Rules shall prohibit the  
12 outdoor playing of music between the hours of 10:00 pm and 8:00  
13 am.

14 5. No food service is to be provided. No outdoor advertising signs are  
15 allowed. Adequate parking is required.

16 6. The rental must meet all local and state regulations, including those  
17 pertaining to business licenses and taxes. Approval of this permit does  
18 not authorize the owner to violate private covenants and restrictions.

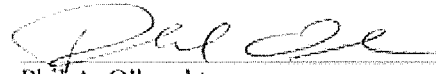
19 7. No use of the property shall be made that produces unreasonable  
20 vibration, noise, dust, smoke, odor or electrical interference to the  
21 detriment of adjoining properties.

22 8. Compliance with these conditions of approval is essential to maintaining  
23 the peace and tranquility of the surrounding neighborhood. The applicant  
24 is put on notice that these conditions will be strictly enforced and that  
25 failure to comply will serve as grounds for revocation of the permit.

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

10. Prior to any rental, the applicant shall install a landscaping strip along the  
north side of the property to the satisfaction of staff that will grow to a  
height sufficient to block views from the vacation rental into the adjoining  
residence. This condition may be waived upon concurrence of the owner  
of the adjoining residence.

Dated this 28th day of February, 2014.

  
Phil A. Olbrechts

County of San Juan Hearing Examiner

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

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

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

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.