

To: San Juan County Council and Planning Commission
From: Joe Symons, Olga WA
Date: 19 November 2020
Re: San Juan County Comprehensive Plan Element B.2 Land Use and Rural
Land Use Issues, to be considered at the Planning Commission Meeting scheduled for 20 Nov 2020

The Nov 6 2020 Adam Zach memo referred to is located at:
<https://www.sanjuanco.com/DocumentCenter/View/21360/Land-Use-Issue-Follow-Up-Planning-Commission-November-20-2020?bidId=>

PURPOSE: To resolve the remaining issues from the August 7, 2020 Land Use Issue staff memos. This memo provides additional information requested by the Planning Commission during discussion of land use issues on August 21 and September 18.

The following comments reference the Vacation Rental Permits section of the above listed memo, pages 4-8

Unresolved issue 1: Caps on VRs

I support options B, C and D (pg 4) . I see no argument for PC/CC to be limited to choosing only one of these options.

More specifically, I recommend that any cap on the total number of vacation rental permits (VRPs) be set at the current number of compliant VRPs and, as suggested in the memo, this occur concurrently with imposing a moratorium on new VRPs to prevent vesting. That said, my support for a cap as defined here *should be seen as an expedient and appropriate immediate decision, and not be understood as a permanent decision.*

Staff writes:

Determining an appropriate cap below the existing number of compliant permits is difficult to do. There is not a clear threshold where a marginal increase in the number of permits leads to negative outcomes. For example, if the cap were set at 500 permits (103 fewer than existing permits), there is no evidence that this will lead to better outcomes than the 603 existing vacation rental permits.

Yes, for sure determining a cap below the existing number of compliant permits is difficult. Yes, there is no immediately clear metric for determining the threshold of what might be described as “overtourism.” While there may be no evidence that simply choosing the current level of VRPs is an optimum outcome, making such a choice would appear to be politically expedient. However, that doesn’t mean setting the cap at the current level of compliant VRPs is right. It is clear from public participation that the current level of VRPs is far in excess of what the community might call an acceptable “outcome.” This topic needs further work to determine a “sweet spot” or “Goldilocks” situation where the “outcomes” meet community standards and the SJC approved Vision Statement (foundation of the CP and required by GMA).

Unresolved issue 2: VRPs related to parcel size

At a minimum, as a guide to policy, VRPs should be restricted to the density map designation for that parcel. Thus if a parcel containing a VRP is in RFF-5, it should have a minimum of 5 acres. This policy should be particularly established for all rural lands designations in the county. According to the staff report (which does not show whether the parcels are in activity centers or rural lands), only 23% of the VRPs are on parcels of 5 acres or more.

This issue needs much more data and conversation. Again, I reference the Vision Statement as the policy guideline for maintaining rural character. VRPs in rural lands that are located on a parcel whose acreage is below the density designated for the parcel should have some kind of minimum size below which the VRP is not allowed, or for which there is some kind of compensating behavior, action or policy.

Unresolved issue 3: non-transferability of a VRP upon sale of the property

I support a policy shift toward a business license that must be renewed annually and does not vest the VRP upon a change of ownership.

Unresolved issue 4: septic system sizing

I support a policy which restricts the number of guests in a facility to no more than is appropriate for the existing septic system capacity of the property. The number of bedrooms in a facility is a placeholder for septic size capacity: currently the policy is 2 persons/bedroom. However, VRP owners/operators may exceed this by redefining the number of spaces in a facility as “bedrooms” and ignoring any enforcement on the number of guests/bedroom. I realize there are enforcement issues here that have yet to be resolved.

Unresolved issue 5: home share vs stand alone VRPs

A distinction between a home share and a stand-alone VRP should be made, with preference for home sharing. Staff describes a home share as:

this use as one where a person lives in a home and rents one or two other bedrooms in the home for periods less than thirty days. San Juan County Code already regulates this use as a “bed and breakfast residence”. Bed and breakfast residence is defined in SJCC 18.20.020 “B” definitions as:

“Bed and breakfast residence” means a hospitality commercial use containing one to two lodging units without cooking facilities, which provides overnight accommodation and breakfast meals in an owner-occupied existing single-family residence. (pg 7)

Practically speaking, the vast majority of VRPs are stand-alone structures, not home-shares. Further, this definition clearly states that a home share is a commercial use. It implies that the owner/operator will provide a morning meal. I do not believe most home-share owners provide meals. Page 8 of the memo lists several requirements for a home-share “bed and breakfast.” Stand-alone VRPs should have to meet similar if not more restrictive standards.

The topic of “commercial use” needs further definition. An owner of a home-share (and no other VRP properties) might more properly be considered a home occupation. An owner of more than one stand-alone VRPs is clearly running a commercial operation. Current law and policy does not make any distinction here. Additional work is needed to resolve the definition and impact of stand-alone VRPs.

I offered the following comments in my 19 August 2020 written testimony to the PC:

Although I have a VRP and have been operating continuously and legally since 1992, I believe the county should suspend all existing VRPs and start over. Many VRPs would be re-issued to their original owners, but under new rules and caps. If there were more applicants than the as-yet-to-be-determined county-wide cap, the VRPs would be issued by lottery and/or with home-stays get first priority and/or local ownership trumps out of county ownership and/or seniority to those who have been doing it the longest and/or within the confines of distance to nearest neighbor or water or....

SJC certainly should not provide a public policy (such as the VRP runs with the land) which specifically enhances the value of certain properties, basically giving a windfall to a VRP owner who wishes to sell. Seems arbitrary, capricious and unfair, or certainly has that appearance.

SJC should distinguish between home stays and “full house” vacation rentals. SJC should ensure that all VRPs, (not just new ones), meet HOA, water, road, and other appropriate policies. Specifically regarding water, requiring a VRP holder to submit annual water consumption is bogus. The requirement should be daily water consumption and given the volatility of VR use, it should be accompanied by the VRP owner’s statement of occupancy (i.e., number of persons) for that day; this data should be collected at least monthly.

<note: I concede the HOA issue and concur with the PC’s position on this>

SJC should reexamine any VRP policy that considers a VRP “residential” instead of commercial. This would particularly be appropriate for “whole home” stays and for any VRP owner who has more than one VRP. VRPs should have to meet minimum requirements as required of commercial lodging facilities and be physically inspected annually by certified inspectors. Land Use Sub-component (Item 2.2.A.12) explicitly states that vacation rentals should be “subject to standards similar to those for hospitality commercial establishments” recognizing the commercial aspect of these enterprises. Self-certification invites misrepresentation.

No one is entitled to a VRP simply because they already have one. No one is entitled to a VRP anyway.

If the county regulates VRPs as they do, it means that the behavior is not acceptable without county knowledge and approval. The fine for an illegal VRP is \$2300; the county's regulatory power is unquestioned.

The system was never designed right. Do we poorly and ineffectually patch a badly-designed system or do we start over with a serious attempt to be smart?

I applaud the hard work that staff and the PC have done to date. This topic is of utmost importance to the future quality of life in this community. Please don't rush it, and please don't take the apparently easy route just to "get it over." I am reminded of the phrase "We didn't have time to do it right but we always have time to do it over." Let's try to minimize the number of cycles. It is staggeringly inefficient in terms of staff, PC, and CC time, raises taxes, sets inappropriate expectations, creates conflict and doesn't demonstrate proactive, thoughtful leadership.