

Memorandum to: San Juan County Council and Planning Commission

From: Joe Symons, Olga WA

Date: 19 August 2020

Re: Comments on San Juan County Memo from Adam Zack dated 7 August 2020 entitled "2036 Comprehensive Plan Update Section B, Element 2, Land Use and Rural Vacation Rentals"

The Zach memo referred to above is located at:

<https://www.sanjuanco.com/DocumentCenter/View/20929/August-7-2020-Staff-Memo-Land-Use-Issues--Vacation-Rental?bidId=>

It was clear from the community conversations held in the county on Orcas in 2019 and on Lopez and San Juan Island in early 2020 that the vacation rental regulatory environment is in serious need of additional review, conversation, consolidation and consequent updates to the county's comprehensive plan and UDC. (For reference, VacationRentalsOrcas.org is the repository for all work done by the Orcas-initiated Vacation Rental Working Group [VRWG] on behalf of the residents of the county.)

As you know, the VRWG sent a letter to SJC Council in December 2019 proposing a number of regulatory reforms. The letter is available at

<https://static1.squarespace.com/static/5d391d3008b46a0001a89b71/t/5e07cfb541180e2960cf4aeb/1577570231163/2019-12-18-Ltr+from+VR+Work+Group+to+County+Council.pdf>

Council has not responded to or taken any action with regard to this letter, now 8 months gathering dust.

The dominant single-action recommendation of the community, supported by over 2600 signatures to a petition, was for Council to impose a moratorium on the issuance of Vacation Rental Permits (VRPs) in order to buy some time to more thoroughly discuss the challenges without permitting more VRPs to be issued by actors hoping to game the system and vest.

While the VRP issue was the immediate focus of the community conversations and subsequent work by citizens and DCD, the underlying issue is one in which a proper balance between economic activity and community character has never been offered, articulated, memorialized and made legally binding. In a larger context, this failure to reconcile the county's approved Vision Statement with the CP resulted in years of litigation (approx 1999 to 2007) with no substantive and appropriate resolution. In short, the elephant remains in the living room.

The VR conversations touched on the pain that this elephant manifests. The phrase for this pain is "overtourism," meaning the impact of too many visitors on the county's limited physical, environmental, infrastructure and community assets. This impact is perceptible: ferries, restaurants, water, parking, rudeness, frustration, lack of employee housing, burn out, overtaxed medical and emergency services, and a perceived sense of being invaded with no boundaries or limits to put a brake on this unwanted transformation.

If the principal message is overtourism pain, then the pain can be reduced by:

1. Emphasizing the availability of existing, commercial, regulated “local” lodging facilities;
2. Reducing the nuisance factor to neighbors in HOA neighborhoods;
3. Reducing the number of tourists regardless of lodging choices;
4. Preventing resource collapse: wells running dry, septic tank failures, ferry overloads, restaurant capacity insufficiency (due in part to lack of employees);
5. Reclaiming the sense of a local community not being contaminated and over-run by non-local consumers (including part time property owners) who are not invested in the long term stability and viability of the community.

The unrestricted availability of VRPs is simply a vehicle for delivering non-locals to the county. It has advantages to anyone who has the economic resources to play in this space, particularly non-local owners. It’s relative cheap, fast and financially profitable. Think of the [tragedy of the commons](#).

The non-articulated “brand” of the San Juans is “come and play”, “the more the merrier”, “we are fresh and free and untrammled and you are welcome to come and shed all your urban defensive mindsets and just enjoy nature (kayaking, hiking, whale watching, ...) and local “artisanal” food and beverages.” There are no barriers, boundaries or restrictions. “If you can get here, the place is here for you.”

There has never been a process for determining what the carrying capacity is (both in environmental and emotional terms) for this “we” space that is all carved up into 17,000+ “me” parcels. The response to the community conversations last year was an attempt to give voice to the pain. The regulatory proposals are a first-approximation shot at controlling the pain. They mostly spoke to “no additional pain” rather than a more long term “what is an acceptable pain level we wish to live with year round in perpetuity”. Would you be happy with the level of pain we saw in 2018 and 2019 being established as the legal floor or baseline and pain goes up from there?

Were we to focus on that elephant (i.e., an acceptable pain level), we might reduce the number of short term lodging facilities (commercial or private, resorts or VRs) since the pain is from what VRPs provide: a base for visitor impact. Non-locals put on a party mentality when they come here (“I’m on vacation!”) not a “I’m entering a special, often considered sacred, space where I am expected to be a steward and tread lightly on the land and in the company of those who live here” mentality.

The gold standard for pain metrics should be the SJC Vision Statement. It has legal chops, it represents a consensus of locals, it doesn’t need to be created. It does, however, need to be honored. It has been ignored for decades. Given that GMA doesn’t obligate a county to consider the impact of visitors, what other tool do we have in the legal toolbox? The Vision Statement is GMA required.

I support the regulatory proposals submitted by the VRWG. However, the only proposal with real chops is the proposal that puts a cap on the total number of VRPs in the county, as only that will directly impact overtourism and thus “pain.”

What is essential is that the county take the time to “do it right” without the economic pressure of outside investors wanting to get vested before more stringent pain-reduction regulations are put in place.

Overtourism pain is separate from the affordable housing issue. Plenty of affordable housing would not lower overtourism pain; it might increase it as the commodification of the county would be unrestricted by the lack of low wage workers to work in the seasonal tourist sector.

What is missing is a thorough, comprehensive, engaging public process to unpack these issues and generate a pathway that meets the Vision Statement (which says nothing in support of overtourism and suggests plenty of language to reject overtourism). Decision makers are encouraged to craft a thoughtful public process unconstrained by the impulse to avoid contentious issues and time limitations.

Item (5), page 5, in the referenced document states:

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

To be consistent with “adopted comprehensive plans”, SJC would have to show that VRP policies are aligned to the Vision Statement, a feel-good portrait that has been marginalized and ignored for decades in contravention of GMA and SJC’s own stated intentions: as you know, according to the newest version of the Introduction to the CP, the Vision Statement is the North Star for the plan.

Paragraph (5) specifically limits “encouraging growth” to “areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.” SJC is not experiencing insufficient economic growth, so encouraging growth is not needed, and in any case it must be done “within the capacities of the state's natural resources, public services, and public facilities”. We have no baseline for determining what the county’s capacity limits are. There should be a clear basis for permitting additional non-local consumption of essential resources.

Options 1A thru 1D, referenced in the document, simply show the legal opportunities for reducing, restricting or controlling the issuance of VRPs via various options (such as 1B: caps). What is not discussed is the process by which any of these options should be determined. For example, (see page 9), “Limit the total number of vacation rental permits to the number existing on (insert date) or at the time this *Plan* is adopted.” This automatically grandfathers in all existing (presumably compliant?) VRPs as of some date. While that is an option, it ignores the possibility that there may be too many VRPs already to meet various constraints including consistency with the Vision Statement.

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.

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?