

**BEFORE THE HEARING EXAMINER  
FOR SAN JUAN COUNTY**

In the Matter of the Application for a )  
Plat Alteration filed by )  
 )  
**BILL AND PAMELA DUTRA AND** )  
**NEW RH, LLC** )  
 )  
Applicants )

**DCD File No: PLPALT-18-0002**

**DECISION APPROVING  
APPLICATION FOR PLAT  
ALTERATION**

*(Affected Parcels/Project Site:  
Tax Parcels 462353056000, 462353102000,  
and 462353059000 also known as Lot 56, Lot  
JJ and Lot 59 in the Roche Harbor Resort  
Village Phase 1.3 plat, in the northwest  
corner of San Juan Island)*

**S.J.C. DEPARTMENT OF  
JUL 22 2019  
COMMUNITY DEVELOPMENT**

**I. SUMMARY OF DECISION.**

The applicants satisfied their burden of proof to obtain approval of the requested plat alteration application, which would adjust the affected parcels' boundaries to follow the as-built placement of a private road, known as Ada's Alley, and all owners support the requested modification. Accordingly, the above-referenced plat alteration application is hereby approved.

**II. APPLICABLE LAW.**

***Jurisdiction.***

SJCC 18.70.080(A)(3) expressly provides that "[t]he hearing examiner is vested with authority to hear and decide proposals for the alteration of subdivisions pursuant to Chapter 18.80 SJCC and RCW 58.17.330."

**DECISION APPROVING DUTRA/NEW RH LLC  
(ROCHE HARBOR RESORT VILLAGE)  
APPLICATION FOR PLAT ALTERATION  
- PLPALT-18-0002**

1 **Criteria for Plat Alteration Approval.**

2 SJCC 18.70.080(A)(4) lays out the County's specific criteria for approval of any  
3 plat alteration application, which reads as follows:

4 *The alteration of a subdivision shall be approved only if:*

5 *a. The application meets the requirements of this chapter, and complies with the applicable*  
6 *policies and requirements of RCW 58.17.330, the Shoreline Master Program, the State*  
7 *Environmental Policy Act, and the Comprehensive Plan;*

8 *b. The application satisfactorily addresses the comments of the reviewing authorities and is*  
9 *in the public interest (RCW 58.17.100, 58.17.110, and 58.17.215);*

10 *c. Any outstanding assessments (if any land within the alteration is part of an assessment*  
11 *district) are equitably divided and levied against the remaining lots, parcels, or tracts, or*  
12 *are levied equitably on the lots resulting from the alteration; and*

13 *d. Any land within the alteration that contains a dedication to the general use of persons*  
14 *residing within the subdivision is divided equitably.*

15 As discussed below, County staff reviewed the pending plat alteration application in  
16 accord with such provisions, and recommended approval.

17 **III. RECORD.**

18 Copies of all materials in the record and a digital audio recording of the (very brief)  
19 open-record hearing conducted for this application are maintained by the County, and may  
20 be requested or reviewed by contacting the Community Development Department during  
21 regular business hours. The following individuals presented brief testimony under oath at  
22 the duly noticed open-record hearing for this matter:

- 23 1. Adam Zack, Planner III, for the San Juan County Department of Community Development;
- 24 2. Brent Snow, General Manager and agent for one of the applicants, New RH LLC, listed as  
25 Governor for the LLC on the WA Sec'y of State's business information website; and
- 26 3. Robert Anderson, with Star Surveying Inc., surveyor for the applicants, generated Plat  
Alteration survey/site plan that is included as part of the application materials and included in the  
Record as part of Exhibit 1.

On several occasions in the past year, the Examiner conducted a site visit to the area  
in connection with prior applications, and is familiar with the Roche Harbor resort, and the  
lots at issue in this matter.

DECISION APPROVING DUTRA/NEW RH LLC  
(ROCHE HARBOR RESORT VILLAGE)  
APPLICATION FOR PLAT ALTERATION  
- PLPALT-18-0002

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GARY N. MCLEAN  
HEARING EXAMINER PRO-TEM FOR SAN JUAN COUNTY

1 The Staff Report, prepared by Mr. Zack, with 7 pages and dated April 25, 2018, and  
 2 all of the Exhibits attached to and referenced therein, are included as part of the Record for  
 3 this matter. The list of exhibits is as follows;

Exhibit No.	Description of Item	Submitted by	Date
1	Application Materials	Applicant	September 13, 2018
2	Legal notice, published October 17, 2018	Planner	October 17, 2018
3	Permit file distribution list	Planner	October 15, 2018
4	Roche Harbor Resort Village Phase 1.3, existing plat	Planner	June 10, 2009
5	Assessor's information for TPNs 462353056000, 462353059000, and 462353102000 for year 2018-2019	Planner	N/A
6	Email exchange between applicant and planner re: second posting of notice.	Planner	November 15, 2018
7	Memo from Assistant County Engineer Jeff Sharp re: revised map	Planner	November 27, 2018
8	Posting and mailing submittal from applicant	Applicant	Received December 7, 2018
9	Email exchange from Linda Kuller, Planning Manager, and applicant re: additional information	Planner	January 4, 2019
10	Applicant response re; additional information	Applicant	Received: March 11, 2019
11	GIS analysis: Roche Harbor Resort Village Phase 1.3 Parcel Ownership	Planner	No date
12	Public Hearing Notice	Planner	Published: April 17, 2019
13	Public Hearing Mailing submittal from applicant	Applicant	Received: April 11, 2019

1  
2 Upon consideration of all the evidence, testimony, codes, policies, regulations, and  
3 other information contained in the file, particularly the unchallenged Staff Report, the  
4 undersigned Examiner issues the following findings, conclusions and Decision.

5 **IV. FINDINGS OF FACT.**

6 1. Any statements of fact or findings set forth in previous or subsequent portions of  
7 this Decision that are deemed to be findings of fact are hereby adopted and incorporated  
8 herein as such.

9 ***Description of the Proposal***

10 2. The requested plat alteration would adjust boundaries for three affected parcels that  
11 are all located in the Roche Harbor Resort Village Phase 1.3 subdivision, in the northwest  
12 corner of San Juan Island.

13 3. The justification for this alteration arises from the as-built placement of a private  
14 road, known as Ada's Alley, which was constructed outside the original lines depicted on  
15 the plat, shown as Lot JJ (assigned Tax Parcel No. 462353102000), resulting in asphalt  
16 roadway running to the south a bit over a portion of Lot 59 (Tax Parcel No.  
17 462353059000), and leaving an undeveloped segment of space dedicated for private  
18 roadway to the north, where Ada's Alley was first planned, abutting Lot 56 (Tax Parcel No.  
19 462353056000).

20 4. The northernmost parcel, Lot 56, is owned by one of the applicants, Bill and Pamela  
21 Dutra. Lot JJ, a portion of which is sandwiched between Lots 56 and 59, is the lot  
22 designation for the private road (Ada's Alley), which is dedicated to all residential property  
23 owners in the plat as a non-exclusive easement for access and utilities. Lot 59, the  
24 southernmost parcel, is now undeveloped. The other applicant, New RH LLC, owns both  
25 Lot JJ (as the majority owner) and Lot 59 (as the sole owner). *(NOTE: The record reflects  
26 an extensive review and discussion between staff and the applicant to verify that New RH  
27 LLC is in fact the owner or majority owner of Lot JJ, instead of many other property  
28 owners with an easement interest in the roadway. See Exhibits 9 and 10).*

29 5. The proposed alteration would realign the affected parcel boundaries to better match  
30 the as-built location of the asphalt pavement area known as Ada's Alley. Specifically, this  
31 application would subtract 540.2 square feet of mostly asphalt pavement area from Lot 59,  
32 add the same square footage to Lot JJ, aka Ada's Alley, and add the same square footage to  
33

34 **DECISION APPROVING DUTRA/NEW RH LLC  
35 (ROCHE HARBOR RESORT VILLAGE)  
36 APPLICATION FOR PLAT ALTERATION  
37 - PLPALT-18-0002**

1 Lot 56. (See initial Plat Alteration Survey, prepared by Star Surveying, included in the  
2 Record as part of Ex. 1, deemed acceptable by Public Works in November of 2018 via Ex.  
3 7; Final, updated survey map is dated March 8, 2019, included as part of Ex. 10, with  
4 minor text corrections as noted on page 5 of the Staff Report).

5 6. The requested plat alteration will NOT result in any new lots, and witnesses  
6 confirmed that the two residential lots, 56 and 59, are and will remain buildable lots, as  
7 there is no minimum lot size in the master planned resort community. (Testimony of Mr.  
8 Snow and Mr. Anderson).

9 **Process, review, notices, and no opposition**

10 7. The applicants submitted the pending Plat Alteration application on or about  
11 September 13, 2018. In the following months, the applicant failed to comply with  
12 applicable posting and confirmation requirements. (See Ex. 6). County staff also  
13 discovered that the application materials were not clear as to the ownership of Lot JJ, Ada's  
14 Alley. (See Ex. 9). Eventually, the applicants provided follow-up information and satisfied  
15 applicable notice and ownership confirmation requirements before the public hearing could  
16 move forward. (See Exhibits 10, 11, 12 and 13; Staff Report, page 4).

17 8. The public hearing for this matter took place on May 22, 2019. No outside agencies  
18 or members of the general public submitted any questions or comments regarding the  
19 pending application, and no one opposed the matter, via written comments or at the public  
20 hearing.

21 **How the application meets approval criteria**

22 9. The applicant appeared at the public hearing and offered no objections, exceptions  
23 or proposed changes to the Staff Report, or its proposed findings and recommendations.  
24 Again, no one opposed the application. Evidence in the record credibly established that the  
25 pending plat alteration application meets all applicable approval criteria and should be  
26 approved. The Staff Report includes a discussion and analysis of how the application meets  
various code requirements. The Staff Report findings and statements of fact are all  
incorporated by reference herein as findings of fact supporting this decision. For the  
reader's convenience, the most pertinent findings are republished, in part, below.

10. SJCC 18.70.080(A)(1) mandates that: *Alterations of subdivisions shall be  
processed in accordance with RCW 58.17.060 and 58.17.215 through 58.17.218. Alteration  
applications shall contain the signatures of the majority of those persons having an  
ownership interest in lots, tracts, parcels, sites or divisions in the subject subdivision or  
portion to be altered.* And, *"If the subdivision is subject to restrictive covenants which*

1 were filed at the time of the approval of the subdivision, and the application for alteration  
2 would result in the violation of a covenant, the application shall contain an agreement  
3 signed by all parties subject to the covenants providing that the parties agree to terminate  
or alter the relevant covenants to accomplish the purpose of the alteration of the  
subdivision or portion thereof (RCW 58.17.215).

4 11. The Staff Report and exhibits included in the record established that the applicants  
5 are the owners of the three lots being altered, and that they, or their lawful representatives,  
signed the application. (Staff Report, page 4; Ex. 11).

6 12. The Staff Report confirms that the requested plat alteration will not violate any  
7 restrictive covenants applicable to the subdivision. (Staff Report, at page 4; Ex. 4, sheet 1  
8 of original plat).

9 13. The Record demonstrates that all notice, publication, and posting requirements were  
10 satisfied prior to the public hearing for this matter. (Exhibits 12 and 13; Staff Report, at  
page 4).

11 14. As noted above, SJCC 18.70.080(A)(4) lays out the County's specific criteria for  
12 approval of any plat alteration application, which reads as follows:

13 *The alteration of a subdivision shall be approved only if:*

14 *a. The application meets the requirements of this chapter, and complies with the applicable  
policies and requirements of RCW 58.17.330, the Shoreline Master Program, the State  
15 Environmental Policy Act, and the Comprehensive Plan;*

16 *b. The application satisfactorily addresses the comments of the reviewing authorities and is  
in the public interest (RCW 58.17.100, 58.17.110, and 58.17.215);*

17 *c. Any outstanding assessments (if any land within the alteration is part of an assessment  
18 district) are equitably divided and levied against the remaining lots, parcels, or tracts, or  
are levied equitably on the lots resulting from the alteration; and*

19 *d. Any land within the alteration that contains a dedication to the general use of persons  
residing within the subdivision is divided equitably.*

20 15. With respect to the plat alteration language found in SJCC 18.70.080(A)(4)(a), the  
21 Staff Report credibly explains that: the applicant has provided the information necessary to  
22 review the proposal under such requirements; the proposal is not in the shoreline so there  
23 are no applicable requirements in the Shoreline Master Program; plat alterations are not  
24 subject to the State Environmental Policy Act; and that because land division regulations  
were created to further the purposes and objectives of the County's Comprehensive Plan,  
and this application is consistent with the County's plat alteration requirements, it is in

1 compliance with the Comprehensive Plan. The Examiner concurs, and finds that the  
2 application satisfies approval criteria(4)(a).

3 16. No members of the public, neighbors, or other reviewing authorities submitted any  
4 comments questioning or opposing the proposed plat alteration. The Examiner finds that it  
5 is in the public interest to have plat illustrations accurately reflect on-site conditions,  
6 particularly the location of paved road alignments. Based on the Staff Report, and  
7 application materials, the Examiner concurs with the staff recommendation of approval, and  
8 finds that the application satisfies approval criteria (4)(b).

9 17. Staff reviewed relevant legal instruments recorded and otherwise applicable to the  
10 affected parcels and determined that there are no outstanding assessments on the parcels in  
11 question. (*Staff Report, page 5; Ex. 5*). Therefore, the provisions of approval criteria (4)(c)  
12 are not applicable to this matter, or are readily satisfied because there are no assessments to  
13 resolve.

14 18. Staff reviewed relevant legal instruments recorded and otherwise applicable to the  
15 affected parcels and determined that Lot JJ is dedicated to provide access for plat residents,  
16 and although a portion of the boundaries for Lot JJ will change, the total size and function  
17 of Lot JJ will remain as it was originally dedicated. In short, all rights and interests to use  
18 Lot JJ will remain equitably divided, providing access to/for plat residents, so the approval  
19 criteria in (4)(d) is fully satisfied.

20 19. The Staff Report explains that, after approval of this requested plat alteration, the  
21 applicant shall produce a revised drawing of the approved alteration (*See* SJCC  
22 18.70.050(C)(2)(1)(iii)), to be processed and recorded in the same manner as set forth in the  
23 county's code for final plats. All persons with an ownership or security interest in property  
24 to be altered must sign the altered plat. *Id.* Altered plats shall only alter or supersede the  
25 original plat in the specific ways approved by the Examiner in this Decision. *Id.*

## 26 V. CONCLUSIONS OF LAW.

1. Based on testimony and evidence in the Record, particularly the unchallenged Staff Report, and all findings set forth above, the Examiner concludes that the pending plat alteration application is fully supported by substantial and credible evidence.

2. The proposed changes to the Roche Harbor Resort Village Phase 1.3 subdivision meet the criteria for approval of a plat alteration.

3. Any legal conclusions or other statements made in previous or following sections of this document that are deemed conclusions of law are hereby adopted as such, and are incorporated herein by this reference.

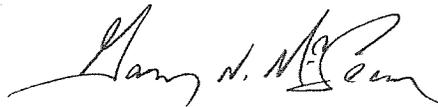
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**VI. DECISION and CONDITIONS of APPROVAL.**

Based on evidence included in the record for this matter and all findings and conclusions as set forth above, the Dutra/New RH LLC requested plat alteration – to modify Lots 56, JJ and 59 of the Roche Harbor Resort Village Phase 1.3 subdivision to generally follow the as-built private roadway known as Ada’s Alley – meets all applicable review criteria. Therefore, the request to modify the boundaries for Lots 56, JJ and 59, as reflected on the survey map dated 03/08/2018 and prepared by Star Surveying Inc. (*included in the Record as part of Ex. 10*), is hereby approved, subject to the following Conditions of Approval:

1. The applicant(s) shall produce a revised drawing of the approved alteration to be processed and recorded in the same manner as set forth in the county’s code for final plats, found in SJCC Chapter 18.70 (See SJCC 18.70.050(C)(2)(l)(iii));
2. All persons with an ownership or security interest in property to be altered must sign the altered plat; and
3. The plat alteration approved in this Decision is expressly limited to alter or supersede the original plat in the specific ways approved and described herein, particularly the proposal description provided in Finding No. 5 above, as depicted on the survey map dated 03/08/2018, included in the Record as part of Exhibit 10.

ISSUED this 19<sup>th</sup> Day of July, 2019



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Gary N. McLean  
Hearing Examiner

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**Appeals, Valuation Notices**

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 requirements may result in dismissal of any 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 confer with advisors of their choosing, possibly including a private attorney.

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