

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

In the Matter of the Application for a)
Plat Alteration filed by property)
owners)

MAYA AND IMRAN SARGUSINGH,)
)
Applicants)

File No. LANDUSE-19-0083

**DECISION APPROVING
APPLICATION FOR PLAT
ALTERATION**

*(Affected Parcels/Project Site:
Tax Parcels 252250005000 and
252250006000, also known as Lots 5 and 6 in
the Fisherman's Bay Waterfront Tracts
subdivision, located at 127 Peninsula Road
on Lopez Island)*)

S.J.C. DEPARTMENT OF
OCT 01 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 consolidate Lots 5 and 6 in the Fisherman's Bay Waterfront Tracts subdivision on Lopez Island into a single lot. The applicants are the only parties with an ownership interest in both affected lots, and they signed the application, meaning that all affected owners support the requested modification. After public notice and expiration of applicable comment periods, no one opposed or questioned the pending application. Accordingly, the above-referenced plat alteration 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."

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2 **Criteria for Plat Alteration Approval.**

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

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

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

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

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

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

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

18 **III. RECORD.**

19 Copies of all materials in the record and a digital audio recording of the open-record
20 hearing conducted for this application are maintained by the County and may be requested
21 or reviewed by contacting the Community Development Department during regular
22 business hours. Julie Thompson, the designated County Planner assigned to review the
23 pending application, was the only person who appeared and provided testimony under oath
24 at the duly noticed open-record hearing for this matter. No one opposed the application, at
25 the hearing or in writing.

26 The Staff Report, prepared by Ms. Thompson, with 4 pages, dated August 12, 2019,
and the 7 Exhibits attached to and described on page, are included as part of the Record for
this matter. Again, there were no written comments from any neighboring property owners
opposing the pending application.

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

6 **IV. FINDINGS OF FACT.**

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

10 ***Description of the Proposal***

11 2. The requested plat alteration would consolidate two lots into one, specifically Lots 5
12 and 6 in the Fisherman's Bay Waterfront Tracts subdivision on Lopez Island. *Staff Report,*
13 *page 1; Ex. 2, Application materials, including Preliminary Plat Alteration survey map/site*
14 *plan, prepared by San Juan Surveying, dated May 14, 2019.*

15 3. The two lots are owned by the applicants, Maya and Imran Sargusingh. The Staff
16 Report explains that the subdivision is not subject to restrictive covenants, so the owners of
17 the two lots that are affected by the requested plat alteration – Mr. and Mrs. Sargusingh –
18 are the only persons who needed to sign the application. *Staff Report, page 2, analysis*
19 *of signature requirement found in SJCC 18.70.080(A)(1).*

20 4. Shortly after the Sargusingh's purchased the two lots at issue, they initiated a pre-
21 application consultation process with County staff to explore redevelopment options on
22 their property. *Ex. 3, page 1.*

23 5. Together, the two lots are about 1-acre in size. The existing house on the site is
24 located mostly on Lot 6, but part of the home crosses over onto Lot 5. *Staff Report, page 1.*
25 Assessor maps included in the file show that several other lots in the same subdivision also
26 have existing structures that were built on portions of two adjacent lots. *Ex. 3, page 6.*

6. Materials in the file describe the existing house as a cabin built in the 1960s with an
above-grade deck on site, which has been deemed a legally established nonconforming
structure. *Ex. 3, pre-application site visit summary and report from SJCo Planner, Nadine*
Cook, dated March 14, 2019, at page 1. The applicants/property owners have expressed an
interest in replacing/rebuilding the existing house, mostly within the same footprint. *Staff*

1 *Report, page 1; Ex. 3, pre-application report, at page 4.*

2 7. The Staff Report explains that the Fisherman's Bay Waterfront Tracts subdivision
3 was originally approved in 1947 with 73 lots, but it has been replatted several times, so that
4 it now has just 15 lots. The remaining lots, including those involved in this matter, are low
5 bank waterfront lots facing San Juan Channel. *Staff Report, page 1.*

6 8. The pre-application review process identified a Category II wetland between the
7 existing house and the shoreline on the applicants' property. This fact and other shoreline
8 and critical area considerations described in the pre-application report make it difficult for
9 any applicant to build on both lots. *Testimony of Ms. Thompson.*

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

11 9. The applicants initiated their plat alteration process by submitting complete
12 application materials on or about July 1, 2019. *Staff Report, page 2; Ex. 2, Application*
13 *materials, with preliminary survey map for proposed lot consolidation.*

14 10. With one exception, Ms. Thompson confirmed that all applicable notice, posting,
15 and publication requirements have been satisfied for this application. *See Exhibits 5 and 6;*
16 *Staff Report, page 2; Testimony of Ms. Thompson.* The property was not posted until
17 August 5, 2019, which was less than 30-days before the public hearing, which occurred on
18 August 28th. Accordingly, Staff requested that the Examiner leave the record open until
19 September 4, 2019 to allow for receipt of any comments that might be submitted by such
20 time. *Staff Report, page 2.* Having not received any additional comments at any point
21 through the month of September, the record for this matter is deemed closed and this
22 decision is not in order.

23 11. No outside agencies or members of the general public submitted any questions or
24 comments regarding the pending application, and no one opposed the matter, via written
25 comments or at the public hearing. The only comment from within the County came from
26 the Public Works Department, indicating that the legal description review was completed
on July 17th. (*Ex. 4*).

How the application meets approval criteria

12. The applicant's agent did not appear at the public hearing and offered no written
objections, exceptions or proposed changes to the Staff Report, or its proposed findings and
recommendations. Neither of the applicants appeared at the hearing or offered written
objections to any part of the Staff Report. Again, no one opposed the application.
Evidence in the record credibly established that the pending plat alteration application
meets all applicable approval criteria and should be approved. The Staff Report includes a
discussion and analysis of how the application meets various code requirements. The Staff

1 Report findings and statements of fact are all incorporated by reference herein as findings
2 of fact supporting this decision.

3 13. SJCC 18.70.080(A)(1) mandates that: *Alterations of subdivisions shall be*
4 *processed in accordance with RCW 58.17.060 and 58.17.215 through 58.17.218. Alteration*
5 *applications shall contain the signatures of the majority of those persons having an*
6 *ownership interest in lots, tracts, parcels, sites or divisions in the subject subdivision or*
7 *portion to be altered.” And, “If the subdivision is subject to restrictive covenants which*
8 *were filed at the time of the approval of the subdivision, and the application for alteration*
9 *would result in the violation of a covenant, the application shall contain an agreement*
10 *signed by all parties subject to the covenants providing that the parties agree to terminate*
11 *or alter the relevant covenants to accomplish the purpose of the alteration of the*
12 *subdivision or portion thereof (RCW 58.17.215).*

13 14. As noted above, the application was signed by both of the owners of the property
14 that is the subject of this requested plat alteration. *Staff Report, page 2; Ex. 2.*

15 15. The Staff Report confirms that the requested plat alteration will not violate any
16 restrictive covenants applicable to the subdivision. *Staff Report, at page 2.*

17 16. The Record demonstrates that all notice, request for outside agency review, and
18 publication requirements were satisfied prior to the public hearing for this matter. *Exhibits*
19 *5 and 6; Staff Report, at page 2.* Having held the record open through most of the month of
20 September to allow for submittal of additional written comments because the property was
21 not posted more than 30 days before the public hearing, and noting that there no additional
22 written comments have been received, applicable posting and public comment periods have
23 all been more than satisfied.

24 17. As noted above, SJCC 18.70.080(A)(4) lays out the County’s specific criteria for
25 approval of any plat alteration application, which reads as follows:

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

*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
Environmental Policy Act, and the Comprehensive Plan;*

*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);*

*c. Any outstanding assessments (if any land within the alteration is part of an assessment
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*

d. Any land within the alteration that contains a dedication to the general use of persons

residing within the subdivision is divided equitably.

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18. With respect to the plat alteration language found in SJCC 18.70.080(A)(4)(a), the Staff Report credibly explains that: the applicant has provided the information necessary to review the proposal under such requirements; the proposal is within a designated shoreline area, but there are no applicable requirements in the Shoreline Master Program relevant to this proposal; plat alterations are not 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 compliance with the Comprehensive Plan. (*See Staff Report discussion, on pages 3 and 4*). The Examiner concurs, and finds that the application satisfies approval criteria(4)(a).

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19. No members of the public, neighbors, or other outside reviewing authorities submitted any comments questioning or opposing the proposed plat alteration. Based on the Staff Report, and application materials, the Examiner concurs with the staff recommendation of approval, and finds that the application is in the public interest, satisfying approval criteria (4)(b). The Examiner further concurs with Staff in finding that fewer parcels provides less opportunity for development, and that less development is in the public interest, especially on waterfront lots like those at issue in this application.

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20. The Staff Report confirms that there are no outstanding assessments on the parcels in question. (*Staff Report, page 4*). Therefore, the provisions of approval criteria (4)(c) are not applicable to this matter, or are readily satisfied because there are no assessments to resolve.

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21. Staff correctly determined that the approval criteria in (4)(d) does not apply and has no relevance to this application.

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

21 V. CONCLUSIONS OF LAW.

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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 Fisherman's Bay Waterfront Tracts Subdivision meet

1 the criteria for approval of a plat alteration.

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

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

7 Based on evidence included in the record for this matter and all findings and
8 conclusions as set forth above, the requested plat alteration – to consolidate Lots 5 and 6 of
9 the Fisherman’s Bay Waterfront Tracts Subdivision into a single lot – meets all applicable
10 review criteria. Therefore, the requested plat alteration is approved, as reflected on the
11 preliminary survey map dated 05/14/2019 and prepared by San Juan Surveying (*included in
12 the Record as part of Ex. 2*), subject to the following Conditions of Approval:

- 13 1. The applicant(s) shall produce a revised drawing of the approved alteration
14 to be processed and recorded in the same manner as set forth in the county’s
15 code for final plats, found in SJCC Chapter 18.70 (*See SJCC
16 18.70.050(C)(2)(l)(iii)*);
- 17 2. All persons with an ownership or security interest in property to be altered
18 must sign the altered plat; and
- 19 3. The plat alteration approved in this Decision is expressly limited to alter or
20 supersede the existing plat in the specific ways approved and described herein,
21 particularly the proposal description provided in Finding No. 2 above, as
22 depicted on the preliminary survey map dated 05/14/2019, included in the
23 Record as part of Exhibit 2.

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26 ISSUED this 30th Day of September, 2019



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.