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Before Hearing Examiner
Gary N. McLean

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

SJC DEPARTMENT OF
APR 16 2021
COMMUNITY DEVELOPMENT

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

ELEANOR KINKEAD,)
Applicant,)

File No. LANDUSE-20-0006

*(Affected Parcel/Project Site:
Tax Parcel No. 152050024000, also known
as Lot HR-5 in the Decatur Northwest
Subdivision, located inland/uphill NE of
Brigantine Bay off Harmon Ranch Road in
the NW portion of Decatur Island)*)
_____)

**DECISION APPROVING
APPLICATION FOR PLAT
ALTERATION**

I. SUMMARY OF DECISION.

The applicant satisfied her burden of proof to obtain approval of the requested plat alteration application, which would: shift the location of the applicant's .10-acre circular lot by approximately nine feet northwest from its current location to avoid a swale to the east of the lot which presents a minor geotechnical hazard and creates challenges for the applicant's proposed cabin on the site. The applicant's lot, identified as Lot HR-5, is one of many circular lots, also referred to as "building envelopes", that are included in the existing Decatur Northwest Subdivision on Decatur Island. The small lots are all surrounded by and located within the much larger 448+acre common area owned by the Decatur Northwest Community Association. The applicant is the only party with an ownership interest in Lot HR-5, and the application materials include a letter of conditional approval from the Decatur Northwest Homeowners Association (*Ex. 5*), meaning that all affected owners support the requested plat lot adjustment. 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.

**DECISION APPROVING THE KINKEAD PLAT
ALTERATION – LANDUSE-20-0006**

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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.”

Criteria for Plat Alteration Approval.

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

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.

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

III. RECORD.

Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the County and may be requested or reviewed by contacting the Community Development Department during regular business hours. Given the Covid-19 health proclamations issued by the Governor and local authorities, the hearing occurred on March 25, 2020, using teleconference equipment operated by county staff. Staff confirmed that no members of the general public appeared at the site designated for the public hearing in public notices, and that no one other than hearing participants mentioned herein contacted staff to express an interest in providing testimony or participating in the public hearing. Julie Thompson, the designated County Planner assigned to review the pending application, appeared and provided testimony under oath during the hearing. Danny

1 Herbert, with Star Surveying, Inc., the applicant's designated agent and surveyor, also
2 testified under oath during the hearing. Mr. Herbert summarized the applicant's reasons for
3 seeking the plat alteration and noted that existing site conditions present difficulties placing
4 a rectangular building footprint inside the existing building envelope/circular lot. He
5 confirmed that the applicant is fully aware of the 15-foot building setback that will keep any
6 new structure at least 15 feet away from the boundary of the Decatur Highland common area
7 acreage immediately north of the applicant's lot. Mr. Herbert did not question or challenge
8 any of the analysis or recommended conditions included in the Staff Report. Ms. Thompson
9 added an additional Exhibit No. 9 into the record, reflecting Public Works Department
10 comments received after the Staff Report was issued. No one opposed the application, at the
11 hearing or in writing.

12 The Staff Report, prepared by Ms. Thompson, with 5 pages, dated March 9, 2020,
13 and the 8 Exhibits attached to and described on pages 4 and 5, are included as part of the
14 Record for this matter. As noted above, Exhibit No. 9 was accepted into the record at the
15 public hearing. Again, the Decatur Northwest Homeowners Association submitted a letter
16 conditionally supporting the application (*Ex. 5*) and there were no written comments from
17 any neighboring property owners or other agencies opposing the pending application.

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

21 IV. FINDINGS OF FACT.

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

25 *Description of the Proposal*

26 2. The requested plat alteration would:

Move the applicant's existing .10-acre circular Lot HR-5 approximately nine feet northwest from its
current location, as depicted on the face of the "Preliminary Plat Alteration of Lot HR-5" instrument
prepared by Star Surveying Inc., dated 1/9/2020, included in the record as part of *Exhibit 1*. Lot HR-
5 is located in the existing Decatur Northwest Subdivision, created in 1983, on Decatur Island. (*Staff
Report, page 1; Ex. 1, application materials*).

3. The application materials explain that the pending plat alteration is requested to avoid
a swale to the east of the lot which presents a minor geotechnical hazard and creates
challenges for the applicant's proposed cabin on the site. (*Ex. 1, application materials,
particularly letter dated Jan. 16, 2020, from Mr. Herbert, with Star Surveying, explaining*

1 *applicant's reasons for pursuing this application*). Moving the lot as requested will make it
2 easier to place a rectangular shaped building within the circular lot, given site constraints,
3 including the 15-foot setback required from the adjacent lot line for the Decatur Highland
common area parcel to the north of the applicant's lot. (*Testimony of Mr. Herbert; Online
review of San Juan County Assessor maps and records for adjacent properties*).

4 4. The applicant's lot, identified as Lot HR-5, is one of many circular lots, also referred
5 to as "building envelopes", that are included in the existing Decatur Northwest Subdivision
6 on Decatur Island. (*Online review of San Juan County Assessor maps and records for
adjacent/surrounding properties*). The small lots are all surrounded by and located within
7 the much larger 448+acre common area owned by the Decatur Northwest Community
Association. (*Id.*).

8 5. The requested plat alteration will not increase the size of the applicant's lot – the lot
9 size will remain the same. Similarly, while the lot will be moved slightly to the northwest
10 from its current location, the move will take place in a very low-density portion of the affected
11 plat. The total area of the Decatur Northwest common area parcel (*TPN 152050074000*)
surrounding the applicant's lot will also remain the same, before and after Lot HR-5 is shifted
12 about 9-feet to its new location. In short, the requested plat alteration can be accomplished
without any apparent impacts on surrounding properties.

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

14 6. The applicants initiated their plat alteration process by submitting complete
15 application materials on or about January 21, 2020. (*Staff Report, page 2; Ex. 1, Application
materials*).

16 7. Ms. Thompson confirmed that all applicable notice, posting, and publication
17 requirements have been satisfied for this application. (*See Exhibits 6 and 7; Staff Report,
page 2; Testimony of Ms. Thompson*).

18 8. The County's Public Works staff submitted a written comment dated March 10, 2020,
19 after the Staff Report was issued, which is now included in the record as *Exhibit 9*. The email
20 comment confirms that the application materials do not include any any significant errors in
21 the survey records and asked that the final plat alteration documents include a Surveyors Note
mentioning the Bearing Datum, or at least that the Basis of Bearing is derived from the
original plat.

22 9. No outside agencies or members of the general public submitted any questions or
23 comments regarding the pending application, and no one opposed the matter, via written
24 comments or at the public hearing.

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2 ***How the application meets approval criteria***

3 10. Evidence in the record credibly established that the pending plat alteration application
4 meets all applicable approval criteria and should be approved. No one opposed the
5 application. The Staff Report includes a discussion and analysis of how the application meets
6 various code requirements. The Staff Report findings and statements of fact are all
7 incorporated by reference herein as findings of fact supporting this decision.

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

18 12. The applicant is the only party with an ownership interest in Lot HR-5, and the
19 application materials include a letter of conditional approval from Julie Dunnington,
20 President of the Decatur Northwest Homeowners Association (*Ex. 5*), presumably the entity
21 that controls/manages the Decatur Northwest common area parcel referenced above. This
22 presumption appears to be accurate, as the preliminary plat alteration sheets prepared by the
23 applicant’s surveyor include spaces for signatures by both the applicant, Ms. Kinkead, as
24 owner of Lot HR-5, and Ms. Dunnington, as President of the Decatur Northwest Community
25 Association. Accordingly, it appears as though the application materials substantially satisfy
26 signature requirements found in SJCC 18.70.080(A)(1). (*Ex. 1, application materials*).

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

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*

1 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 2. The applicant's requested change to the Decatur Northwest Subdivision, originally
3 created in 1983, meets the criteria for approval of a plat alteration.

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

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

8 Based on evidence included in the record for this matter and all findings and
9 conclusions as set forth above, the requested plat alteration meets all applicable review
10 criteria. Therefore, the requested plat alteration is approved, as reflected on the "Preliminary
11 Plat Alteration of Lot HR-5" instrument dated 1/9/2020 and prepared by Star Surveying Inc.
(included in the Record as part of Ex. 1), subject to the following Conditions of Approval:

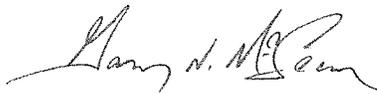
12 1. The applicant(s) shall produce a revised drawing of the approved alteration to
13 be processed and recorded in the same manner as set forth in the county's code
for final plats, found in SJCC Chapter 18.70 (*See SJCC 18.70.050(C)(2)(l)(iii)*);

14 2. All persons with an ownership or security interest in property to be altered
15 must sign the altered plat; and

16 3. The plat alteration approved in this Decision is expressly limited to alter or
17 supersede the existing plat in the specific ways approved and described herein,
18 particularly the proposal description provided in Finding No. 2 above, as depicted
on the preliminary plat alteration instrument dated 1/9/2020, included in the
Record as part of *Exhibit 1*.

19 4. The final plat alteration documents shall include a Surveyor's Note
20 referencing the Bearing Datum and/or confirming that the Basis of Bearing is
derived from the original plat. (*See Ex. 9, Public Works comment*).

21 ISSUED this 16th Day of April, 2020

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25 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.