Before Hearing Examiner
Gary N. McLean

BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application for a Plat Alteration filed by: **WINDWARD NORTH LLC,** Applicant, *(Affected Parcels/Project Site: Tax Parcel Nos. 353452001000 and 353452009000, also known as Lots 1 and 9 in the Gleneagle Subdivision, located east/southeast of False Bay on the south end of San Juan Island).*	**File No. LANDUSE-20-0007** **DECISION APPROVING APPLICATION FOR PLAT ALTERATION**

SJC DEPARTMENT OF
APR 17 2020
COMMUNITY DEVELOPMENT

I. SUMMARY OF DECISION.

The applicant satisfied its burden of proof to obtain approval of the requested plat alteration application, which would: reconfigure Lots 1 and 9 in the existing Gleneagle Subdivision, essentially expanding Lot 9 to include new area where a barn was inadvertently constructed on a portion of what is now Lot 1, and reducing the size of Lot 1 accordingly. All affected owners support the requested plat alteration. 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."*

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;*
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> *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);*
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> *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*
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> *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. As with almost all public hearings conducted by the undersigned hearing examiner for San Juan County over the past several years, the public hearing was available for "live stream" viewing over the internet, as noted on the agenda posted on the County's website. Julie Thompson, the designated County Planner assigned to review the pending application, appeared and provided testimony under oath during the hearing. Francine Shaw, with Planning Permit Services, LLC, the applicant's designated agent, also testified under oath during the hearing. Ms. Shaw did not question or challenge any of the analysis or recommended conditions included in the Staff Report. She disclosed that the applicant may close on the sale of their property before a final plat alteration might be recorded, so the actual owner of record as of the date of any recording would be signing final

plat alteration recording instruments. Ms. Thompson explained that open space requirements for the Gleneagle plat will still be sufficient after the plat alteration is recorded, a significant point in this matter because Lot 1 (the lot to be reduced in size) is the designated common area/open space created when the plat was first approved. No one opposed the application, at the hearing or in writing.

The Staff Report, prepared by Ms. Thompson, with 4 pages, dated March 9, 2020, and the 4 Exhibits attached to and described on page 4, are included as part of the Record for this matter. The application materials were prepared by Ms. Shaw and are included as Exhibit 1, featuring a very detailed summary of the justification for the requested plat alteration and how the application satisfies all applicable approval criteria.

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

IV. FINDINGS OF FACT.

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

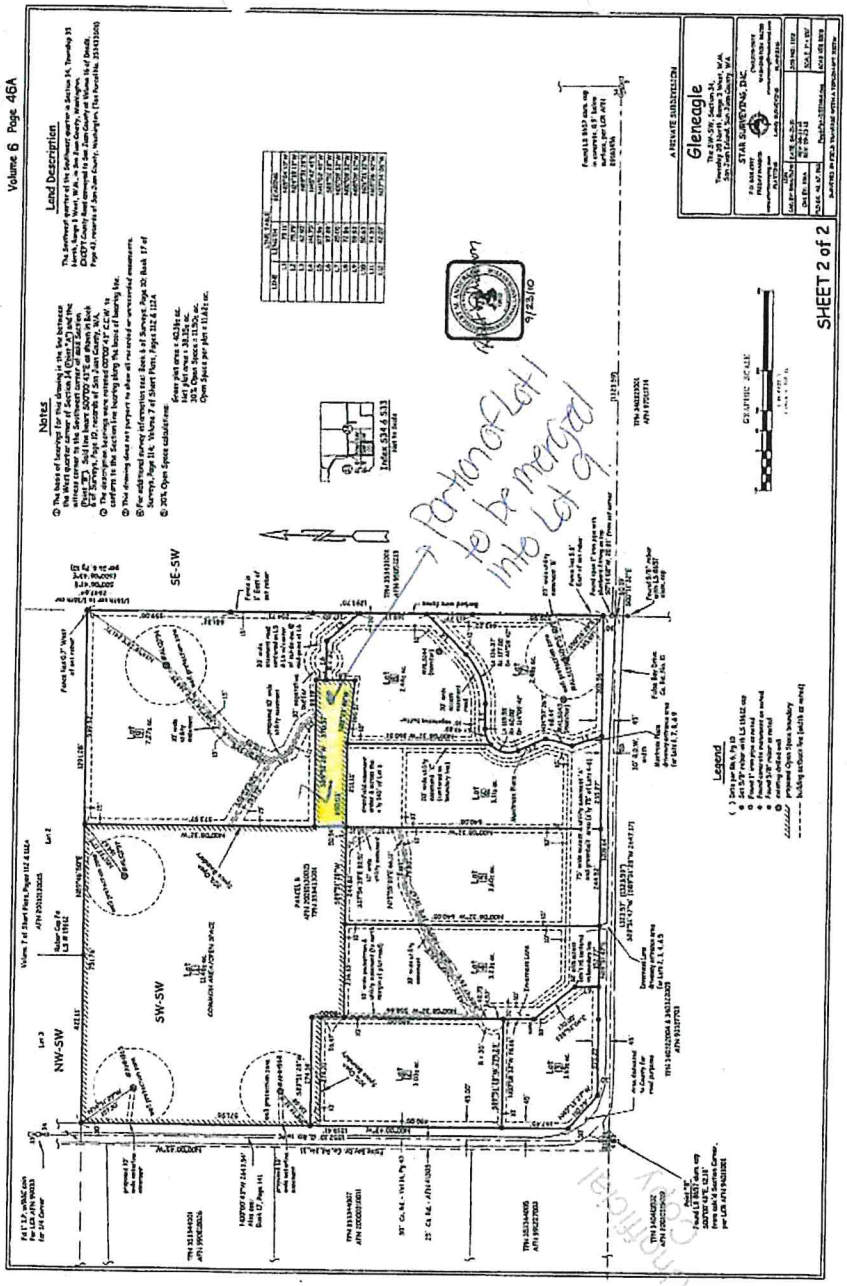
Description of the Proposal

2. The requested plat alteration would:

> Merge a .71-acre portion of Lot 1, a jointly owned common area/open space lot (TPN 353452001000), into Lot 9 (TPN 353452009000), a residential lot, as marked on sheet 2 of 2 of the existing Gleneagle plat drawings included in the record as part of Ex. 1. *(Ex. 1, application materials, cover letter from Ms. Shaw, marked plat drawing highlighting 'Portion of Lot 1 to be merged into lot 9'; Staff Report, page 1).*
>
> The plat alteration would reconfigure Lots 1 and 9, resulting in the following changes in size for each lot *(Staff Report, page 1; Ex. 1, Ms. Shaw's cover letter, on page 3)*:

	Existing Size	*Size after Plat Alteration*
Lot 1	11.48 acres	10.77 acres
Lot 9	7.27 acres	7.98 acres

For the reader's convenience, the applicant's drawing highlighting the area affected by the plat alteration is provided on the following page:


Volume 6 Page 46A
Land Description
Notes
Gleneagle
STAR SURVEYING, INC.
SHEET 2 of 2
Portion of Lot 1 to be merged into Lot 9
9/23/10
SE-SW
SW-SW
NW-SW
Legend

3. The application materials explain that the pending plat alteration is requested to correct an inadvertent error, where the owner of the parent parcel for the Gleneagle Subdivision obtained a building permit and constructed a new barn/garage[1] before final subdivision instruments were recorded, resulting in a situation where the barn/garage is now located on a portion of the Common Area for the subdivision, known as Lot 1, instead of the applicant/owner's private residential property, known as Lot 9. *(Ex. 1, application materials, cover letter, on page 2; Staff Report, page 1; Testimony of Ms. Thompson).*

4. The Gleneagle Subdivision was recorded in October of 2010. *(Ex. 1, application materials, particularly sheet 1 of the recorded Gleneagle Subdivision legal instrument).* The plat has 9 lots, 8 residential lots with one lot designated as common area/open space.

5. The Gleneagle Subdivision shows the total plat area is just over 40 acres, the net plat area is just over 38 acres, and the 30% open space calculation on the face of the plat, on Sheet 2 of 2, shows 11.50 acres. The face of the plat, on Sheet 1 of 2, includes Restriction No. 12, which reads as follows: *"In Rural Farm Forest land-use districts, no more than thirty percent of the area of a parcel shall be covered by impervious surfaces, exclusive of roads and driveways."*

6. At the public hearing, Ms. Thompson confirmed that applicable County open space requirements will be satisfied, even if this plat alteration application is approved. Her statement is correct, and the applicants and all owners of lots in the Gleneagle Subdivision are deemed fully advised and informed that Gleneagle plat Restriction No. 12 referenced above, as well as SJCC 18.70.060(B)(9) mandates that in Rural Farm Forest districts – like the area where the Gleneagle plat is located – no more than 30% of the area of a parcel shall be covered by impervious surfaces, exclusive of roadways and driveways.

7. The requested plat alteration will not increase the number of buildable lots within the plat – the lot count will remain the same as it is today. The open space requirements applicable to development on each lot will also remain the same. The prohibition on residential development on Lot 1 remains the same. *(See Plat Restriction No. 11).* Given the cumulative effect of Lot 1 remaining as designated open space and the restriction on the amount of land that can be developed on each residential lot as referenced above, the Examiner finds and concludes that far more than 30% of the plat area will remain as undeveloped open space, even after approval of this requested plat alteration. Accordingly, the requested plat alteration will not result in changes that are contrary to applicable county codes and policies, or the public interest.

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[1] The structure is called a barn throughout the Staff Report but is referenced as both a barn and a garage in the application materials *(See Ex. 1, cover letter, on page 2).* The Examiner takes the terms to mean just one structure, now standing on a portion of Lot 1, immediately south of existing Lot 9, on the strip of land to be merged into Lot 9 following approval of this plat alteration request.

Process, review, notices, and no opposition

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

9. Ms. Thompson confirmed that all applicable notice, posting, and publication requirements have been satisfied for this application. *(See Exhibits 2 and 3; Staff Report, page 2; Testimony of Ms. Thompson).*

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

How the application meets approval criteria

11. Evidence in the record credibly established that the pending plat alteration application meets all applicable approval criteria and should be approved. No one opposed the application. 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.

12. 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 were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement 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).*

13. Based on the application materials submitted on January 21, 2020, all of the owners of all of the lots in the Gleneagle Subdivision agreed to support the pending plat alteration request. *(Staff Report, page 2; Testimony of Ms. Thompson; Ex. 1, application materials, Agent Authorization forms signed by Michel and Patricia Aiello, and Scott Sisson, as Managing Member of Windward North LLC, designating Ms. Shaw as Agent to apply for the underlying plat alteration at issue in this matter).*

14. When the application was first submitted, there were only three different owners for all nine lots in the subdivision. Lots 4, 5, 6, 7, 8, and 9 were owned by the named-applicant, Windward North, LLC, which is an entity apparently owned and controlled by Scott and Jodi

Sisson. *(Ex. 1, application materials, cover letter, page 1; Ex. 1, notarized 'Agent Authorization' form, and 'Acknowledgment Form for LLC' showing that Scott Sisson is the Managing Member of the Windward North LLC).* Lots 2 and 3 are owned by Michel and Patricia Aiello. Lot 1, the designated Common Area, is owned by the Gleneagle Homeowners Association, which was comprised of just the Aiello's and the Sisson's as the only owners of lots in the entire plat. Accordingly, the application materials substantially satisfy signature requirements found in SJCC 18.70.080(A)(1).

15. At the public hearing, Ms. Shaw disclosed that some of the lots may be sold to other owners before the requested plat alteration might be approved and recorded. The Examiner reviewed online property records for the parcels in the Gleneagle Subdivision and discovered that Lot 4 sold to Stephen and Jeannie Collier in January 26, 2020, just after the application was submitted, and Lot 7 sold to Victoria Eakin in March of 2020. *(See San Juan County Assessor records for Lot 4 (TPN 353452004000) and Lot 7 (TPN 353452007000)).*

16. Moving forward, when this plat alteration moves to the recording phase, County staff must ensure that sufficient and correct owner signatures are obtained, in accord with then applicable recording requirements. It appears this may not be an issue, as the Sisson's and the Aiello's still own a majority of lots in the HOA, which owns Lot 1, and the Sisson's still own Lot 9. But, all owners of all residential lots appear to hold an interest in Lot 1, meaning all then-current owners may need to sign final recording instruments. (*See SJCC 18.70.080(A)(6), which provides in part that "All persons with an ownership or security interest in property to be altered must sign the altered plat").*

17. 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 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.*

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 not within a designated

shoreline area, so 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 page 3).* The Examiner concurs, and finds that the application satisfies approval criteria(4)(a).

19. No members of the public, neighbors, or other outside reviewing authorities submitted any comments questioning or opposing the proposed plat alteration. The requested plat alteration would eliminate potentially confusing property interests and possible waste if the Sisson's had to remove their barn structure from its current location where it was inadvertently built before the final plat records and surveys were completed. Repeating findings noted above – the requested plat alteration will not increase the number of buildable lots within the plat and the lot count will remain the same as it is today. The open space requirements applicable to development on each lot will also remain the same. The prohibition on residential development on Lot 1 remains the same. *(See Plat Restriction No. 11).* Given the cumulative effect of Lot 1 remaining as designated open space and the restriction on the amount of land that can be developed on each residential lot as referenced above, the Examiner finds and concludes that far more than 30% of the plat area will remain as undeveloped open space, even after approval of this requested plat alteration. Accordingly, the requested plat alteration will not result in changes that are contrary to applicable county codes and policies, or the public interest. Based on these facts and others included in the record, including without limitation 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).

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.

21. The Staff Report explains that there is no financial gain or loss to any persons residing in the subdivision, and that at the time of the application, all owners of all lots agreed to pursue this requested plat alteration. The ownership interests of each lot owner in the common area, Lot 1, remains unchanged. Their potential obligation to share in any costs associated with removing the existing barn from its current location in a designated open space area where residential structures are prohibited (however tenuous) is eliminated through approval of this plat alteration. Accordingly, approval criteria in (4)(d) either does not apply and has no relevance to this application, or if it does, based on facts set forth above, it is hereby deemed satisfied.

22. SJCC 18.70.080(A)(6) provides 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)(l)(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 (emphasis added); and altered plats shall only alter or supersede the original plat in the specific ways approved by the Examiner in this Decision. Conditions of approval have been included to assure compliance with these code requirements for all plat alterations.

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 applicant's requested change to the Gleneagle Subdivision, originally created in 2010, meets 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.

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 requested plat alteration meets all applicable review criteria. Therefore, the requested plat alteration is approved, as reflected on the "Plat Alteration of Gleneagle" draft instrument revised 1/17/2020 and prepared by Holman Land Surveying, Inc. *(included in the Record as part of Ex. 1),* subject to the following Conditions of Approval:

1. Consistent with SJCC 18.70.080(A)(6), 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 *(See SJCC 18.70.080(A)(6))*; and

3. The drawing depicting the .71-acre area affected by this application is republished on page 4 of this Decision. The plat alteration approved in this Decision is expressly limited to alter or supersede the existing plat in the specific

ways approved and described herein, particularly the proposal description provided in Finding No. 2 above, repeated below, as depicted on the preliminary plat alteration instrument prepared by Holman Land Surveying, revised 1/17/2020, included in the Record as part of *Exhibit 1:*

> Merge a .71-acre portion of Lot 1, a jointly owned common area/open space lot (TPN 353452001000), into Lot 9 (TPN 353452009000), a residential lot, as marked on sheet 2 of 2 of the existing Gleneagle plat drawings included in the record as part of Ex. 1. *(Ex. 1, application materials, cover letter from Ms. Shaw, marked plat drawing highlighting 'Portion of Lot 1 to be merged into lot 9'; Staff Report, page 1).*
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> The plat alteration would reconfigure Lots 1 and 9, resulting in the following changes in size for each lot *(Staff Report, page 1; Ex. 1, Ms. Shaw's cover letter, on page 3)*:

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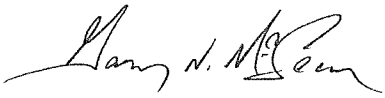
ISSUED this 17th Day of April, 2020



Gary N. McLean
Hearing Examiner

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.