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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: )

**GLORIA & CARL EINFELD (LOT 41)** )

AND )

**PAUL & THERESA JACKSON (LOTS )  
42, 43),** )

Applicants/Owners, )

KIM BOURNS, STAR SURVEYING, )

Applicants' Agent )

*(Affected Parcels/Project Site:  
Tax Parcel Nos. 462250041000,  
462250042000, and 462250043000, also  
known as Lots 41, 42, and 43 of the  
Driftwood Shores of Henry Island Plat  
on Henry Island).* )

File No. LANDUSE-21-0239

**DECISION APPROVING  
APPLICATION FOR PLAT  
ALTERATION**

S.J.C. DEPARTMENT OF

FEB 28 2022

COMMUNITY DEVELOPMENT

**I. SUMMARY OF DECISION.**

The applicants satisfied their burden of proof to obtain approval of the requested plat alteration application, which would: divide the middle of three abutting lots, lot 42, down the center and attach half of the former Lot 42 to the adjacent parcels on either side, Lots 41 and 43, resulting in just two lots, eliminating Lot 42. The applicants are the owners of the three affected parcels and obviously 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.

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**DECISION APPROVING THE EINFELD/JACKSON  
PLAT ALTERATION – LANDUSE-21-0239**

Page 1 of 9

**GARY N. MCLEAN**  
HEARING EXAMINER FOR SAN JUAN COUNTY

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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 December 22, 2021, using teleconference equipment operated by county staff. Staff confirmed that no one other than hearing participants mentioned herein contacted staff to express an interest in providing testimony or participating in the public hearing.

1 Julie Thompson, the designated County Planner assigned to review the pending  
2 application, appeared and provided testimony under oath during the hearing, briefly  
3 summarizing the application and her recommendation of approval. The applicants' agent,  
4 Ms. Bourns, appeared during the hearing and responded to questions from the Examiner. No  
one else asked to speak during the hearing for this matter. No one submitted any written  
questions or challenge regarding any of the analysis included in the Staff Report. No one  
opposed the application, at the hearing or in writing.

5 The Staff Report, prepared by Ms. Thompson, with 4 pages, dated December 13,  
6 2021, and the 6 Exhibits attached to and described on page 4, are included as part of the  
Record for this matter. The Exhibits are as follows:

- 7 1. Application materials;
- 8 2. Proposed site plan for plat alteration prepared by Star Surveying, dated  
9 10/25/21;
- 10 3. Email comment and response, to/from County surveyor and applicant's  
11 surveyor, re: additional details required on final map used for recording;
- 12 4. Legal ad, published November 17, 2021;
- 13 5. Public Notices, materials confirming mailing & posting of legal notice; and
- 14 6. Receipt confirming payment of application fees, dated October 27, 2021.
- 15 7. Shoreline Permit and Joint Use Dock Agreement for dock built on Lot 43,  
16 with use rights shared by owners of Lot 42, from 1990 [*Submitted by County  
17 Staff after the public hearing, to address joint use dock questions raised  
during the hearing.*]

18 The Examiner held the record open for additional information from the parties to  
19 address questions about the joint use dock on Lot 43. Having received nothing from either  
20 applicant, and only receiving Exhibit 7 from County Staff, the record is now closed and this  
21 Decision is in order. Upon consideration of all the evidence, testimony, codes, policies,  
22 regulations, and other information contained in the file, particularly the unchallenged Staff  
23 Report, the undersigned Examiner issues the following findings, conclusions and Decision.

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**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.

***Background; Description of the Proposal***

2. The applicants, Gloria & Carl Einfeld (owners of Lot 41) and Paul & Theresa Jackson (owners of Lots 42, 43) are the owners of three abutting lots in the Driftwood Shores of Henry Island plat, located on the northeast shore of what is known as Little Henry Island.

3. Kim Bourns, from Star Surveying, served as the Applicants' Agent through the application and hearing process.

4. The three abutting lots are generally situated with lot 41 on the west, lot 42 in the middle, and lot 43 on the east. The lots are currently assigned Tax Parcel Nos. 462250041000, 462250042000, and 462250043000. *(Staff Report; Ex. 1, Application materials; Ex. 2, proposed site plan).*

5. Lots 41 and 43 are both developed for single family residential use. Lot 42 is undeveloped. All three lots are heavily vegetated. *(Staff Report, page 1).*

6. Lot 41 has a joint use dock agreement with its neighboring lot, Lot 40, to the west where a dock is now located. Lot 43 has a dock located along its shoreline, with a joint use dock agreement for such dock with Lot 42. *(See Ex. 7).* Both Lots 42 and 43 are now owned by the same people, the Jacksons, who are applicants in this matter. *(Staff Report, page 1; Testimony of Ms. Thompson).*

7. In this matter, the applicants seek approval to divide the middle lot, Lot 42, roughly in half, with half to be attached to the abutting lots on each side, Lots 41 and 43. Lot 42 would be eliminated. This plat alteration will reduce the total number of lots now in the affected subdivision by one. *(Staff Report, page 1; Ex. 2, proposed site plan).*

8. The application addressed in this decision is a long-plat, aka "subdivision" alteration request, which requires a public hearing before and a decision by the County's Hearing Examiner. *See SJCC 18.70.080(A)(3).* In accord with Washington law and County codes, the terms "subdivision", "long-subdivision", "plat", and "long-plat" mean the same thing.

1 9. The requested plat alteration will not result in changes that are contrary to applicable  
2 county codes and policies, or the public interest. (*Staff Report*).

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

4 10. The applicants initiated their plat alteration process by submitting application  
5 materials in late October of 2021 with the materials deemed complete for purposes of review  
6 and vesting on the same date. (*Staff Report, pages 1 and 2; Ex. 1, Application materials;*  
7 *Exs. 4 and 5, Legal ads and notices*).

8 11. Ms. Thompson confirmed that all applicable notice, posting, and publication  
9 requirements have been satisfied for this application, and that the County received no  
10 comments opposing the requested plat alteration. (*See Exhibits 4 and 5, re: noticing; Staff*  
11 *Report, page 4; Testimony of Ms. Thompson*).

12 12. During the hearing, the Examiner asked the parties if the requested plat alteration  
13 could jeopardize the legal status of the “joint use dock” now located on Lot 43, because after  
14 this alteration is approved, the dock would no longer be under “joint use” but would only  
15 serve a single parcel, i.e. the expanded Lot 43.

16 13. The Examiner held the record open to allow the parties to supplement the record with  
17 information that could address the joint use dock issue, and only received a single item from  
18 County Staff, and nothing from either applicant. (*Ex. 7*). In the end, the status of the joint  
19 use dock does not serve as a basis to deny this requested plat alteration. However, the owners  
20 of Lot 43 should be fully informed and aware that the dock on Lot 43 may be deemed a legal  
21 nonconforming structure after this alteration is recorded, and any proposed modifications to  
22 such dock will need to comply with County codes in effect at such time. Further, to avoid  
23 future questions or possible disputes regarding access to the dock on Lot 43, the applicants  
24 may find it helpful to confer with advisors of their choosing to generate a legal instrument  
25 clarifying or releasing access rights to the dock that might flow from ownership of a large  
26 portion of Lot 42.

14. 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 during the public hearing.

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

15. A preponderance of evidence in the record credibly established that the pending long  
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.

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

11 17. Based on the application materials, all of the owners of the affected lots fully support  
12 the pending plat alteration request. (*Ex. 1, application materials*). County Staff confirmed  
13 that there are no restrictive covenants that would be violated by this proposed long-plat  
14 alteration. (*Staff Report, page 2*). Accordingly, the pending application satisfies all  
15 requirements found in SJCC 18.70.080(A)(1).

16 18. As noted above, Staff confirmed that proper notices were published, mailed, and  
17 posted in accord with applicable County codes, and the public hearing for this matter occurred  
18 on December 22, 2021, satisfying requirements found in SJCC 18.70.080(A)(2).

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

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

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

25 *b. The application satisfactorily addresses the comments of the reviewing authorities and is*  
26 *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.*

27 20. With respect to the plat alteration language found in SJCC 18.70.080(A)(4)(a), the  
28 Staff Report credibly explains that: the applicant has provided the information necessary to  
29 review the proposal under such requirements; the proposal is within the county’s designated  
30 shoreline area, and it is in general compliance with the County’s Shoreline Master Program;  
31 plat alterations are not subject to the State Environmental Policy Act; and that because land

1 division regulations were created to further the purposes and objectives of the County's  
2 Comprehensive Plan, and this application is consistent with the County's plat alteration  
3 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).

4 21. No members of the public, neighbors, or other outside reviewing authorities submitted  
5 any comments questioning or opposing the proposed plat alteration. Following approval of  
6 this long-plat alteration, the number of buildable lots in the affected Subdivision will be  
7 reduced by one. The requested plat alteration will not result in changes that are contrary to  
8 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).

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

12 23. The Staff Report explains that none of the land affected by this proposed plat  
13 alteration is covered by any dedication to the general use of persons in the same subdivision.  
Accordingly, approval criteria in (4)(d) either does not apply and has no relevance to this  
14 application, or if it does, based on facts set forth above, it is hereby deemed satisfied.

15 24. SJCC 18.70.080(A)(6) provides that: after approval of this requested plat alteration,  
16 the applicant shall produce a revised drawing of the approved alteration (See SJCC  
17 18.70.050(C)(2)(I)(iii)), to be processed and recorded in the same manner as set forth in the  
18 county's code for final plats; all persons with an ownership or security interest in property to  
19 be altered must sign the altered plat (emphasis added); and altered plats shall only alter or  
20 supersede the original plat in the specific ways approved by the Examiner in this Decision.  
Comments from the County's Surveyor, Mr. Stone (Ex. 3) noted several details that must be  
included on the final plat alteration drawings, before recording. These changes are clearly  
identified and should be easily accomplished. Conditions of approval have been included to  
assure compliance with these code requirements for all plat alterations.

## 21 V. CONCLUSIONS OF LAW.

22 1. Based on testimony and evidence in the Record, particularly the unchallenged Staff  
23 Report, and all findings set forth above, the Examiner concludes that the pending plat  
alteration application is adequately supported by a preponderance of credible evidence.

24 2. The applicants' requested change to the affected subdivision, dividing Lot 42 down  
25 the center and attaching each half to the adjacent parcels on either side, Lots 41 and 43, as

1 depicted on the site plan included as part of the record meets the criteria for approval of a plat alteration.

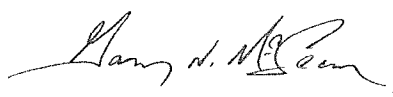
2 3. Any legal conclusions or other statements made in previous or following sections of  
3 this document that are deemed conclusions of law are hereby adopted as such, and are  
4 incorporated herein by this reference.

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

6 Based on evidence included in the record for this matter and all findings and  
7 conclusions as set forth above, the requested plat alteration meets all applicable review  
8 criteria. Therefore, the requested plat alteration is approved, as reflected on the proposed  
9 Preliminary Plat Alteration of Lots 41, 42, and 43, Driftwood Shores of Henry Island Plat,  
included in the record as *Exhibit 2*, dated 10/25/21 and prepared by Star Surveying, Inc.,  
subject to the following Conditions of Approval:

- 10 1. Consistent with SJCC 18.70.080(A)(6), the applicant(s) shall produce a  
11 revised drawing of the approved alteration to be processed and recorded in the  
12 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)*);
- 13 2. The revised drawing submitted for recording must include all details noted by  
14 the County's Surveyor in *Ex. 3*.
- 15 3. All persons with an ownership or security interest in property to be altered  
16 must sign the altered plat (*See SJCC 18.70.080(A)(6)*); and
- 17 4. The plat alteration approved in this Decision is expressly limited to alter or  
18 supersede the existing Driftwood Shores of Henry Island Plat in the specific ways  
19 approved and described herein.

20 ISSUED this 28<sup>th</sup> Day of February, 2022



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22 Gary N. McLean  
23 Hearing Examiner



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**Appeals**

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.