SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s):	King's Ransome Cove, LLC Francine Shaw P.O. Box 2112 Friday Harbor, WA 98250
File No.:	PLPALT-12-0001
Request:	Plat Alteration Rehearing
Parcel No:	461550014, 462212001, 462221002, 462221003, 462221004
Location:	Henry Island
Summary of Proposal:	Re-arranging lot lines and including new parcels in plat.
Land Use Designation:	Residential Rural – Upland Conservancy - Shoreline
Hearing Date:	February 25, 2013
Application Policies and Regulations:	SJCC 18.70.080
Decision:	Approved with conditions.

BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN

Phil Olbrechts, Hearing Examiner

RE: Kings Ransome Cove, LLC Plat Alteration (PLPALT-12-0001)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION ON REHEARING.**

A final decision was issued on the above-captioned matter on December 2, 2013. The application was reheard on February 25, 2013. The findings, conclusions, decision and conditions of the December 2, 2013 decision are largely re-adopted into this second final decision with one major exception. It is now determined that the Klondike (HE 13-06) examiner decision does create a binding precedent on the applicability of shoreline regulations that apply to "new subdivisions". These shoreline regulations will apply to any plat alteration involving the creation of one or more new waterfront lots. The "new subdivision" regulations apply to the subject application. Consequently, the proposed plat alteration will set aside shoreline common areas and depict shoreline setbacks as required by SJCC 18.50.330(B)(6) and 18.50.330(D)(3).

PROCEDURAL BACKGROUND

The above-captioned matter was reheard due to potential jurisdictional problems with the alternate examiner who conducted the hearing for the December 2, 2013. The Examiner who conducted the hearing for the December 2, 2013 decision was not specifically appointed by the San Juan County Council to hold hearings, although she was only conducting the hearing on behalf of the appointed (undersigned) examiner and the appointed examiner made and wrote the final decision.

At the rehearing the administrative record of the December 2, 2013 decision was incorporated into the rehearing record. The administrative record of the December 2, 2013 hearing is comprised of the six exhibits identified in the December 2, 2013 decision in addition to the hearing transcript of that decision.

At the February 25, 2013 rehearing, a July 9, 1999 memorandum from Grant Beck to Randy Gaylord was admitted as Exhibit 7. No other exhibits were added to the record.

TESTIMONY AT REHEARING

Lee McEnery clarified that the common area was made by the simple land division, not the original division of the plat.

Stephanie Johnson O'Day, representing the applicant, noted there were four parcels of land involved in the plat alteration. The configuration at the last hearing isn't in the staff report. Lot 14 has a house on it. Lot 37 is where the home will be built. Lot 37 was cleared years ago and then the project was stopped. The plat alteration is adding three lots to the plat. Ms. Johnson O'Day said the applicant wanted to set the 50 foot setback for Lot 37. Wick Dufford in the Klondike decision had requested the setting of all setbacks for that plat alteration. Ms. O'Day noted that if the lot line adjustment process is not construed as requiring the setting of setbacks it should be construed as authorizing the setting of setbacks and that setbacks should be set in this application.

Lee McEnery noted that Klondike was distinguishable because it involved so many changes that it had to be construed as a plat alteration as opposed to a lot line adjustment. Carefree didn't have a land division and it shouldn't have set setbacks.

FINDINGS OF FACT

1. Findings Adopted. The findings of fact of the December 2, 2012 final decision on the above-captioned matter in addition to the findings included in the "Procedural Background" section of this decision are adopted by this reference as if set forth in full. In addition, Conclusion of Law No. 10 of the December 2, 2012 decision expressed some uncertainty as to the origin of the common area of the subject plat. Staff clarified at the rehearing that the common area was created by the adjoining two lot short subdivision identified as SLD No. 2012-0501009 in Finding of Fact No. 3 in the December 2, 2012 decision. This clarification is adopted as an additional finding of fact.

CONCLUSIONS OF LAW

1. Conclusions Adopted. Conclusions of Law No. 1-5, 7, and 8 of the December 2, 2012 final decision on the above-captioned matter are adopted by this reference as if set forth in full.

2. Conclusions Modified. Conclusion No. 6 of the December 2, 2012 final decision is replaced to provide as follows:

> *The County Council has authorized the hearing examiner to make a final decision on the application as authorized by RCW 58.17.330. The Comprehensive Plan does not directly address plat alterations. The 2006 hearing examiner decision, HE 13-06, COL No. 10, concluded that boundary line modifications should be processed as lot line adjustments, which are subject to all of the requirements of Chapter 18.70 SJCC, including the subdivision design and development standards of SJCC 18.70.060 and the shoreline master program. Since staff has not evaluated the proposal for consistency with SJCC 18.70.060 and the shoreline master program, a condition of approval will require the Applicant to demonstrate to staff that the proposal complies with those ~~regulations~~SJCC ~~18.70.060~~. A SEPA DNS was issued for the proposal. Compliance with the*

Shoreline Master Program is discussed below to the extent pertinent. ~~As discussed in the application of SJCC 18.50.330(B)(6), requirements that apply to "new land divisions" or the like do not apply to plat alterations.~~ As conditioned, the criterion quoted above is satisfied.

Normally it would not be appropriate to delegate to staff though the conditions of approval a finding of consistency with all applicable shoreline and subdivision design standards. However, given that the requested lot modification is a relatively minor proposal with no discernible consistency issues with applicable development standards, the issues left to be resolved by staff are sufficiently limited and narrow in scope to be appropriate in his instance.

Conclusions 9, 10 and 11 are stricken and replaced with the following:

As conditioned.

3. Beck Circular Argument. The Grant Beck memo, Ex. 7, contains what he termed a "circular argument" that wasn't adopted by him but is a valid argument that wasn't addressed in the December 2, 2012 final decision. As pointed out in the memo, SJCC 18.70.030(4) requires boundary line modifications that affect platted lot lines to be processed as subdivision alterations pursuant to SJCC 18.70.080(A). SJCC 18.70.080(A), in turn, requires conformance to RCW 58.17.215, which exempts lot line adjustments from plat alteration review requirements. In short, the argument goes that the San Juan code requires boundary line modifications to be processed under state law alteration procedures and state law alterations procedures don't apply to boundary line modifications.

The most obvious response to the circular argument is "why would you designate a process for an application that never applies to it?" Statutes should be interpreted in a manner that all language is given effect and no portion is rendered meaningless or superfluous. *See Manna Funding, LLC v. Kittitas County* ____Wn. App. _____ (2013). If state alteration procedures don't apply to boundary modifications under SJCC 18.70.030(4), SJCC 18.70.030(4) becomes completely meaningless. All boundary line modifications subject to SJCC 18.70.030(4) qualify as lot line adjustments under the plat alteration exemption of RCW 58.17.215. See SJCC 18.20.020; 18.70.030; RCW 58.17.040(6). Consequently, if the state lot line adjustment exemption exempts lot line modifications from plat alteration review under the San Juan County Code, no boundary line modification would ever be subject to plat alteration review.

4. Applicability of Klondike. Although the Klondike examiner decision is of arguable applicability and validity, adherence to precedence in this case necessitates a revision to the December 2, 2013 decision. Upon rehearing it is determined that the "new subdivision" provisions of the shoreline master program **do** apply to the subject application.

In the December 2, 2013 decision the examiner agreed with the Klondike (HE 13-06) examiner decision to the extent that it held that boundary line modifications affecting the lot lines of platted subdivisions must be processed as plat alterations. However, the December 2, 2013 decision noted that plat alteration criteria that expressly applied to "new subdivisions" do not apply to boundary line modifications and that statements in the Klondike decision were dicta and in any event were overruled if they weren't dicta.

At the rehearing Ms. Johnson O'Day noted that the Klondike examiner had in fact applied "new subdivision" provisions to boundary line modifications. Ms. Johnson O'Day is correct that Conclusions of Law No. 12 and 13 of the Klondike decision do in fact apply provisions that only apply to "new subdivisions" to the boundary line modification under consideration. The Klondike examiner expressly determined that the "new subdivision" provisions applied because the modifications resulted in shoreline lots appearing where none had been located before as well as new development within the shoreline area.

The Klondike decision is arguably distinguishable because it involved the introduction of seven new lots into the shoreline via a plat alteration. In this case the only new waterfront lot created by the plat alteration was the extension of "Parcel A" to the shoreline. The area where Lot 37 will be located, where the applicant is seeking to vest a 50 foot setback, was subject to subdivision review just last year in SLD No. 2012-0501009. For whatever reason, the applicant chose not to identify and vest its setback in that short plat application, as authorized by *Noble Manor v. Pierce County*, 133 Wn.2d 269 (1997).

The interpretation of "new subdivision" in the Klondike decision is also debatable. A "new" subdivision strongly suggests an application for a subdivision as opposed to a plat alteration. However, there is some merit to the Klondike examiner's policy basis for his interpretation. As noted in his decision, a property owner could avoid the common area requirements of SJCC 18.50.330(B)(6) by platting several upland lots and then subsequently transforming them to waterfront lots.

As noted in the December 2, 2013 decision, the current examiner will only overrule past precedent if the precedent is clearly erroneous. Although the Klondike decision as it regards "new subdivision" provisions is debatable, it is not clearly erroneous. It is a reasonable interpretation of an ambiguous code requirement. As such it will be followed in this case.

Adherence to precedence is a particularly important in this case because there has been little consistency over the years on the processing of platted boundary line modifications. As noted in the 1999 Beck memo, Ex. 7, boundary line modifications were processed as plat alterations from the date of adoption of the Uniform Development Code to the date of the memo. The 1999 Prosecuting Attorney's opinion, Ex. 6, that boundary line modifications should not be processed as plat

alterations presumably reversed the practice and staff from that point forward did not process boundary line modifications as plat alterations. The hearing examiner reversed course again in the Klondike decision and held that boundary line modifications should be processed as plat alterations.

The County's position on this case is yet another change in position on the review process applicable to boundary line modifications. Staff have taken the position that Klondike should only be read as requiring plat alteration review for plats involving an extensive re-arrangement of lot lines and did not require plat alteration review for this application. As noted in Conclusion of Law No. 6 of the Klondike decision, the examiner's determination on the applicability of plat alteration review was solely based upon County code, specifically SJCC 18.70.030(4). Nowhere in the Klondike decision did the examiner suggest or imply that the applicability of SJCC 18.70.030(4) is dependent upon the degree of modification.

Although the Klondike examiner did not consider the degree of modification in his determination that platted boundary modifications are subject to plat alteration review, that door was left somewhat open on his determination that "new subdivisions" include new waterfront lots created by a plat alteration. In Conclusion of Law No. 13, the examiner noted that the application involved a "new subdivision" because it created seven new lots along the shoreline that had not previously existed. It is possible that the examiner would have ruled differently if the number of new waterfront lots were less, although he made no express comments on this issue.

Basing the applicability of "new subdivision" provisions to plat alteration based upon the degree of modification would not be a valid interpretation. In order to provide some degree of certainty and predictability to the application of subdivision standards, it is concluded that any platted boundary modification that involves the creation of one or more new waterfront lots shall qualify as a "new subdivision" for purposes of the County's shoreline regulations. Basing the applicability of code provisions on the degree of lot line modifications has already been rejected by the courts. *See City of Seattle v. Crispin*, 149 Wn. 2d 896 (2003). In *Crispin*, the court rejected the processing of lot line modifications as subdivisions if the lot lines involved "substantial changes". 149 Wn.2d at 212-13. The court reasoned that such a rule would not be workable and would perhaps not be constitutional due to the ambiguity of determining what changes were substantial enough to trigger subdivision review. The court stated that *"[w]e have recognized that the regulation of land use must proceed under an express written code and not be based on ad hoc unwritten rules so vague that a person of common intelligence must guess at the law's meaning and application."*

As discussed in Crispin, basing the applicability of "new subdivisions" provisions on the degree of modification will not create a workable or legally defensible standard. To provide clarity and consistency with past examiner decisions, if a platted boundary modification involves the creation of one or more waterfront lots, the entire modification will be subject to all "new subdivision" provisions.

DECISION ON REHEARING

The plat alteration application is approved as proposed by the Applicant with the following conditions/revisions:

1. The Applicant shall demonstrate compliance with chapter 18.70 SJCC, the applicable policies and requirements of RCW 58.17.330, the shoreline master program and the comprehensive plan. Setbacks and common areas shall be identified on the final plat alteration map as required by SJCC 18.50.330(B)(6) and 18.50.330(D)(3).[1] Any dedicated areas that are removed as a result of this condition shall be divided equitably amongst affected lots as required by SJCC 18.70.080(A)(4)(d).
2. This approval shall expire if the subdivision alteration is not recorded within 60 months of the approval date. The final alteration application shall be submitted to the Community Development and Planning Department at least 60 days in advance of the expiration date.
3. All survey standards and requirements shall be complied with pursuant to SJCC 18.70.070F2.
4. The following conditions shall be shown as restrictions on the face of the plat, in addition to those restrictions and dedications required by SJCC 18.70.100:

   This subdivision alteration has been approved by the responsible County officials on the premise that each lot will be occupied by no more than one single-family dwelling and lawfully related outbuildings. No lot shall be otherwise occupied unless the owner can first demonstrate to the County's satisfaction that the provisions for water supply, sewage disposal, circulation, lot size and related planning consideration are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the subdivision Director who shall be responsible for coordinating the review of such requests and for making the required determination.

   There may be additional private conditions, covenants or restrictions in addition to those shown on the face of this plat. Such private conditions may not be shown on plats. Any private deed restrictions are supplemental to the requirements of this Code. The County shall not be party to any private restrictions.

   If during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity

[1] The issue of what to do with existing common areas is purposely not addressed in this decision, since the parties have not had the opportunity to address the issue.

of the find must be halted immediately, and the Administrator must be notified at one.

Dated this 12th day of March 2013.

Phil Olbrechts
County of San Juan Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, 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 requirement may result in dismissal of the 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 consult with a private attorney.

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