

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Peter and Patricia Fitzgerald
528 Oak Street
Petaluma, CA 94952-2725

Agent: Terri Williams
PO Box 1001
Eastsound, WA 98245

File No.: PLPALT-12-0002

Request: Plat Alteration

Parcel No: 160250403 and 160250404

Location: 22 Newton St., Orcas Island

Summary of Proposal: Lot combination

Land Use Designation: Rural Farm Forest

Hearing Date: March 13, 2013

Application Policies and Regulations: SJCC 18.70.080

Decision: Approved subject to conditions.

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Peter and Patricia Fitzgerald	FINDINGS OF FACT, CONCLUSIONS
5 Plat Alteration	OF LAW AND FINAL DECISION.
6 (PLPALT-12-0002)	

7 **INTRODUCTION**

8 The applicant has applied for approval of a plat alteration to combine two lots. The alteration is approved.

9 **TESTIMONY**

10 Lee McEnery stated the only concern with the application was the sewer system; however, the septic tank was inspected and deemed sufficient. The property is not on a shoreline and is merely removing a lot line to make the properties more functional.

11 Teri Williams, applicant's representative, testified that she agrees with the staff report.

12 **EXHIBITS**

13 The February 19, 2013 staff report and attached application materials are admitted into the administrative record as Ex. 1.

14 **FINDINGS OF FACT**

15 **Procedural:**

- 16 1. Applicant. The Applicant is Peter and Patricia Fitzgerald.
- 17 2. Hearing. The Hearing Examiner conducted a hearing on the subject application on March 13, 2013.

18 **Substantive:**

- 19 3. Site and Proposal Description. The Applicants propose to consolidate two adjoining lots owned by them located in the Doe Bay subdivision, located on 22 Newton Street on Orcas Island. Specifically the applicants propose to eliminate the lot line between lots 3 and 4 of Block 4 of the Doe Bay subdivision. Doe Bay subdivision is among the oldest in the county, and is composed of very small lots with platted roads shown on the paper map that were often not developed. Over the years

1 people that have acquired more than one lot in these older subdivisions often make
2 them into one parcel, making a more usable lot. Construction over lot lines is not
3 allowed.

4 4. Characteristics of the Area. Surrounding land uses are residential.

5 5. Adverse Impacts of Proposed Use. No adverse impacts are apparent from
6 the record. The proposal will create a net public benefit under the policies of the
7 Growth Management Act, Chapter 36.70C RCW, by reducing density outside of an
8 urban growth area. As testified by staff, the septic system for the lots has been
9 inspected and found adequate.

10 CONCLUSIONS OF LAW

11 **Procedural:**

12 1. Authority of Hearing Examiner. SJCC18.70.080(A)(3) authorizes the hearing
13 examiner to hold hearings and issue final decisions on proposed plat alterations.

14 **Substantive:**

15 2. Zoning Designation. The subject property is designated as Rural Farm Forest.

16 3. Permit Review Criteria. SJCC 18.70.080(A)(4) establishes the criteria for
17 approval of plat alterations. Applicable regulations are quoted below in italics and
18 addressed in corresponding conclusions of law.

19 **San Juan County Code Regulations**

20 **SJCC 18.70.080(A)(1):** *Alterations of subdivisions shall be processed in accordance
21 with RCW 58.17.060 and 58.17.215 through 58.17.218. Alteration applications shall
22 contain the signatures of the majority of those persons having an ownership interest
23 in lots, tracts, parcels, sites or divisions in the subject subdivision or portion to be
24 altered.*

25 *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).*

4. The Application was filed by the agent for the owners of the lots subject to the
proposed plat alteration. The staff report notes that no covenants would be violated
by the alteration and there is no evidence to the contrary. Accordingly, this
requirement is satisfied.

1 **SJCC 18.70.080(A)(5)(a):** *The application meets the requirements of this chapter,*
2 *and complies with the applicable policies and requirements of RCW 58.17.330, the*
3 *Shoreline Master Program, the State Environmental Policy Act, and the*
Comprehensive Plan

4 5. As noted in the criterion quoted above, plat alterations must meet all requirements
5 of “this chapter”, which includes all requirements applicable to preliminary plat
6 applications. Since the proposal only involves the elimination of a lot line, it is fairly
7 clear that demands on public services and infrastructure will be reduced. As noted in
8 Finding of Fact No. 5, septic has been inspected and found adequate. Consequently,
9 it can be determined that the proposal will be served by adequate infrastructure and
10 services as generally required by Chapter 18.70 SJCC. The comprehensive plan does
not dictate any minimum densities for the applicable land use designation and no
other policies are implicated given the minor nature of the application. The alteration
is not located within the shoreline jurisdiction of the Shoreline Management Act.
This plat alteration decision is supported by hearing examiner written findings and
conclusions as required by RCW 58.17.330. The criterion is satisfied.

11 **SJCC 18.70.080(A)(5)(b):** *The application satisfactorily addresses the comments of*
12 *the reviewing authorities and is in the public interest (RCW 58.17.100, 58.17.110,*
13 *and 58.17.215)*

14 6. It does not appear that any agencies have commented on the subdivision and no
15 comments would be anticipated for such a minor plat alteration. The proposal is in
16 the public interest because it facilitates infill development of an improved subdivision
17 without any associated adverse impacts and it also reduced density outside of an
urban growth area as encouraged by the Growth Management Act, Chapter 36.70A
RCW.

18 **SJCC 18.70.080(A)(4)(c):** *Any outstanding assessments (if any land within the*
19 *alteration is part of an assessment district) are equitably divided and levied against*
20 *the remaining lots, parcels, or tracts, or are levied equitably on the lots resulting*
from the alteration; and

21 7. The staff report notes there are no assessments that will be impacted by this
alteration.

22 **SJCC 18.70.080(A)(4)(d):** *Any land within the alteration that contains a dedication*
23 *to the general use of persons residing within the subdivision is divided equitably*

24 8. The plat map in the application materials attached to the staff report does not
25 reveal any dedications within the alteration area that are for the general use of persons
residing with the Doe Bay subdivision.

DECISION

The proposed alteration is consistent with all the criteria for plat alteration and is approved, subject to the following conditions:

1. This subdivision alteration approval allows for the consolidation of Lots 3 and 4 of Block 4 of the Doe Bay subdivision, as proposed in the plat alteration application dated 12/12/12 in Ex. 1. 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.

2. The septic system must be inspected to confirm non-failing, prior to recording the map.

3. All survey standards and requirements shall be complied with pursuant to SJCC 18.70.070F2.

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:

4. 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 considerations are adequate to serve the proposed use. Compliance with this provision shall be effected by written application to the Subdivision Administrator who shall be responsible for coordinating the review of such requests and for making the required determination.

5. There may be additional private conditions, covenants or restriction 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.

6. If during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the Administrator must be notified at once.

Dated this 27th day of March 2013.


Phil A. Olbrechts

County of San Juan Hearing Examiner

1 **Effective Date, Appeal Right, and Valuation Notices**

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

8 This land use decision is final and in accordance with Section 3.70 of the San Juan
9 County Charter, such decisions are not subject to administrative appeal to the San
10 Juan County Council. See also, SJCC 2.22.100

11 Depending on the subject matter, this decision may be appealable to the San Juan
12 County Superior Court or to the Washington State shorelines hearings board. State
13 law provides short deadlines and strict procedures for appeals and failure to timely
14 comply with filing and service requirement may result in dismissal of the appeal. See
15 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
16 promptly review appeal deadlines and procedural requirements and consult with a
17 private attorney.

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