



October 13, 2023

San Juan County Council
c/o Department of Community Development
sent via email to: Sophia Cassam, sophiac@sanjuanco.com

Re: Docket Request 23-0003 (Southwell), Public Comments

Dear County Council Members,

I am writing with public comments from Friends of the San Juans regarding Annual Docket Request 23-0003, Southwell proposed map amendment. These comments supplement comments previously submitted into the record on August 16, 2023 (copy attached for ease of reference).

Our prior comments noted that we agree with the recommendation from Department of Community Development (DCD) staff to deny Docket Request 23-0003 because it does not satisfy the criteria for approval set forth in the County Code, and because the proposal would violate the Comprehensive Plan and Growth Management Act. In addition, we provided legal authority and analysis of how this proposal would constitute illegal spot zoning if approved.

I am writing now to expand upon our comments, to address the Planning Commission's findings and recommendation on this docket request. The Planning Commission failed to make any findings addressing the criteria applicable to proposed map amendments. As DCD staff has explained in multiple memoranda and presentations, a comprehensive plan map amendment request may only be granted if all of the criteria set forth at San Juan County Code 18.90.030(F)(1) are satisfied. The Planning Commission struggled with the criteria and were unable to find that *any* of the criteria were met. However, the Planning Commission desired to recommend approval of the request notwithstanding their inability to find that any criteria were satisfied. The Planning Commission then directed DCD staff to remove proposed findings from the draft resolution that would have addressed the applicable criteria, and instead made their recommendation without any reference to the mandatory criteria, intentionally disregarding the requirements of the County Code and Growth Management Act.

Arbitrary and capricious zoning decisions are subject to reversal upon judicial review. *Teed v. King County*, 677 P.2d 179, 36 Wn.App. 635 (Wash. App. 1984), citing *Barrie v. Kitsap Cy.*, 93 Wash.2d 843, 613 P.2d 1148 (1980). An "arbitrary and capricious" action is conduct that is "willful and unreasonable without consideration and in disregard of facts or circumstances." *Id.*

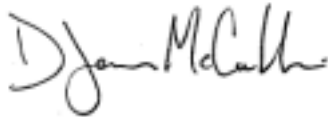
The Planning Commission's recommendation to approve docket request 23-0003, despite its inability to find that any of the required criteria are satisfied, is clearly arbitrary and capricious. Notably, for docket requests 23-0004 and 23-0005 the Planning Commission made findings addressing the required criteria. The Planning Commission's intentional removal of any reference to the required criteria from its findings solely for docket request 23-0003 emphasizes their intentional disregard of the applicable criteria for this proposal, in a manner which is blatantly "willful and unreasonable without consideration and in disregard of facts or circumstances."

I urge you to reject the Planning Commission's findings and recommendation upon docket request 23-0003. If the Council were to adopt the Planning Commission's findings, your decision would also be arbitrary and capricious.

Docket request 23-0003 should be denied, because none of the criteria set forth at San Juan County Code 18.90.030(F)(1) are satisfied; disregarding the Code criteria would be arbitrary and capricious; the proposal would violate the Comprehensive Plan and Growth Management Act; and approval of the request would constitute illegal spot zoning.

Thank you for your work on these important issues and your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "D. James McCubbin". The signature is written in a cursive style with a large initial "D" and "J".

D. James McCubbin
Friends of the San Juans
Legal Director & Staff Attorney

attachment: copy of comment letter dated August 16, 2023



August 16, 2023

San Juan County Planning Commission
c/o Department of Community Development, attn: Sophia Cassam, Planner III
Sent via email to: Sophia Cassam, sophiac@sanjuanco.com

Re: Docket Request 23-0003 (Southwell), Public Comments

Dear members of the San Juan County Planning Commission,

I am writing with public comments from Friends of the San Juans regarding Annual Docket Request 23-0003, Southwell proposed map amendment.

Friends of the San Juans is a nonprofit organization based in Friday Harbor, Washington. Friends was established in 1979 with a specific interest in the formation of San Juan County's first Comprehensive Plan. Friends continues to recognize the importance of responsible land use planning through the County's Comprehensive Plan and Code provisions, as we proceed with our mission to protect and restore the San Juan Islands and the Salish Sea for people and nature.

Docket Request 23-0003 is a proposal for a change in residential density to benefit a single parcel on Lopez Island, Tax Parcel Number (TPN) 252244002000¹. The property is designated Rural Farm Forest and the existing density allowance is 1 dwelling unit per 5 acres.² The request is to change the density to "two units per 2.53 acres"³, which equates to 4 units per 5.06 acres; a proposed change to quadruple the density allowed for a single parcel as compared to the density allowance for the surrounding Rural Farm Forest area.

¹ Application for Docket Request 23-0003, viewed at:

https://www.sanjuanco.com/DocumentCenter/View/28206/2023-Docket-Application_23-0003_Southwell

² Memo from Sophia Cassam, Planner III, to San Juan County Council and San Juan County Planning Commission, Subject "Annual Docket: Requests for Comprehensive Plan Map Amendments Staff Analysis and Recommendations", file "2023-07-10_DCD_Site-specific Redesignations_Rec_Cassam_Staff Report_PC_CC", dated July 10, 2023 (hereinafter referenced as "July 10 Staff Memo"), page 3; and 2023 Annual Docket - Map Amendments slide presentation to County Council, file "2023-08-08_Annual Docket_Maps_Staff Rec_Presentation_CC" (hereinafter referenced as "August 8 Staff Presentation"), slide 8.

³ Application for Docket Request 23-0003.

Friends of the San Juans agrees with the Department of Community Development (DCD) Staff Conclusion that the proposed increase in density “is inconsistent with the criteria established in SJCC 18.90.030(F) and with the policies of the Comprehensive Plan Land Use Element.”⁴ Friends further agrees with the Staff Recommendation that there should not be any amendment to the Comprehensive Plan Official Maps based upon the docket request.⁵

A Comprehensive Plan map amendment request may only be granted if all of the criteria set forth at San Juan County Code 18.90.030(F)(1) are satisfied. This Code provision provides⁶:

F. Criteria for Approval. These actions are reviewed for conformance with the applicable provisions of the Comprehensive Plan, the UDC, and as follows:

1. Comprehensive Plan Official Map Amendments. The County may approve an application or proposal for a Comprehensive Plan Official Map amendment if all of the following criteria are met:

- a. The changes would benefit the public health, safety, or welfare.
- b. The change is warranted because of one or more of the following: changed circumstances; a demonstrable need for additional land in the proposed land use designation; to correct demonstrable errors on the official map; or because information not previously considered indicates that different land use designations are equally or more consistent with the purposes, criteria and goals outlined in the Comprehensive Plan.
- c. The change is consistent with the criteria for land use designations specified in the Comprehensive Plan.
- d. The change, if granted, will not result in an enclave of property owners enjoying greater privileges and opportunities than those enjoyed by other property owners in the vicinity where there is no substantive difference in the properties themselves or public purpose which justifies different designations.
- e. The benefits of the change will outweigh any significant adverse impacts of the change.

Friends agrees with the staff analysis pertaining to criteria a, c, d, and e.⁷ It is clear that the applicant’s request to increase the density allotment on their single parcel to four times the

⁴ July 10 Staff Memo, page 9; and August 8 Staff Presentation, slide 18.

⁵ *Ibid.*

⁶ Code section accessed August 15, 2023 at: <https://www.codepublishing.com/WA/SanJuanCounty/#!/SanJuanCounty18/SanJuanCounty1890.html#18.90.030>

⁷ July 10 Staff Memo at pages 7-8; August 8 Staff Presentation at slides 13 and 15-17.

density allowed in the surrounding zone would benefit only themselves and would satisfy none of the required criteria.

Friends does not agree that there are any “changed circumstances” or any other facts which satisfy criterion b. DCD Staff appears to have granted an inappropriately strained interpretation of criterion b in the most generous means possible in favor of the applicant, by finding that a “changed circumstance” exists because the applicant is seeking to divide their parcel through a court order. However, this approach and conclusion is improper and contrary to the purposes of the Growth Management Act, San Juan County Comprehensive Plan, and the San Juan County Code. The term “changed circumstances” must be interpreted and applied as looking for an objective change of circumstances pertaining to the land. DCD staff has erroneously applied the term as including a *subjective* change of circumstances *for the applicant*. Here, the only “change” is that the applicant seeks to divide their parcel because they desire to build a second home, and are attempting to do so through a court-ordered division (avoiding the typical subdivision process that would be subject to County review). There is no logical or practical distinction between this situation and any other property owner who decides they want to split up their property for financial gain or any other reason. Staff’s interpretation allowing the subjective desire of a property owner to count as a “changed circumstance” renders this criterion effectively meaningless, and would encourage sprawl in violation of the Growth Management Act as well as the purposes of the Comprehensive Plan and County Code. Nor is there any other factual basis to find that criterion b is satisfied for the present map amendment request. The Planning Commission should find that criterion b is not met for this application.

Docket Request 23-0003 must be denied because it does not meet the requirements of the San Juan County Code. In addition, Docket Request 23-0003 must be denied because its approval would constitute illegal spot zoning.

The Washington Supreme Court has long “denounced spot zoning categorically.” *Pierce v. King County*, 62 Wn.2d 324, 339, 382 P.2d 628, 638 (Wash. 1963).

The concept of spot zoning as an evil in the field of municipal growth is well recognized by nearly all authorities.

'Spot zoning is an attempt to wrench a single lot from its environment and give it a new rating . . . which affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan for the community as a whole, but is primarily for the private interest of the owner of the property so zoned; and it is the very antithesis of planned zoning. It has generally been held that spot zoning is improper, and that one or two building lots may not be marked off into a separate district or zone and benefitted by peculiar advantages or subjected to peculiar burdens not applicable to adjoining similar lands.'

Pierce v. King County, 62 Wn.2d 324, 338, 382 P.2d 628, 637 (Wash. 1963), citing 101 C.J.S. Zoning § 34.

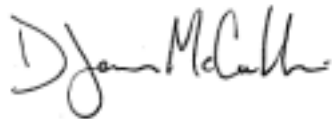
Illegal spot zoning is a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification (1) totally different from, and inconsistent with, the classification of surrounding land and (2) not in accordance with the comprehensive plan. *Citizens for Mount Vernon v. City of Mount Vernon*. 133 Wn.2d 861, 875, 947 P.2d 1208 (1997). The Court in *Citizens for Mount Vernon* held that the proposed rezoning through a planned unit development of a 39.3 acre parcel was unlawful because it would have constituted illegal spot zoning.

The proposal here to change the density designation of a single 2.53 acre parcel, to quadruple the density of the surrounding area, is a more obvious and extreme example of spot zoning than that found to be illegal in *Citizens for Mount Vernon*. Docket Request 23-0003 would clearly be unlawful if granted, and must be denied.

For each of the foregoing reasons, as well as those explained by DCD staff, Docket Request 23-0003 should be rejected.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D. James McCubbin". The signature is written in a cursive, slightly slanted style.

D. James McCubbin
Legal Director & Staff Attorney
Friends of the San Juans