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, Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON VARIANCE VA 01 0470

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: DON and ROBERTA OSTROM

ASSESSOR PARCEL NO: P39580

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located at 9319 Claybrook Road, Sedro-Woolley, WA; Lot 3 of Short Plat 5-87; within the SE 1/4 of the NW 1/4 of Section 19, Township 35 North, Range 05 East, W.M. Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
DON & ROBERTA OSTROM)	VA01-0470
)	
For a Variance from Sewer and Street)	FINDINGS OF FACT,
Improvement Requirements)	CONCLUSIONS OF LAW
For a Proposed Two-Lot Short Plat)	AND DECISION
Within the Urban Growth Area for the)	
City of Sedro Woolley)	
_____)	

THIS MATTER, an application for a variance, came on regularly for hearing on September 26, 2001, after due notice. Grace Roeder, Planner, represented the County Planning and Permit Center. Jeroldine Hallberg, appeared for the City of Sedro Woolley. Marianne Manville-Ailles, of Skagit Surveyors, represented the applicant. Members of the public were given an opportunity to be heard.

Based on the testimony taken, the exhibits admitted, and the argument made, the following is entered:

FINDINGS OF FACT

1. Don and Roberta Ostrom (applicants) seek a variance from two requirements of the Sedro Woolley Municipal Code (SWMC) in order to pursue a two-lot short plat within the urban growth area for the City of Sedro Woolley.
2. Development of land in Skagit County that is located within an urban growth area is governed by the County-adopted provisions of the applicable City code.
3. The applicant wishes to short plat property located at 9319 Claybrook Road. The subject property is Lot 3 of Short Plat 5-87, situated within a portion of the SE1/4NW1/4, Sec. 19, T35N, R5E, WM.
4. SWMC 16.16.070(C) requires plats to be served by sanitary sewers unless a variance is granted. SWMC 16.16.120 requires that the abutting half of substandard streets along plats be brought up to standard.
5. The applicants here seek to be excused from compliance with the above requirements prior to short plat filing. They ask for a variance to allow on-site sewage treatment and to defer street improvements. Ultimately the requirements for providing urban level sewer and street facilities will need to be met, but the idea is to await the



formation of local improvements districts, through which the costs can be spread equitably.

6. The subject property is 1.02 acres in size, located on the east side of Claybrook Road. The property is basically rectangular with the long dimension running east-west. The tract measures 289/257 feet along the north and south property lines and 147/124 feet along the east and west property lines.

7. An existing house, deck and garage are located on the west half of the property. The driveway is located near the north property line. The house is served by an on-site sewage system and receives water from the Public Utility District.

8. The property is roughly 1500 feet from the nearest public sewer line. Claybrook Road is currently a 60-foot wide paved County road which lacks urban improvements.

9. The property is basically flat with single-family residences located to the north, south and west. Adjacent to south and east is a mobile home park (Lazy Acres). The zoning is SF-2, single family, minimum lot size 8,400 square feet.

10. The applicants are proposing to divide their property into two lots: one approximately 18,968 square feet and the other about 19,233 square feet in size. Access to Lot B, the interior lot, would be provided by a separate tract, called Tract 1, which follows the path of the existing driveway.

11. Sedro Woolley Ordinance 1333-99 allows short plats to be served by on-site sewage disposal systems if a future development plan is approved. The future development plan or "shadow plat" must demonstrate that the property can ultimately be subdivided into enough lots to comply with the overall density of four units per acre. A "shadow plat" has been submitted in this case and shows that a four lot configuration is conceptually possible. However, the "shadow" lot line on Lot A runs through the existing house, an approach that is probably not practical

12. Ordinance 1333-99 deals with interim development in the City and its urban growth area before the arrival of full urban infrastructure. The underlying concept is to allow development to go forward in exchange for a commitment to participate in urban services when they become available. In general, waivers of protest of local improvement districts are the means used to insure that services will be extended and that urban lots will ultimately be served by urban infrastructure.

13. Improvements to Claybrook Road at this site would result in a 124 foot section of improved roadway in the middle of much longer unimproved sections.

14. The Sedro Woolley variance criteria are found at SWMC 17.60.050, as follows:



- a. It will not result in a detriment to neighbors or the public in general.
- b. Special circumstances exist here which are not common to other similarly restricted properties, such as physical features, nature of surrounding improvements and uses, or proposed design elements that will meet the same purpose as the regulation from which relief is requested.
- c. The cumulative effect of such variances will not undermine the purpose and intent of the regulation.
- d. The proposal supports the goals and objectives of the Comprehensive Plan.

15. The City Staff has reviewed the instant application and recommends approval of the variance for sewer connection and street improvements, subject to no-protest agreements for a sewer ULID and a street LID.

16. Also, the City seeks to require that the applicant sign a no-protest agreement regarding annexation.

17. The Examiner finds that the short plat proposed contemplates development consistent with the surrounding neighborhood. But special circumstances exist here in the current status of sewer and road development in the area. These circumstances support deferring compliance with urban infrastructure requirements in exchange for a promise not to oppose the eventual extension of services by means of local improvement districts.

18. There is a possibility that multiple variances of the type sought here might ultimately make it more difficult to obtain support for the extension of sewer services because of the duplicate costs of installing septic systems and then extending and connecting to the sanitary sewer. The waiver of protest mechanism counteracts this possibility, and thereby avoids the likelihood of adverse cumulative effects from the sewer variance.

19. The street improvement variance in itself will cause no adverse impacts. Piecemeal improvements to roadways are not an efficient way to construct a transportation system. Eventual participation by the short plat in a broader-scale road improvement project will ultimately provide the overall street upgrade contemplated by law.

20. The Comprehensive Plan and the zoning contemplate residential development in this area. The subdivision proposal, with its shadow plat, supports the density goals of



the Comprehensive Plan. The granting of the variance sought, with its no-protest conditions, will in no way interfere with this result.

21. For the applicants, it is asserted that infrastructure concerns (sewers, roads) can be addressed without reference to annexation, and that the variance need not be made conditional on the signing of a no-protest agreement on annexation. Alternatively, the argument is made that the applicants should be required to do no more than agree to sign an annexation petition, but that they should be free to oppose the terms of any annexation agreement.

22. The Examiner left the record open to give the applicant and the City additional time to come up with new language or approaches to the annexation issue. On October 2, 2001, the applicants' representative submitted a letter addressing this subject. The City's submission was received on October 8, 2001. These items were included in the record, which was then closed. There was no meeting of the minds.

23. The City's letter drew attention to SWMC 15.56.080 which deals with development in unincorporated urban growth areas. That section states, in pertinent part:

If development is within the unincorporated portion of the city's urban growth area, the applicant shall enter into a contractual agreement with the jurisdiction with standing with the following conditions:

A. The property owner shall, at such time as may be directed by the city, sign, give consent, and not object to annexation of the development, provided the requirements of Chapter 35A.14 RCW are complied with in any further annexation proceeding. . . .

This language was also adopted by Skagit County Ordinance 18223.

24. No public comment letters were received on this proposal. However, a neighbor testified to concerns about drainage in the area. He said that management of storm run-off is presently a problem in the neighborhood and stated that what is done on this issue for these lots will set a precedent for other development.

25. The construction and maintenance of appropriate drainage facilities should be addressed in the short plat approval process. The allowance of a variance from half street improvement requirements should not be construed as authorization to avoid appropriate drainage control measures.

26. The City asked that a revised short plat be submitted showing how the relevant density goal can be met eventually as a practical matter. However, the conceptual plan submitted shows that the proposed two-lot division does not preclude the urban densities identified in the Comprehensive Plan. This should be enough for this



sewer and street improvement variance proceeding. The details of possible future divisions can be left to the short plat approval process.

27. Soil samples need to be taken and a demonstration made that the subject property is suitable for additional septic development.

28. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.10.020(3).

2. The variance request is exempt from the procedural requirements of the State Environmental Policy Act. WAC 197-11-800(6).

3. SCC 14.02.040 requires that in Growth Management Act designated urban growth areas, the provisions of the applicable City code shall be applied when adopted by County ordinance. Appendix A, thereto, lists Titles 15, 16, and 17 of the Sedro Woolley Municipal Code as among those City code provisions so adopted.

4. The Examiner concludes that the proposed short plat is "development" for the purposes of SWMC 15.56.080 and that it is appropriate under that section for a no protest of annexation agreement to be required as a condition of the subject variance. The language of the condition should track the language of the ordinance.

5. The above findings support a conclusion that the requested variations from standard requirements are consistent with the variance criteria of SWMC 17.60.050, if the following conditions are imposed:

- a. The variance number and date of approval shall be placed on the final plat map.
- b. Prior to recording of the short plat, the applicant shall sign and record waivers of protest for a sewer ULID and a street LID relating to facilities serving the subject property.
- c. Prior to recording of the short plat, the applicant shall sign, give consent, and not object to annexation of the subject property, provided the requirements of Chapter 35A.14 RCW are complied with in any further annexation proceeding. This contractual agreement shall likewise be recorded.



d. All outstanding planning review fees shall be paid prior to any final approval of any land division.

6. Prior to approval of the short plat, the applicant must demonstrate to the County's satisfaction that appropriate measures will be taken to control drainage from the development, that adequate soils exist on the property for additional septic system development, and that the short plat is not inconsistent with the density goal of the Comprehensive Plan.

7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The requested variance from immediate sewer hook up and half street improvement requirements is granted, subject to the conditions set forth in Conclusion 5 above. This variance is temporary in nature. This decision contemplates the eventual compliance of the owner(s) of the subject property with the urban infrastructure requirements of the Sedro Woolley Municipal Code.



Wick Dufford, Hearing Examiner

Date of Action: October 25, 2001.

Copy Transmitted to Applicant: October 25, 2001

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



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