



200201310115

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 Permit Application VA 01 0804

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: Jeffrey Benham

ASSESSOR PARCEL NO: P64930

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located 24502 Wicker Road, Sedro-Woolley, WA; a portion of Lot 1 of Deiters Acreage; within the NW 1/4 of the SE 1/4 of Section 19, Township 35 North, Range 05 East, W.M. Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Jeff Benham  
1100A East College Way  
Mount Vernon, WA 98273

**Agent:** Marianne Manville-Ailles  
Skagit Surveyors  
806 Metcalf Street  
Sedro Woolley, WA 98284

**File No:** PL01-0804

**Request:** Variance

**Location:** 24502 Wicker Road, within a portion of Lot 1 of Deiters  
Acreage, within a portion of the NW1/4SE1/4, Sec. 19,  
T35N, R5E, WM.

**Summary of Proposal:** In connection with a three-lot short plat, the request is to be  
relieved of the requirements for connection to the sanitary  
sewer and for half-street improvements.

**Land Use Designation:** *Comprehensive Plan:* Sedro Woolley Urban Growth Area  
*Zoning:* SF-2, single family residence, 3-5 units per acre.

**Public Hearing:** After reviewing the report of the Planning and Permit  
Center, the Hearing Examiner conducted a public hearing  
on January 9, 2002. Due notice of the hearing was given.

**Decision:** The application is approved, subject to conditions.



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## FINDINGS OF FACT

1. 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.

2. Jeff Benham (applicant) seeks a variance from two requirements of the Sedro Woolley Municipal Code in connection with a proposed two-lot short plat at 24502 Wicker Road, within the Urban Growth Area of the City of Sedro Woolley.

3. The property consists of approximately .95 acres (41,251 square feet) of basically flat land situated on the south side of Wicker Road, within a portion of Lot 1 of Deiters Acreage, within a portion of the NW1/4SE1/4, Sec. 19, T35N, R5E, WM. Columbia Way, a private road, runs north and south just inside the western boundary of the property. The property is rectangular, measuring 188 feet along the north and south property lines, and 219 feet along the east and west property lines.

4. There is an existing house on the southerly third of the property and a detached garage some 30 feet northwest of the house. The remainder of the parcel is primarily open and in grass. The house and garage are accessed by a gravel driveway that enters from Wicker Road on the north and loops through the site to Columbia Way near the southwest corner.

5. The property is located within an area developed in single-family residences to the south, east and west. To the north is the City cemetery. There are several mobile home parks in the near vicinity.

6. The proposed short plat creates three lots in a tier from north to south. Lot 1 on Wicker Road contains 12,500 square feet. Lot 2 in the middle contains 16,095 square feet. The garage is on this lot. Lot 3 on the south is the site of the existing house and contains 12,656 square feet.

7. What is proposed is a revised plan in response to the County's advising that one of the original lots was too small to qualify for septic system approval. Under this revised plan all lots meet the necessary size minimum for on-site sewage disposal.

8. The urban zoning that would apply in Sedro Woolley is SF-2, single-family, 3-5 units per acre. The minimum lot size is 8,400 square feet. Under normal circumstances four lots could be accommodated on a parcel of the size of the subject property. However, the private road easement for Columbia Way on the west removes about 11,012 square feet from the developable area. The remaining space provides only enough room for three lots when building setbacks are applied.

9. Sedro Woolley Ordinance 1333-99 allows short plats to be served by on-site sewage systems if a future development plan is approved. The future development plan



contemplated by the ordinance should show that the property can be subdivided to create sufficient lots to comply with minimum overall density requirements. In the instant case, the proposed short plat is itself the future development plan. The City raises no issue here concerning density compliance.

10. SWMC 16.16.070(C) requires all plats to be served with sanitary sewer unless a variance is approved. The applicant proposes individual on-site septic systems for all three lots. Therefore, a variance from the requirement for hooking up to the sewer is sought. Site evaluations done for lots 2 and 3 found soils sufficient for conventional drain field development. This information is needed for Lot 1.

11. The nearest sanitary sewer is approximately 1,400 feet from the property. Sedro Woolley Comprehensive Plan Policy S1.2 allows for short plats more than 200 feet from the existing sanitary sewer to be served by individual septic systems provided that the applicant signs a waiver of protest for a future sewer ULID. The applicant has agreed to sign such a waiver.

12. The waiver is intended to promote the ultimate hook-up of all of the lots to the sewer system.

13. Wicker Road in the vicinity of the property is a paved County road with no improvements. Installation of curbs, gutters, storm drains, and sidewalks along the applicant's half of the street frontage at this time would result in a section of improved road in the middle of a much longer unimproved section.

14. SWMC 16.16.120 requires that the abutting half of substandard streets along plats be brought up to standard. The applicant seeks a variance from this requirement, promising to sign a waiver of protest regarding any future street LID.

15. There is a proviso to the half street improvement requirement of SWMC 16.16.120. The last sentence of the subsection reads:

At the discretion of the city, construction of such improvements may be deferred until such time as a building permit is applied for or a covenant may be placed on the plat requiring the developer or future property owners to participate in construction costs through a local improvement district, or other city or state sponsored road project.

16. 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 use, or proposed design elements that will meet the same purpose of 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.

17. The City staff has reviewed the instant application and recommends approval of both the sewer and half-street improvement variances. They seek a condition making the sewer variance subject to the signing of a no protest agreement for a sewer ULID. However, for the street improvements, they request a condition deferring the work only until the time of building permit application. The City also asks for a no protest agreement regarding annexation.

18. The applicant strongly protests the City's deferral of street improvements only until the building permit stage. He points out that a pre-application meeting with the City was held and that he was then told that the City would ask for a condition that he sign a no protest for the eventual formation of a street LID. The applicant states that his decision to go ahead with the project was based on this representation from the City.

19. There are significant economic consequences to asking for street improvements at the building permit stage. The costs of the improvements will have to be paid by the subdivider or more or less immediately passed on to the purchasers of the lots. The applicant argues that the likely effect on costs or on salability/price will render the project infeasible for him.

20. The City concedes that Staff told the applicant that the no protest of ULID option would be available to him. However, at some point during the processing of the application, they became convinced that the ULID approach has been ineffective. Therefore, although no protest agreements had been allowed in the past, they decided to go with the "building permit stage" option in the future. The applicant's variance request just happened to be in the middle of processing when this change of policy was made.

21. The City rejects the proposition that it is bound by statements made at a pre-application meeting.

22. The change of policy by the City was made *sub silentio* in the confines of its offices. There is no evidence that the City has provided any sort of general notice that the policy as to the timing for required street improvements on small subdivisions has changed. The City gave the applicant no personal notice of this change until publication of the Staff Report a few days in advance of the Hearing Examiner hearing. This was



after he had retained professionals to design and present the subdivision for him and after these professionals had done their work.

23. The applicant's agents point out that there is no way in the world that they could have anticipated the City's change of approach in this case. It came as a bolt from the blue. They argue that there is no hard evidence that "no protests" do not work. They suggested a tracking system for such agreements and the development of real data on whether they are effective or not.

23. The Examiner finds that the short plat proposed contemplates development consistent with the surrounding neighborhood. Allowing the variances sought will not result in a detriment to neighbors or to the public in general.

24. 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 promises not to oppose the eventual extension of sewer services and improvement of roadways.

25. Resistance to urban improvements might be a cumulative effect of granting numerous variances excusing the installation of such improvements. The waiver of protest mechanism is intended to prevent this. Since the adopted regulations explicitly contemplate such variances it cannot be said that their approval will undermine the purpose and intent of the regulatory scheme.

26. The Comprehensive Plan anticipates infill residential development in this Urban Growth Area neighborhood. The subdivision proposed is a move toward achieving the planned density objectives.

27. 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 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. Where development is approved within the unincorporated portion of the City's Urban Growth Area, SWMC 15.56.080 authorizes requiring the applicant to enter a no protest agreement in regard to annexation of the development.

5. The findings above support a conclusion that the requested variances from standards of the Sedro Woolley Municipal Code will meet 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 approval of the short plat, the applicant must demonstrate to the County's satisfaction that adequate soils exist on Lot 1 for septic system development.
- c. Prior to recording the short plat, the applicant shall sign and record waivers of protest for a sewer ULID, and for a street LID's relating to roads serving the subject property.
- d. 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.
- e. The basis for the variances granted here is the revised preliminary short plat drawing shown on Sheet 1 of Exhibit C herein.
- f. The City Engineer must approve a maintenance agreement for the private road.
- g. All outstanding review fees shall be paid prior to submittal of any land division.

6. In this case the Examiner rejects the City's recommendation that the half street improvements should be required at the building permit stage. Implicit in the permit procedures adopted for variances -- which include a mandatory public hearing -- is a requirement for fundamental fairness in the processing of applications. The specific facts of this case reflect a failure to supply this most basic feature of due process of law.

7. Although requiring street improvements at the building permit stage is discretionary for the City, that discretion was exercised here without warning or notice on

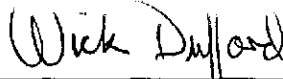


an application that was indistinguishable from many others that have been treated differently. (See, for example, *Application of Lewis Norris* (PL01-0480), heard on the same day as the instant application.) Under all the circumstances, the discretion was abused.

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

### DECISION

The requested variances from sewer hook-up and half street improvement requirements, are granted, subject to the conditions set forth Conclusion 5 above. These variances are temporary in nature. The 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: January 29, 2002

Copy Transmitted to Applicant: January 29, 2002

### 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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