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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 REQUEST VA000096 and  
SPECIAL USE REQUEST SU000097

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: RICK WEYNANDS

ASSESSOR PARCEL NO: P64967

ABBREVIATED LEGAL DESCRIPTION: The property is located at 24515 E. State Street Sedro-Woolley, WA; a portion of Lot 14 of "Deiter's Acreage", within the SE ¼ of Section 19, Township 35 North, Range 05 East, W.M., Skagit County, WA

## BEFORE THE SKAGIT COUNTY HEARING EXAMINER

### FINDINGS, CONCLUSIONS AND DECISION

**Applicant:** Rick Weynands  
PMB#553  
1500A E. College Way  
Mount Vernon, WA 98273

**File Nos:** PL00-0096 (Variance)  
PL00-0097 (Special Use Permit)

**Requests:** (1) Variances  
(2) Conditional Use Permit

**Location:** 24515 E. State Street, within the Urban Growth Area of the City of Sedro Woolley. The property is a portion of Lot 14 of "Deiter's Acreage" located within a portion of the SE1/4, Sec. 19, T35N, R5E, WM.

**Summary of Proposal:** (1) Variances to allow for a four-lot short plat with onsite sewage and reduced road standards.  
(2) A Conditional Use Permit to allow for a clustered residential development on the proposed four-lot short plat.

**Land Use Designations:** Comprehensive Plan -- Urban Growth Area (Sedro Woolley)  
Zoning -- SF-2 (Sedro Woolley)

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on August 14, 2002. A written summary of the applicant's presentation was received by the Examiner's Office on September 6, 2002.

**Decision:** (1) The Conditional Use application is denied..  
(2) If the Conditional Use application were approved, the Variance application would be granted in part and denied part.



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## FINDINGS OF FACT

1. Rick Weynands (applicant) seeks to create a four-lot short plat within the Urban Growth Area of the City of Sedro Woolley. He wishes to serve the lots with on-site sewage facilities, and to be relieved of various road improvement requirements. He also seeks permission for a "clustered residential development" in order to meet applicable density requirements. He proposes three new duplexes with a total of six two-bedroom units, as well as treatment of the existing residence on one lot as a duplex.

2. The subject property is located at 24515 E. State Street within the Urban Growth Area of Sedro Woolley. It comprises a portion of Lot 14 of "Deiter's Acreage," within a portion of the SE1/4, Sec. 19, T35N, R5E, WM.

3. The property is approximately 1.3 acres in size, situated on the north side of State Street. It is rectangular, measuring approximately 164 feet wide and 349 feet long. The long dimension runs north-south. Cougar Lane borders the property to the west. Brookshire Lane borders the property to the east.

4. The property is basically flat. A single-family residence and garage are located in the southwest corner of the parcel. This residence has been occupied, assessed, and taxed as a duplex. This house is accessed via a circular driveway off of State Street that ties into Cougar Lane.

5. State Street is a paved public road. Cougar and Brookshire Lanes are single-lane private roads. Cougar Lane is graveled with an existing substandard easement width of 29.16 feet. The majority of Brookshire Lane is paved.

6. The adjoining properties are all developed with single-family residences. The homes are a mixture of stick-frame houses and manufactured homes. The lots range in size from about 10,500 square feet to approximately 33,000 square feet. In addition to residences, there is an auto repair shop across State Street.

7. 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. SCC 14.02.040.

8. Sedro Woolley's zoning for the subject property is SF-2. The applicant seeks to create just four lots, using the short plat mechanism. However, four single-family residences on four lots would not meet applicable minimum density requirements for property of this size. Therefore, the applicant seeks to build a duplex on each of the lots. In his view, this can be accomplished in the SF-2 zone by meeting clustered residential development requirements. Clustered residential developments in the zone must qualify for Conditional Use approval. SWMC 17.08.010(b)(1)



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9. The clustered residential development proposed here is for four lots ranging in size from approximately 12,660 square feet to 12,750 square feet in buildable area. The three new duplexes would each contain two bedrooms and each new unit would have a footprint of 900 square feet. The residential density would equate to 6 units per acre.

10. The minimum lot size in the SF-2 zone is 8,400 square feet. The County interprets Growth Management requirements as imposing a 10,890 square foot maximum lot size. The Variance request incorporates the notion of lots exceeding this maximum.

11. Sedro Woolley's Code requires all plats to be served with sanitary sewer unless a variance is approved. SWMC 16.16.070(c). The applicant seeks a variance in order to use on-site sewage disposal systems for each of the four lots. Sedro Woolley's Comprehensive Plan (Policy S.1.2) contemplates that short plats more than 200 feet from the existing sanitary sewer may be served by individual septic systems, provided that the applicant signs a waiver of protest for a future sewer ULID. The lots proposed cannot be any smaller without violating the minimum size for on-site sewage disposal for the soils involved (12,500 square feet).

12. Lot 1 will be accessed from a driveway on State Street near the present entrance of the existing curved driveway. A portion of this existing driveway on Lot 2 will be removed and access to that lot will be at the State Street-Cougar Lane intersection. Lots 3 and 4 will be accessed by a shared driveway from Cougar Lane. There are 12 proposed parking stalls on site.

13. The standard access road easement width is 50 feet. SWMC 15.40.060. The easement for Cougar Lane is currently only 29.16 feet wide. Half of this, or 14.58 feet, is on the applicant's property. The applicant proposes to contribute another 5.42 feet to the easement, so that there are 20 feet of width on his property. This would bring the total width to 34.58 feet. The applicant is seeking a variance from the 50-foot right-of-way requirement.

14. The applicant also seeks to be relieved the requirement for paving Cougar Lane, except for the south 25 feet. He proposes a graveled roadway of 24 to 26 feet in width. Finally he asks to be excused from providing curb and gutter along Cougar Lane and curb, gutter and sidewalk along State Street. (See SWMC 15.40.060, 16.16.120.)

15. The City is in agreement with the request for variance from the requirement for a 50-foot easement width. The City opposes variances from the requirements for (a) connection to sanitary sewer, (b) paving Cougar Lane, (c) curb, gutter and sidewalk improvements. The County concurs in the City's position.

16. A Mitigated Determination of Non-significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on February 13, 2001. The record does not reveal any appeal of the MDNS. The following conditions were attached:



(1) The applicant shall maintain all temporary erosion/sedimentation control measures in compliance with the Best Management Practices of the Department of Ecology Manual. Said measures shall remain in place until completion of the project.

(2) The applicant shall provide a detailed drainage plan and report prepared in compliance with the Department of Ecology Stormwater Management Manual for the Puget Sound Basin.

(3) Cougar Lane and interior driveways serving the plat must comply with City of Sedro-Woolley street improvements including a paved surface, sidewalks, curbs, and gutters unless a variance is approved.

(4) The applicant shall be required to provide sanitary sewer to the project unless a variance is approved. The sanitary sewer line into the plat will be a private side sewer line.

(5) The applicant shall provide water to the site per plans approved by Skagit County Public Utility District. The water system will be required to meet minimum fire flow requirements for residential occupancy.

(6) The project will be subject to the appropriate impact fees.

(7) This project must comply with the City's Landscaping regulations, which require a minimum of 20% landscaping.

17. The design of the short plat initially called for four standard lots, each with a duplex, each with its own drainfield and reserve area. On July 17, 2002, the Planning and Permit Center received a revised Preliminary Site Plan showing provisions made for open space. The applicant states that this open space plan was submitted under protest.

18. The revised drawing depicts a 5,250 square foot open space area over the drainfields on Lots 2 and 3. The size is a little over 10% of the property, minus roads. The text states that the open space will be developed as a natural lawn area to be available as an outdoor play area for the residents of the four proposed lots. The area would be contained within an easement and maintained by the landowners.

19. A soils evaluation has been performed for each of the four proposed lots. Skagit County has approved the entire parcel for a maximum of 15 bedrooms. The two-bedroom duplexes on Lots 1, 3 and 4 will produce 12 bedrooms. The existing house on Lot 2 has three bedrooms, bringing the total to 15. If septic development were approved, a condition would be needed limiting the total development to 15 bedrooms in the event the existing house is ever remodeled or reconstructed.



20. There is a 6" inch City sewer line on the south side of State Street that is within 200 feet of the proposed short plat. There is also an 8" sewer line on the north side of State Street that is in excess of 800 feet from the proposed short plat. The City prefers that the applicant not connect to the 6" line because that line is now substandard in size. Instead, the City seeks to have the applicant connect the proposed development to the 8" line.

21. Publicly supplied water is available to the site, but a letter of availability from the utility is needed.

22. On the subject of Cougar Lane, the applicant emphasizes that it is a private road. Widening the easement to the full 50 feet would necessarily overlap improvements on the opposite side of the lane from the subject property. Indeed some of these improvements encroach on the existing easement.

23. The easement increase proposed on the applicant's side of Cougar Lane is the maximum that can be accommodated consistent with lot sizes needed for septic system development. The only encroachment on the applicant's side is an existing garage. This would be removed.

24. The applicant's main argument for being relieved from the necessity of paving Cougar Lane is that the neighbors do not support paving. The record is not clear on this point.

25. The case for avoiding half street improvements on Cougar Lane in part involves the space they would take. The applicant states that seven feet would be needed for curb, gutter and sidewalk installation. This would eat up more than the entire newly added easement area and leave the area devoted to road surface at around its current width.

26. The applicant also points out that there is currently no drainage system nearby to receive the concentrated runoff from a surface road with curb and gutter. He asserts that now there is no drainage problem and that maintaining a graveled surface would preserve the status quo.

27. The reason given for avoiding half street improvements on State Street is that the effort would create an isolated section of curb, gutter and sidewalk along a street that otherwise largely lacks these improvements.

28. Neighbors of the property expressed a number of concerns. They noted that the neighborhood is developed in single-family residences and questioned the compatibility of the proposed duplexes. They were worried about the increased traffic on Cougar Lane and about the safety of the road for children. A sidewalk on one side was requested as a minimum road improvement. Septic system development was opposed on the basis that it might endanger existing water wells in the area. Several



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people stated they feared that renters of the duplexes would not take care of their properties and questions were asked about with who would be responsible for road maintenance if the units were rented.

29. The applicant's spokesman responded that the new residential units will be single story and, thus, should not be visually out of character with the neighboring development. He agreed to putting a sidewalk in along Cougar Lane. He said that under the applicant's plan the roadway would be widened to better accommodate traffic and that the driveways on the subject property were designed to accommodate fire trucks. The chain link fence now along the west side of the property would be removed. As to renting versus selling the units, he was not clear. The duplexes are not being specifically proposed as rentals.

30. 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.

2. The requirements of SEPA have been met.

3. For property with the Sedro Wolley Urban Growth area, Skagit County has adopted relevant provisions of Titles 12, 13, 15, 16 and 17. SCC 14.02, Appendix A.

4. In the context of subdividing, the proposal at hand attempts to come under the "Optional Clustering" provisions. The minimum standards for subdivisions address the topic at SWMC 16.16.230:

#### **A. Mandatory Clustering**

1. The director may require that housing units allowed for a site be clustered on a portion of the site in order to protect critical and natural resource areas as set forth in Chapter 17.65, to accommodate construction areas subject to high groundwater, to accommodate construction in areas adjacent to other unique natural features, utility reservations, or to enable the creation of buffers between incompatible uses.

2. The director may allow up to twenty percent reduction in lot dimensions, sizes and setback requirements, consistent with the Uniform Building Code, to facilitate the clustering of the permitted number of dwelling units on the site. The required clustering shall not result in fewer lots than would otherwise be permitted on the site, (at the minimum density specified) without written authorization by the applicant.



**B. Optional Clustering.**

Applicants for housing projects may request up to twenty percent reduction in lot sizes, dimensions, and building setback requirements in order to cluster housing and retain land serving the purposes listed in Subsection A of this section; or to avoid development on slopes steeper than twenty percent; or to preserve *natural site features* such as rock outcrops; or otherwise enable land to be made available for public or private open space. The director may grant such requests if he or she determines that the development would not have a significant impact on surrounding land uses.

5. The above language authorizes "clustered housing" in the subdivision context only where the very purpose of the clustering is to create open space. But, in the instant case none of the specifically identified open space uses are the reason for the attempt to take advantage of the clustering concept. There are no critical areas, natural resource areas, high groundwater, unique natural features, utility reservations, buffers, steep slopes, or rock outcrops for which protection is sought.

6. The only possible purpose here under the optional clustering language is to "otherwise enable land to be made available for public or private open space." However, the creation of open space is clearly not the purpose for trying to apply the clustering section. Indeed, the applicant has explicitly stated that the open space proposal in this application was submitted under protest and has argued that it was not required.

7. Based on the testimony and evidence, the purpose for trying to apply clustering in this case is to create the required density on the acreage involved while retaining lots big enough to meet the standards for on-site septic systems. The clustering idea provides an avenue to get duplexes approved in the SF-2 zone. But here the underlying aims of using this avenue have nothing whatsoever to do with preserving open space. There is no suggestion of a need for clustering "to enable land to be made available for public or private open space."

8. Accordingly, the Examiner concludes that the proposal at hand is not appropriate for the application of the "Optional Clustering" provisions of SWMC 16.16.230. Since this is the case, no Conditional Use Permit based on clustering can be approved for this proposal.

9. In the absence of approval of a Conditional Use Permit the applicant has identified no method for short platting this property for residential use in this zone.

10. On reflection, the whole scheme appears to be an elaborate effort to avoid developing sufficient single family houses on a sufficient number of lots to meet the density required. To do so would necessitate smaller lots and more lots, triggering requirements for long platting. Moreover, the lots involved would be too small for





approval of on-site sewage treatment. The applicant from the beginning has sought to find a way to avoid the expense of hooking up to the sanitary sewer system.

11. Because the Conditional Use Permit which is a predicate to approval of the short plat cannot be granted, the issues involved in the Variance application do not necessarily have to be reached. Nevertheless, in the event that the examiner is overturned on appeal of the Conditional Use Permit application, the following conclusions on the Variance questions are offered.

12. The criteria for issuing a Variance are set forth at SWMC 17.60.050, as follows:

A. It will not result in a detriment to neighbors or the public in general.

B. . . . [S]pecial circumstances exist here which are not common to other similarly restricted properties. (These circumstances may include physical features of the subject property, nature of surrounding improvements, and uses, or proposed design elements that will meet the same purpose as the regulation from which relief is requested.) The special circumstance(s) shall be specified in the findings; and

C. The special circumstances are sufficiently unique that the cumulative effect of such variances will not undermine the purpose and intent of this title.

13. As long as the City refuses to allow connection to the 6" sewer line on the south side of State Street, the request for on-site septic systems should be approved for the interim until the 8" line is built to within 200 feet of the short plat. This would be consistent with the policy of the Comprehensive Plan. The special circumstances are the hardship involved in bringing the line to the property from its present remote location.

14. Nothing in such approval, however, limits the City from requiring the signing of a waiver of protest for a future sewer ULID. Moreover, dry sewer line installation may be required in connection with preliminary plat approval in anticipation of the ultimate extension of the sewer main. See SWMC 16.16.070.

15. The applicant has shown the requisite special circumstances for allowing a substandard width of the access road (Cougar Lane). See SWMC 15.40.060(F)(3) and ((E)(3). The nature of surrounding improvements prevent use of the full 50 feet.

16. However, the Examiner concludes that such a showing has not been made as to the requirement for paving Cougar Lane. See SWMC 15.40.060(A)(10). Therefore, the Variance to be excused from paving the lane should be denied.



17. Similarly, the Examiner concludes that the applicant has failed to make the requisite showing of special circumstances in regard to the half street improvements on Cougar Lane and State Street. The absence of storm drain facilities is something that must be rectified upon urbanization. Here such facilities are required by a condition of the MDNS which was not appealed. That there are stretches of the subject roads that do not have these improvements is not a hardship that calls for a Variance.

18. In reaching this decision, the Examiner has analyzed only the proposal before him. He does not intend any comment on the possibility of other approaches toward the same end.

19. Nevertheless, the following general observation is offered. The purpose of Urban Growth Areas is self-evidently to accommodate growth. But normally, under the Growth Management Act, growth is to occur only when concurrency requirements are met. This means that for most projects connection to the sewer system should be required at the time of development. Under limited circumstances for small developments, Sedro Woolley allows the interim use of on-site septic systems. But, it is recognized that the more of these arrangements that are approved, the harder it will eventually be to get sewer extensions and sewer hook-ups to occur. In accordance with the spirit and purposes of the GMA, it is therefore appropriate that the potential for authorization of septic systems within the Urban Growth Area be viewed as an exception to be construed narrowly.

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

### DECISION

(1) The Conditional Use Permit application is denied. This precludes approval of the land division proposed.

(2) If the Conditional Use Permit were approved, a Variance should be granted for the development of on-site septic systems for the interim until the 8" sewer main is extended to within 200 feet of the property. The Variance should be subject to appropriate conditions including: (a) a limit to 15 bedrooms on the property, (b) a promise not to oppose a ULID and (c) the building dry sewer lines.

(3) The Variance request for land division with reduced road standards should be denied, except as to the width of the access easement. A Variance should be granted allowing the easement for Cougar Lane to be 34.58 feet in width.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: September 16, 2002

Copy Transmitted to Applicant: September 16, 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.