

**RECOMMENDATION TO**  
**THE BOARD OF COUNTY COMMISSIONERS (BoCC)**  
**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**Applicant:** Victor and Linda Benson  
19357 Kanako Lane  
Mount Vernon, WA 98274

**Request/File No:** Zoning Variance, PL10-0298

**Location:** Adjacent to and surrounding the area of 19996 East Stackpole Road, Mount Vernon, WA; a portion of the Northeast ¼ of Section 8, Township 33 North, Range 4 East, W.M., Skagit County, Washington.

**Land Use Designation:** Agricultural – Natural Resource Land (Ag-NRL)

**Summary of Proposal:** Variance request to rescind condition #2 of variance V88-002 associated with Short Plat 13-88. Condition #2 prevents residential development on Lot 2 of S/P 13-88 and states as follows: The remaining acreage shall be labeled “Not for residential building purposes unless approved by the appropriate County Officials”.

**SEPA Compliance:** Exempt

**Public Hearing:** November 3, 2010. Public comments received in support of and opposition to the project; Planning & Development Services (PDS) recommends denial.

**Decision:** Recommend denial

**Date of Decision:** November 19, 2010

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

## **FINDINGS OF FACT**

1. This is a request by Mr. and Mrs. Victor Benson (Benson) to modify Variance V88-002 by rescinding condition #2.

2. The variance condition #2 is associated with Lot 2 of Short Plat 13-88. The condition, entered in 1988, prohibits residential development of the remaining Lot 2 parcel. The purpose of this request is to combine Lot 2 with a 20-acre non-residential parcel to the south in order to create a single parcel eligible for one residential development.

3. The properties involved are located adjacent to and surrounding 19996 East Stackpole Road, Mount Vernon, Washington.

4. Notice of the public hearing was published October 14, 2010. A staff report including comments and recommendations of county departments and governmental agencies was filed with the hearing examiner and a copy sent to the applicants more than seven days prior to the hearing.

5. The open record pre-decision hearing was held November 3, 2010.

6. At the open record hearing exhibits 1-13 were submitted and admitted to the record.

7. The staff report (exhibit 1) findings are adopted herein and incorporated by reference.

8. The property is currently designated in both the Comprehensive Plan and Zoning Code as Ag-NRL.

9. The request was reviewed in accordance with the State Environmental Policy Act and found to be exempt.

10. In 1988 the minimum lot size in the then agricultural zone was 40 acres. The 1988 zoning provisions allowed a single family residence and sufficient land to support a well and septic systems, as well as pertinent outbuildings. Generally a short plat was approved which labeled the non-residential acreage “not for building purposes” unless approved by the appropriate county officials. This condition was generally applied due to the total acreage not being the minimum multiple necessary for two lots within the minimum lot size (80 acres). There are a large number of these 1988 type of variances and land divisions.

11. Although the property owners note that the proposed residential acreage is “un-farmable” it does serve a farming purpose as a storage area for equipment.

12. There is insufficient evidence that the literal interpretation of the current Skagit County Code provision 14.16.860 would deprive the Bensons of rights commonly enjoyed by other properties in the same district.

13. The application and decision in 1988 was granted with the knowledge of the applicants that condition #2 would restrict development of the remaining acreage. Agricultural zoning regulations in Skagit County have become more restrictive since 1988. The current provision of SCC 14.16.860, while very similar to the 1988 requirements, does not allow any process from which to seek relief from a similar restriction.

14. The lot certification code amended in 2005 requires minimum lot size or one of many exemptions to apply for residential development, except in the agricultural designation. The current property was not a certified lot prior to the amended code in 2005.

15. There are significant similarities between the 1988 requirements and current SCC requirements and Comprehensive Plan policies to restrict residential development on Ag-NRL lands.

16. The applicants have owned the adjoining 20 acres to the south since approximately 1994.

17. The zoning code and Comprehensive Code changes are not a result of any action by the applicant.

18. There is insufficient evidence to show that the removal of condition #2 from the 88-02 is based upon any limitations of the property.

19. The granting of the variance under these circumstances would confer upon the applicant a special privilege that is denied to other similarly situated lands.

20. Denial of the variance decision condition request would not deny reasonable use of the applicants' property.

21. PDS recommends denial of the request to rescind condition #2.

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

### **CONCLUSIONS OF LAW**

1. Under SCC 14.06.130 the Hearing Examiner has jurisdiction over this matter and of the parties to issue a recommendation to the BoCC.

2. The requirements of RCW 43.21 C and SCC 14.2 have been met.

3. State and local notice requirements have been met.

4. In making this recommendation to the BoCC the undersigned has considered the objectives and goals of the Comprehensive Plan, the Zoning Ordinance, the variance requirements of SCC 14.10.020, SCC 14.16.860 and the facts and exhibits introduced at the pre-decision hearing November 3, 2010.

5. It is the applicants' burden to show the relevant variance criteria has been met. In this case there is insufficient evidence to sustain the applicants' burden to rescind condition #2 of variance V88-002. The applicants have failed to show that special conditions and circumstances exist which are peculiar to the land, that a literal interpretation would deprive the applicants of rights commonly enjoyed by other properties in the same district, there is a denial of reasonable use of the applicants' property and a granting of the request would not confer upon the applicant special privileges denied to other land within the Ag-NRL designated areas.

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

### **RECOMMENDATION**

1. The undersigned concurs with the recommendation of PDS that denial is the appropriate decision for compliance with the objectives and goals of the Comprehensive Plan, the Zoning Ordinance and the policies established by SCC 14.16.860. If the BoCC does not agree with this recommendation then it is recommended that conditions 1-4 listed in the staff report (exhibit 1) be imposed.

Done this 19<sup>th</sup> day of November, 2010.

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Wm. H. Nielsen, Hearing Examiner *pro tem*

Transmitted to Applicant: November 19, 2010.