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Kathy Hill, 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: RECOMMENDATION ON AGRICULTURAL VARIANCE AG 99 0539

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: MICHAEL and JEANNIE YOUNGQUIST

ASSESSOR PARCEL NO: P22771

ABBREVIATED LEGAL DESCRIPTION: a portion of Section 26, Township 34 North,  
Range 3 East, W.M., Skagit County, Washington.

17708

RESOLUTION NO. \_\_\_\_\_

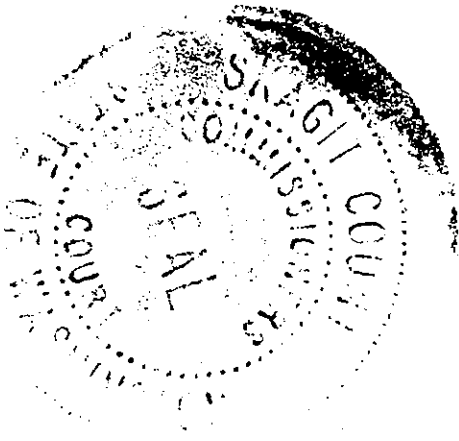
A RESOLUTION APPROVING AN AGRICULTURAL VARIANCE  
FOR MICHAEL and JEANNIE YOUNGQUIST

WHEREAS, the Skagit County Hearing Examiner held a public hearing on November 24, 1999 to review the application for an Agricultural Variance of MICHAEL and JEANNIE YOUNGQUIST and adopted Findings of Fact and a Recommendation which were submitted to the Board of Skagit County Commissioners; and,

WHEREAS, The Board of Skagit County Commissioners has reviewed the Findings and Recommendation of the Hearing Examiner in this matter and concurs with these Findings and Recommendation; now therefore,

BE IT RESOLVED that the Board of Skagit County Commissioners hereby adopts the Findings and Recommendation of the Hearing Examiner and approves the Agricultural Variance request of MICHAEL and JEANNIE YOUNGQUIST subject to the conditions of approval listed in the Recommendation.

WITNESS our hands and official seal this 28<sup>TH</sup> day of DECEMBER, 1999.



BOARD OF COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

\_\_\_\_\_  
TED W. ANDERSON, Chairman

Harvey Wolden  
HARVEY WOLDEN, Commissioner

Robert Hart  
ROBERT HART, Commissioner

ATTEST:

Patti Chambers  
Patti Chambers  
Clerk of the Board



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Kathy Hill, Skagit County Auditor

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

**17708**

In the Matter of the Application of <b>MICHAEL AND JEANNE YOUNGQUIST</b>	)	
	)	VA99-0539
	)	
For A Variance to Allow the Division of of 75+ Acres into Two Lots: One 40 Acres and the Other 35+ Acres	)	Findings of Fact,
	)	Conclusions of Law
	)	And Recommendation
	)	

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THIS MATTER relates to an application for a variance by Michael and Jeanne Youngquist. The application came on for hearing on November 24, 1999, after due notice. The Skagit County Planning and Permit Center was represented by Brandon Black. Michael Youngquist represented himself. The recommendations of the Conservation Futures Advisory Committee were presented by Richard Doenges. Several members of the public testified.

On the basis of the testimony, exhibits and argument, the following is entered:

**FINDINGS OF FACT**

1. Michael and Jeanne Youngquist own a 75+ acre tract which is a part of what was a 160 acre homestead farmed by Michael's father, Emil Youngquist. The property has been and is presently in agricultural use.
2. The location is west and north of 1447 Jungquist Road. The parcel is situated within a portion of Sec. 26, T34N, R3E, W.M.
3. Out of the original homestead, a home site of approximately 4.77 acres was segregated. This smaller parcel is owned by the mother. The balance of the homestead was divided between the two sons. Michael Youngquist's portion is the 75+ acres that is subject of the present application.
4. The segregation of the mother's home was accomplished in 1981 through Short Plat #46-81. As a condition of the short plat, the 75+ acres parcel was subjected to the following limitation:

This parcel shall not be further subdivided, nor shall it be used for residential, commercial or industrial building purposes.
5. All of the parties agree that the purpose of this limitation was to preserve the acreage in agricultural use. There are currently several structures on the property which are used in



connection with agricultural operations. These are not viewed as violations of the short plat condition.

6. The subject parcel is zoned Agricultural, and lies outside any Urban Growth Area (UGA). The Comprehensive Plan and associated maps, adopted June 1, 1997, designate the area as Agricultural Natural Resource Land.

7. The variance requested is from SCC 14.04.112(5)(a) which establishes a minimum lot size of 40 acres in Agricultural zones located outside of a UGA.

8. The purpose of the presently proposed subdivision is to allow the entire 75+ acre parcel to continue to be used for agriculture. A buyer has been found who will continue agricultural use of the 40 acre lot (15 acres of which are currently planted in raspberries). The applicant will continue to grow crops on the substandard 35+ acre lot. The economics of survival in agriculture dictate the sale. The applicant explains the special circumstances as follows:

The higher capital needs for a diverse agriculture in Skagit County creates the need to bring in outside investors to partner with the agricultural industry. These investors need to have a secure asset with clear title for financial purposes. This will allow better use of capital assets to land owners as well as operators. The need to tie up capital in land on value added operations such as ours would be reduced. Therefore, allowing the creation of smaller parcels like the one proposed will enhance the viability of agricultural production and indirectly the preservation of agricultural land.

9. In order to insure long term agricultural use for the property, the applicant proposes granting conservation easements to a third party prior to any sale. The easements would cover the entire 75+ acreage and insure that residential development could not occur on either parcel.

10. The Conservation Futures Advisory Committee has reviewed this application and favors allowing the division requested. The 35+ acre lot will not be so small that it cannot be farmed and the conservation easements should provide protection for long-term agricultural use. The Committee offered to help in the drafting of easements.

11. One of the explicit aims of the Growth Management Act (GMA) is the preservation of natural resource based industries such as agriculture. RCW 36.70A.020(8). To this end agricultural lands that have long-term significance for commercial production are to be specially designated. RCW 36.70A.170(1)(a) Special regulations for the conservation of such lands are to be adopted. RCW 36.70A.060(1).



12. The Comprehensive Plan, adopted to implement the GMA, establishes strong policies aimed at the continuation of agricultural land in agricultural use. See Chapter 5, Natural Resource Conservation Element, Goals C and G and associated Objectives and Policies.

13. The Examiner finds that the approval of the subject application would further the aims of the GMA and of the Comprehensive Plan.

14. Under SCC 14.04.223, variances are authorized in specific cases where departure from the requirements of the zoning code "will not be contrary to the public interest" and "where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship." The explicit criteria for approval of a variance are:

- a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.
- b. The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.
- c. That the special conditions and circumstances do not result from the actions of the applicant.
- d. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.

16. The subject parcel is in area characterized primarily by agricultural land. The surrounding parcels do not exceed 40 acres. Most are significantly smaller. The requisite hardship exists because insistence on the literal terms of the 40 acre minimum lot size for the applicant's property would likely result in the failure to preserve land in long-term agricultural use contrary to the thrust of contemporary land use law and policy. This can be viewed as a special circumstance applicable to this property and not to most other properties in the neighborhood. It is not a circumstance that was caused by actions of the applicant.

17. Moreover, because there are many lots under 40 acres in the district, the failure to grant this variance could be regarded as a deprivation of rights enjoyed by other properties and cannot be seen as a grant of special privilege.

18. There was no public opposition to the proposal, either in writing or by oral testimony. One resident of the area testified that he had no objection if the easements were executed.



Another was concerned about traffic and interference with privacy. There was nothing in the record to indicate that the proposed division would adversely affect either traffic or privacy.

19. The zoning code is intended to "encourage the most suitable and compatible uses of land." To this end, conserving agricultural and natural resources is an explicit purpose. SCC 14.04.020. The Examiner finds that, with the granting of conservation easements, the proposed variance would be in harmony with the general purpose of the zoning code. Further, it would not be injurious to the neighborhood or otherwise detrimental to public welfare.

20. Under all the facts and circumstances, the reasons set forth in the application justify the granting of the variance and the variance requested is the minimum that will make possible the reasonable use of the land.

21. The Staff in this case agreed that, with the granting of conservation easements, the variance would be appropriate in light of agricultural land preservation policies of the County. However, the Staff was unable to overcome the explicit terms of the limitation on further subdivision written into approval of Short Plat #46-81.

22. If the variance were approved, the Staff recommended several conditions. One of these was to require that a formal short plat application be submitted for review and approval. The other conditions related to the kinds of land use and infrastructure concerns that would normally be reviewed in connection with a short plat.

23. The Staff believes that the subject parcel includes a Type 4 stream, requiring a 50 foot no development buffer under the Critical Areas Ordinance. The applicant asserts that the stream is a drainage ditch inside the diked portion of the County and exempt from this setback requirement. There is insufficient evidence to resolve this matter on the present record. The Examiner believes that it and other land use questions can appropriately be deferred to the short plat process.

24. 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 parties and the subject matter of this proceeding.
2. Under the facts, the Examiner concludes that the variance criteria of the zoning code are met by this application, if the conservation easements referred to are granted.
3. The barrier that remains is the limitation written into Short Plat #46-81. The Examiner concludes that the limitation does not apply to the situation at hand. The limitation states:



This parcel shall not be further subdivided, nor shall it be used for residential, commercial or industrial purposes.”

Taken as a whole, the language is clearly intended to prevent the kind of uses that are listed in the second predicate of the sentence. The prohibition on further subdivision, therefore, should be read as limited to subdividing for those uses. Here we are looking at a potential subdivision in aid of on-going agricultural use. This is precisely the type of use the limitation on the Short Plat was meant to protect.

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

### RECOMMENDATION

The Hearing Examiner recommends that the variance be granted, subject to the following conditions

- (1) The applicant shall grant conservation easements, as approved by the Planning and Permit Center, covering the entire 75+ acre parcel.
- (2) A formal short plat application shall be submitted for review and approval.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: December 13, 1999

Copies transmitted to Applicant: December 13, 1999



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