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NO. 66325-9

IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

SCOTT C. HOPPER,

Petitioner/Appellant,

vs.

SNOHOMISH COUNTY,

Respondent,

PETITIONER/APPELLANT HOPPER'S OPENING BRIEF

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TABLE OF CONTENTS

I. Introduction.....1

II. Assignments Of Error1

 No. 1 The Trial Court Erred By Not Finding the County’s Ad-hoc Procedures Used to Render Plaintiff’s Claims Moot Through Full Refund of Permit Fees Unlawful Under RCW 82.02.020..1

 No. 2 The Trial Court Erred In Granting Defendant’s Motion for Summary Judgment Where Material Facts Related to Mootness and Exceptions to the Mootness Doctrine Were Disputed Under CR 56..1

 No. 3 The Trial Court Erred By Allowing the County to Make Gifts of Public Monies Through Full Refund of Permit Fees to Avoid Judicial Review.....1

III. Issues Pertaining To Assignments Of Error.....1

 1. Does RCW 82.02.020 or RCW Chapter 82.02 authorize County permit fee dispute procedures?1

 2. Can the County use local ad-hoc permit fee dispute procedures to frustrate or defeat injunctive, writ, or declaratory review through the use of “full refunds” of permit fees?1

 3. *Assuming arguendo* that local dispute procedures are lawful, does SCC 30.86.011 authorize the waiver and full refund of all permit fees otherwise owing to the County?2

 4. Are full permit refunds an unconstitutional gift of public monies invalidating the County’s full refund of permit fees?2

5.	Does a full refund of all of Hopper’s permit fees render his challenge under RCW 82.02.020 moot under <u>Orwick v. City of Seattle</u> ?.....	2
6.	Assuming <i>arguendo</i> that permit fee disputes are allowed under RCW Chapter 82.02, did the County’s Hearing Examiner comply with minimum due process requirements and SCC 2.02.125 hearing requirements?.....	2
IV.	Statement of the Case.....	2
V.	Summary of Argument	15
VI.	Argument	16
	A. RCW 82.02.020 Which Regulates Permit Fees is Preemptive of Any County Procedures.....	16
	B. The County’s <i>Ad-Hoc</i> “Dispute” Procedures are Unlawful	18
	C. SCC 30.86.011 “Dispute” Procedures Do Not Authorize the Waiver of Permit Fees.....	21
	D. Neither RCW Chapter 82.02 Nor the Reform Act, RCW Chapter 36.70B, Require a Self-Imposed Timeliness or “Process” Penalty.....	22
	E. Refund of Some of the County’s Ongoing Permit Fee Charges Does Not Render Hopper’s Claim Moot	26
	F. Whether Hopper’s Challenge is Technically Moot, This Matter Is of Continuing and Substantial Public Interest with the Reasonable Expectation of Recurrence Triggers the Exception to the Mootness Doctrine.....	29
	1. Public Matter.....	29
	2. An Authoritative Determination is Important	30
	3. The Issues Raised Are and Will Continue to Recur.....	30

G.	The County’s Actions Violated Procedural Due Process, Appearance of Fairness, and Local Hearing Requirements.....	38
H.	The County’s Refunds Are <i>Ultra Vires</i> and An Unconstitutional Gift of Public Funds	49
VII.	Conclusion	50
VIII.	Appendix.....	51
	Appendix “A”- Snohomish County Code Provisions.....	A-1
	Appendix “B” Supplemental Declaration of Seder	A-2

TABLE OF AUTHORITIES

STATE CASES

Ancheta v. Daly, 77 Wn.2d 255, 259-60, 461 P.2d 531 (1969)46

Barber v. Bankers Life & Cas. Co., 81 Wn.2d 140, 142, 500 P.2d 88
(1972)16

Barrie v. Kitsap County, 93 Wn.2d 843, 852, 613 P.2d 1148 (1980)41

Benchmark v. Battleground, 146 Wn.2d 685, 698, 49 P.3d 860 (2002)19

Brown v. City of Seattle, 117 Wn. App. 781, 790 (2003)48

Brown v. City of Yakima, 116 Wn.2d 556, 559-60, 807 P.2d 353
(1991)20

Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298
(1993)16

Client A v. Yoshinaka, 128 Wn.App. 833, 841-42, 116 P.3d 1081
(2005)31

Cobb v. Snohomish County, 64 Wn.App. 451, 461, 829 P.2d 169
(1992)20

Faben v. Mercer Island, 102 Wn.App. 775, 778-80, 11 P.3d 322
(2000)48

Hart v. DSHS, 111 Wn.2d 445, 759 P.2d 1206 (1988) 29, 31, 33, 34

Hartley v. State, 103 Wn.2d at 774, 698 P.2d 77 (1985)16

Heinsma v. City of Vancouver, 144 Wn.2d 556, 560, 29 P.3d 709
(2001)19, 20

Henderson Homes, Inc. v. City of Bothell, 124 Wn.2d 240, 247, 877
P.2d 176 (1994)18

<i>Home Builders v. City of Bainbridge</i> , 137 Wn.App. 338, 350, 153 P.3d 231 (2007).....	4, 17, 20, 21, 30, 43
<i>Honeywell, Inc. v. Babcock</i> , 68 Wn.2d 239, 243, 412 P.2d 511 (1966) ...	46
<i>Isla Verde v. City of Camas</i> , 146 Wn.2d 740, 753, 49 P.3d 867 (2002)	17, 18, 20
<i>Keller v. Bellingham</i> , 92 Wn.2d 726, 731, 600 P.2d 1276 (1979)	39
<i>Lenci v. City of Seattle</i> , 63 Wn.2d 664, 669, 388 P.2d 926 (1964).....	20
<i>Loveless v. Yantis</i> , 82 Wn.2d 754, 513 P.2d 1023 (1973)	41
<i>Mansour v. King County</i> , 131 Wn.App. 255, 264 (2006).....	35
<i>Mall, Inc v. Seattle</i> , 108 Wn.2d 369, 377, 739 P.2d 668 (1987)	42
<i>Massie v. Brown</i> , 84 Wn.2d 490, 492, 527 P.2d 476 (1974)	20
<i>Mission Springs v. Spokane</i> , 134 Wn.2d 947, 961-63, 954 P.2d 250 (1998)	44
<i>Morin v. Johnson</i> , 49 Wn.2d 275, 279, 300 P.2d 569 (1956)	42
<i>Narrowsview Pres. Ass'n v. City of Tacoma</i> , 84 Wn.2d 416, 420, 526 P.2d 897 (1974).....	35
<i>Noel v. Cole</i> , 98 Wn.2d 375, 379, 655 P.2d 245 (1982)	50
<i>Norco Constr. v. King County</i> , 97 Wn.2d 680, 690, 649 P.2d 103 (1982)	26
<i>Orwick v. City of Seattle</i> , 103 Wn.2d 249, 692 P.2d 793 (1984).....	2, 9, 23, 25, 26, 27
<i>Patrolman's Ass'n v. City of Yakima</i> , 153 Wn.App. 541 (2009)	31
<i>Rabon v. Seattle</i> , 135 Wn.2d 278, 287, 957 P.2d 621 (1998)	31

<i>Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 136 Wn.2d 38, 46, 959 P.2d 1091 (1998)	31
<i>Schultz v. Snohomish County</i> , 101 Wn.App. 693, 700-01, 5 P.3d 767 (2000)	24
<i>Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray</i> , 133 Wn.App. 479, 487, 136 P.3d 776 (2006)	26, 49
<i>Sleasman v. Lacey</i> , 159 Wn.2d 639, 642, 151 P.3d 990 (2007)	42
<i>Sorenson v. Bellingham</i> , 80 Wash.2d 547, 558, 496 P.2d 512 (1972)	33
<i>Sunnyside Valley Irrig. Dist. v. Dickie</i> , 149 Wn.2d 873, 880, 73 P.3d 369 (2003).....	16
<i>Tingey v. Haisch</i> , 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007)	20
<i>Yakima Fruit v. Central Heating</i> , 81 Wn.2d 528, 530, 503 P.2d 108 (1972))	16

FEDERAL CASES

<i>Anderson v. Evans</i> , 371 F.2d 475, n. 27 (2004).....	36
<i>Super Tire Engineering Co. v. McCorkle</i> , 416 U.S. 115, 122, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974).....	31, 37
<i>Weinstein v. Bradford</i> , 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975).....	31, 33, 34, 35, 36, 37

WASHINGTON STATE CONSTITUTIONAL PROVISIONS

Article 1, Section 338
Article 8, Section 7 28, 49, 50
Article 11, Section 1118, 19

CODES

RCW 7.16.04026, 27
RCW Chapter 7.24.....31
RCW Chapter 36.70B.....22, 23
RCW 36.70B.020(4)24
RCW 36.70B.080(1)24
RCW 36.70C.020.....17
RCW 36.70C.020(2)10
RCW 36.70C.030.....10
RCW 42.36.06035, 37
RCW Chapter 82.02.....1, 2, 15, 17, 19, 20, 21, 22, 23
RCW 82.02.0201, 2, 4, 5, 6, 8, 12, 13, 14, 15, 16, 17, 18,
.....19, 20, 21, 23, 24, 25, 26, 28, 30, 37, 38, 43, 48
RCW 82.02.07018
RCW 82.02.070(4).....18
RCW 82.02.090(3).....18

LOCAL CODES

SCC 2.02.020.....	39
SCC 2.02.125.....	2, 7, 39, 41, 42,
SCC 2.02.125(7).....	41, 42
SCC 30.70.110.....	24
SCC 30.86.010.....	3, 5, 32
SCC 30.86.011.....	3, 5, 6, 7, 11, 13, 14, 16, 18, 19, 20, 21, 23, 24,25, 26, 27, 32, 33, 34, 36, 37, 42, 43, 44, 45, 46, 48, 50
SCC 30.86.015.....	22, 44, 45, 46, 48, 50
SCC 30.86.015(5)(a).....	37, 43, 45, 46, 48
SCC 30.86.015(5)(b).....	48, 49
SCC 30.86.030.....	3, 5, 32

I. INTRODUCTION

This case involves an issue of first impression. Namely, whether Respondent Snohomish County (“County”) for purposes of evading judicial review can interpose under its police powers *ad-hoc* administrative “dispute” procedures and the refund all permit fees paid by Hopper as mootness devices after applicant Hopper first challenged the lawfulness of permit fees under RCW 82.02.020.

II. ASSIGNMENTS OF ERROR

- No. 1 The Trial Court Erred By Not Finding the County’s *Ad-hoc* Procedures Used to Render Plaintiff’s Claims Moot Through Full Refund of Permit Fees Unlawful Under RCW 82.02.020.
- No. 2 Assuming *arguendo* That Local Permit Fee Dispute procedures Are Lawful and Appellant’s Claims Technically Moot, the Trial Court Erred In Not Correctly Applying Exceptions to the Mootness Doctrine.
- No. 3 The Trial Court Erred by Not Finding the County’s Actions Violative of Due Process and Local Administrative Appeal Requirements.
- No. 4 The Trial Court Erred By Recognizing the County’s Unconstitutional Gift of Public Monies, Through Full Refund, As A Device to Evade Judicial Review.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- No. 1 Does RCW 82.02.020 or RCW Chapter 82.02 authorize County permit fee dispute procedures?
- No. 2 Can the County use local permit fee dispute procedures or ad-hoc post appeal devices to frustrate or defeat injunctive, writ, or declaratory review through the use of “full refunds” of permit fees?

- No. 3** Assuming *arguendo* that local fee dispute procedures are lawful, does Snohomish County Code (“SCC”) 30.86.011 authorize the waiver and full refund of all permit fees otherwise lawfully owing to the County for processing and review of permit applications?
- No. 4** Does a full refund of only a part of the fee charges Hopper will incur as part of his ongoing application process, made after Hopper filed an administrative appeal and litigation, render his RCW 82.02.020 challenge moot under Orwick v. City of Seattle?
- No. 5** Even if technically moot, does not the public interest exception apply?
- No. 6** Assuming *arguendo* that permit fee dispute procedures are lawful under RCW Chapter 82.02, did the County’s Hearing Examiner comply with minimum due process and SCC 2.02.125 hearing requirements?
- No. 7** Are full refunds an unconstitutional gift of public monies?

IV. STATEMENT OF THE CASE

Appellant Scott C. Hopper is a local developer and builder of residential homes. He has developed projects in the past with most of them located in Snohomish County. In May of 2010, Hopper made financial arrangements to acquire two lots in Snohomish County. Clerk’s Papers (“CP”) 119; CP 455-456.

On May 26, 2010, Appellant Hopper applied to the County’s Department of Planning and Development Services (“PDS”) for an initial grading permit to ultimately develop the two lots as residential building sites for later home construction. CP 141-143; CP 293-296; CP 473-475.

The County's unified development code regulating permit fees is contained in SCC Chapter 30.86 et. seq. Appendix ("App.") A. The County charges permit fees under SCC 30.86.010 to "compensate the county for the cost of administering title 30 SCC." App. A.

On November 10, 2008, Respondent County adopted Ord. 08-122, effective January 1, 2009, that included a new permit fee payment and dispute resolution process, which authorized a 3% "technology surcharge," "in addition to any other fees required by law." SCC 30.86.030; App. A; CP 482-486.

30.86.011 - Fee payment and dispute resolution.

Fees are due and payable at the time services are requested unless otherwise specified in this chapter or state law. Any dispute involving fees shall be resolved by the director. A written request to resolve a fee dispute shall be submitted within 30 days of the fee payment. For the purpose of computing elapsed calendar days, the day after the fee payment date shall be counted as day one. The director shall issue a written determination within 30 days of receipt of the request. The director's decision shall be final. Permit review shall be stayed during the pendency [sic] of the dispute resolution. App. A.

No forms, procedures, standards, or criteria were or have been adopted by the County under SCC 30.86.011 in order for an applicant to know how to proceed with a fee dispute. CP 137-138; CP 145-146; CP 1181-1182; CP 1417 (*Mock Deposition [Dep.]*) p. 14, ll. 3-25; p. 15, ll. 1-8); The County has argued that "Since these [fee dispute] provisions are applied so rarely, there are no 'procedures' in place to address them. Instead, the Director of

PDS does so on a case-by-case basis with advice from counsel as needed.” CP 1124.

To initiate development of the two lots, Hopper paid \$459.24 with his grading permit fee application on May 26, 2010. CP 473-474. Hopper was concerned that the fees were unreasonably excessive. When he asked an intake planner and cashier about it, he was told that he could “write a letter to management.” CP 137-138; CP 145-146; CP 457, ¶10; CP 1181-1182; CP 1416 (*Mock Dep.*, p. 14, ll. 3-2; p. 15, ll. 1-8)

Hopper reviewed information that the County posted on its internet website. CP 458. He discovered that not only the grading permit fees, but other county permit fees that he would later encounter contained multiple “cost layers” that included: “direct services,” “indirect services,” “PDS overhead,” “County-wide overhead,” and “costs for the Examiner, Public Works, and Prosecutor’s Office.” CP 136, CP 207-208, CP 231-258; CP 436-437; CP 458-459; CP 463.

On June 1, 2010 Hopper “disputed” the lawfulness of the County’s permit fees in a letter to PDS that cited RCW 82.02.020 and Home Builders v. City of Bainbridge, 137 Wn.App. 338, 350, 153 P.3d 231 (2007). CP 145-146; CP 218; CP 495-496. Hopper requested PDS to “recalculate” his grading permit fee to remove any indirect costs including those associated with the “cost layers” he found on the County’s website

as well as the 3% technology surcharge from its permit fee schedule none of which, he alleged, were permitted under RCW 82.02.020. CP 146; CP 219; CP 495-552.

On June 8, 2010, PDS biologist, Michael Braaten, visited Hopper's development site. Braaten performed public services in reviewing and processing Hopper's grading permit application. CP 262-264; CP 1205; CP 1423; and CP 1432 (*Mock Dep.*, p. 45, ll. 8-21; p. 79, ll. 12-14); CP 962-964. Following this site visit, Hopper was notified on June 9, 2010 by PDS that his proposal would require additional critical areas review and the payment of a second review fee of \$720.00. CP 262-264; CP 272-274; CP 489-493; CP 962-964; cp 1405-1406.

On July 7, 2010, after receiving no response within 30 days of his first fee payment dispute under SCC 30.86.011, Hopper filed an administrative appeal with the County's Hearings Examiner, Barbara Dykes, to exhaust any remedies. CP 147-162; CP 172-188. He also simultaneously filed a combined LUPA appeal and complaint for declaratory, injunctive, and writ relief. Cp 1-57; CP 59-112.

Hopper's administrative appeal and complaint alleged violations of RCW 82.02.020 by impermissibly charging categories of indirect costs and a 3% technology surcharge under SCC 30.86.010 and SCC 30.86.030. CP 10-16; CP 36-45CP 66-67, 69-71, 75-76.

Immediately after Hopper had filed his administrative appeal and lawsuit on July 7, 2010, Acting PDS Director Barbara Mock met with the County's Prosecutor's Office. CP 1389-1390.

On July 13, 2010, before any administrative appellate hearing, PDS Director Mock returned all of Hopper's grading permit fees. In a "Decision" letter, drafted by the Prosecutor's Office, citing SCC 30.86.011, Ms. Mock stated:

"...Due to this staffing transition, your fee appeal under SCC 30.86.011 was not handled within the 30 day time period specified by the County Code. As a result of this delay, I am granting your appeal, and refunding the \$459.24 that you paid on May 26, 2010." CP 620; (Emphasis added). CP 164-165; CP 620-621.

Hopper had not protested the entirety of the grading permit fees. CP 1429-1430 (*Mock Dep., pp. 62-64*) Instead, he specifically requested that PDS "recalculate" the grading permit fee and other fees in the PDS schedule to remove those portions of unlawful indirect costs and technology surcharges. CP 166-169; CP 1428-1429 (*Mock Dep., pp. 64-66*) He also asked that the County stop this practice in connection with his current and future permit applications. CP 145-146; CP 166-169.

The County admits that at the time of Mock's Decision letter, no permit fee dispute procedures or criteria existed under SCC 30.86.011 to

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The County admits that at the time of Mock's Decision letter, no permit fee dispute procedures or criteria existed under SCC 30.86.011 to

legally require the County to refund all of Hopper's permit fees. CP 1191; CP 1428 (*Mock dep., pp. 62-64*).¹

In an attempt to justify her full refund, Director Mock testified that her Decision was the result of *ad-hoc*, case-by-case decision-making undertaken exclusively with assistance of the Prosecutor's Office, and that "No 'record of decision making' exists." CP 1182; CP 1416 (*Mock dep. p. 15, ll. 5-8*); CP 1122, ll. 3-4; CP 1124, ll. 8-11; CP 1268-1269.

On July 14, 2010 Hopper received Director Mock's July 13, 2010 full refund check (\$459.24) via US mail. CP 622-623.

On July 15, 2010, unbeknownst to Hopper and his attorneys, who were required to be notified under SCC 2.02.125 (7) procedures, the County's Hearing Examiner, Barbara Dykes, issued a final decision terminating Hopper's appeal. CP 624-626. In her Decision (which was used later by the County as the basis for "mootness" and "standing" in its Motion to Dismiss)² Ms. Dykes entered findings stating that: "...PDS granted your appeal pursuant to SCC 30.86.011 and returned to you the permit fees at issue." CP 626; CP 980, ll. 3-8; CP 983, ll. 1-4.

¹ Q There's nothing in 30.86.011 that requires the County to return an entire fee as part of a dispute resolution, is there?

A No. (CP 1427)

² CP 275-287.

On July 16, 2010, Hopper returned the full refund check by letter to Director Mock stating *inter alia* that: he had made no “appeal.” CP 166-169; CP 629-630. In this letter, Hopper told Ms. Mock that: his “dispute” requesting that PDS remove indirect cost elements and the 3% technology surcharge had not been addressed; neither appeal nor “dispute” procedures were allowed under RCW 82.02.020; the full refund of fees was not requested; a full refund would amount to an unconstitutional gift of public monies; and, that he would be subject to these same unpermitted cost and technology surcharges at the next permit fee stage of his project and all future projects. Id.

On July 19, 2010 Hopper sought review of the July 13, 2010 full refund check and letter from PDS to Examiner Dykes in a Second administrative appeal. CP 171-187; CP 193-270; CP 631-656. Hopper’s Second appeal attached a copy of Hopper’s July 16, 2010 letter to PDS in which Hopper rejected the July 13, 2010 full refund as not addressing his “dispute.” CP 167-169. Hopper’s July 16, 2010 letter stated that he would continue to be subjected to illegal charges at the next stage of his project and in connection with future development projects.

When Hopper’s attorney tried to file the second appeal at PDS offices, PDS consulted with the Prosecutor’s Office. PDS then refused to accept its filing. CP 171-187; CP 194-270; CP 631-656. The County’s

explanation in rejecting the filing was that "...since all money had been refunded, he had no grievance and no damages. CP 1121-1122.

On July 21, 2010 Examiner Dykes issued another apparent Decision entitled "Order Closing Appeal." CP 658. This decision restated the same findings contained in the earlier July 15, 2010 Order. CP 970-971. The only difference between these documents were their decision dates, document numbers, page count, and use of an electronic signature.

On July 23, 2010, Hopper amended his First Amended LUPA Petition and Complaint to incorporate his challenge to the PDS Director's July 13, 2010 Decision. CP 113-274.

On July 23, 2010, the County filed its Motion to Dismiss. The County based its Motion upon standing and mootness grounds claiming that the full refund of fees in the July 13, 2010 Decision letter required dismissal under Orwick v. Seattle, 103 Wn.2d 249, 692 P.2d 793 (1984). CP 275-287.

In its Motion to Dismiss, the County attached the Examiner's July 15, 2010, Order which the Prosecutor's Office had received, but which had not been provided to Hopper or his attorneys. CP 316-318; CP 336-337. [Note: In later deposition testimony, Ms. Mock testified that she had no knowledge of how the Examiner would have received information

showing that she refunded Hopper's fees on July 13, 2011.] CP 1241; CP 1432 (*Mock Dep. p. 75.*)

On July 30, 2010, Hopper separately appealed the Examiner's July 21, 2010 Order in a second LUPA appeal and complaint for declaratory, injunctive, and writ relief filed under King County Cause No. 10-2-27596-7 SEA challenging the refusal to accept Hopper's Second administrative appeal. CP 1-55. Hopper again claimed that the County's permit fee practices would continue in later project permit stages as well as with future projects. CP 26-27.

The parties thereafter stipulated to orders consolidating both cases and dismissing the LUPA appeals in that permit fees are not final land-use decisions under RCW 36.70C.020(2) and RCW 36.70C.030. CP 56-58.

On October 7, 2010, Hopper filed a second permit for a required critical areas review, and paid \$741.60 that included a 3% technology surcharge. CP 467; CP 471; CP 965-966.

On October 20, 2010, two (2) days before the motion to dismiss hearing, the County filed its Reply to Hopper's Response. CP 952-959. This Reply contained an October 20, 2010 Supplemental Declaration of Prosecuting Attorney Robert Tad Seder. CP 960-972; App. B. It attached a letter dated October 20, 2010 from the County's newly appointed PDS Director Clay White addressed to Mr. Hopper. CP 967-969. Notably,

before Hopper could “dispute” the \$741.60 critical areas review fees for his second permit, PDS Director White returned all of Hopper’s permit fees on the eve of hearing even though: (1) no refund request had been made by Hopper; (2) no dispute had been filed by Hopper under SCC 30.86.011; (3) and, no 30-day deadline had been missed under SCC 30.86.011. CP 967-969.

The trial court thereafter allowed limited discovery of PDS Director Barbara Mock on November 3, 2010 on mootness and standing issues. The Mock deposition that is material to this appeal includes the following undisputed material facts:

p. 7, ll. 24-25; p. 8, ll. 1-24. Hopper’s project, including his critical area review, is still in process. Mr. Hopper will receive a letter, when the reviewer comes back from vacation, as to the next step in the processing of his application. CP 1414.

p. 14, ll. 24-25; p. 15, ll. 1-8. There is no written process or record as to how an applicant is to dispute a fee charge so Mr. Hopper’s written letter was an appropriate method to dispute the fees. CP 1181-1182; CP 1416.

p. 20, ll. 3-11. PDS Director Mock admits that the only code provision she cited as the basis for refunding all permit fees to Hopper was SCC 30.86.011. CP 1417.

p. 21, ll. 7-15. The Prosecutor’s Office drafted the PDS Director’s letter after Hopper filed his appeal and lawsuit. CP 1188; CP 1417.

p. 23, ll. 12-24; p. 24, ll. 1-12; p. 36, ll. 4-9. Ms. Mock contends she refunded all of Hopper’s grading permit fees pursuant to SCC 30.86.011 because of missing a mandatory 30 day decision period, yet admits that SCC 30.86.011 does not require refund of the fee if

more than 30 days pass. CP 1190-1191; CP 1203; CP 1418; CP 1421.

p. 24, ll. 13-25; p. 25, ll. 4-13; p. 66, ll. 5-16. Ms. Mock admits that the County will continue to collect permit fees from applicants alleged by Hopper to be unlawful to "...cover the costs incurred in reviewing a developer's application." CP 1191-1192; CP 1418; CP 1429.³

p. 25, ll. 14-25. In returning Mr. Hopper's grading permit fee, Ms. Mock could not have responded to Mr. Hopper's June 1, 2010 challenge concerning RCW 82.02.020, because she had not read RCW 82.02.020 until two nights before her deposition on November 3, 2010. CP 1192; CP 1418.

p. 38, ll. 4-17. The County had already incurred public expenses in conducting a review of Hopper's application and site inspection on June 8, 2010 well before Ms. Mock returned Mr. Hopper's fee on July 13, 2010. CP 962-964; CP 1422; CP 1205.

p. 39, ll. 1-12. Ms. Mock could not determine how the County's received a copy of her July 13, 2010 Decision Letter before Examiner Dykes made a ruling that Hopper's fee dispute and appeal to the were moot. CP 1206; CP 1422.

p. 42, ll. 3-5. Ms. Mock testified that Mr. Hopper's development application is still in process. CP 1423.

p. 43, ll. 24-24; p. 44, ll. 1-3. Ms. Mock testified that it is normal to charge an applicant for a critical areas review. CP 1209; CP 1423.

p. 45, ll. 8-25; p. 46, ll. 1-19. Ms. Mock admitted that PDS will continue to collect fees for subsequent applications and review services and that PDS expended service costs in the site visit by its employee, Michael Braaten. Ms. Mock admitted that the current

³ PDS Director Mock testified that: "PDS administers a complex set of development codes and regulations that requires technical staff to review them. The fees that we charge are to cover the costs of those reviews and inspections to insure compliance to County code." As an applicant, Hopper is subject to the mandatory payment of fees as a condition of permit processing identified in Exhibit 19. CP 1418.

PDS Director, Clay White, refunded Hopper's fees on October 20, 2010. CP 1212-1213; CP 1423-1424.

p. 52, ll. 11-25; p. 53, ll. 1-17; p. 54, ll. 2-3. Ms. Mock testified that Hopper's development application is continuing to be processed, that fees will continue to be regularly charged as part of the processing, and, yet without explanation, acknowledged that every fee paid by Hopper had been returned. CP 1219-1221; CP 1425.

p. 57, ll. 18-23; p. 58, ll. 1. Ms. Mock didn't know of any other applicant, other than Hopper, where all fees in processing the application had been waived or refunded. CP 1224-1225; CP 1426.

p. 61, ll. 6-25; p. 62, ll. 1-10, 20-24. Ms. Mock testified that she did not even know about RCW 82.02.020 until two nights before her deposition. Ms. Mock was instructed during the deposition not to answer questions about RCW 82.02.020 in connection with the County's permit fee charges. In addition, Ms. Mock admitted that Hopper did not request the return of all permit fees. CP 1228-1229; CP 1427-1428.

p. 62, ll. 25; p. 63, ll. 1-20. Ms. Mock admitted that nothing in SCC 30.86.011 requires the PDS Director to refund all permit fees where a decision is not made within 30 days. CP 1229-1230; CP 1428.

p. 65, ll. 19; p. 66, ll. 1-16. Ms. Mock confirmed that PDS will continue into the future to impose a 3% technology surcharge and charge indirect costs and County-wide overhead that Hopper claimed violated RCW 82.02.020. CP 1232-1233; CP 1428-1429.

p. 81, ll. 1-12. In processing a normal application, the applicant is required to pay a fee for critical areas review. CP 1248-123; CP 1432.

p. 82, ll. 8-12. PDS will continue review of Hopper's application. If this were a standard application, Mr. Hopper would be expected to pay a fee for the critical areas review. CP 1249; CP 1433.

p. 89, ll. 1-25; p. 90, ll. 12-25; p. 91, ll. 1-7. Ms. Mock explained that all the stages of Mr. Hopper's application as shown in Deposition Exhibit 19, including the payment of listed fees, are "mandatory"

charges that are required to be paid by Hopper the same as any other applicant. Yet, all fees paid by Hopper fees had been returned to him. CP 1434.

p. 89-91. Ms. Mock testified that the only thing different about Hopper's application, otherwise requiring mandatory payment of all fee charges, was the fact that he had filed a lawsuit. CP 1256-1258; CP 1434-1435.

In order to construct residential dwellings, Hopper's project will require additional applications and additional processing fees for development beyond the initial grading permit and critical areas review to complete the project. CP 26, ¶14; CP 27-¶20; CP 460; CP 1439-1446 (Mock Dep. *Ex. 19*.) These fees will continue to include impermissible indirect cost components and technology surcharges not permitted under RCW 82.02.020. *Id.*

Another permit applicant experiencing the unpermitted fees, Andrew Hooper, stated that he would never use the County's SCC 30.86.011 dispute procedures because it would automatically "freeze" his application and result in open-ended punitive uneconomic delays. CP 719-723.

Hopper and other permit applicants can reasonably expect that any and all future permit fee payments will be returned in full as part of the County's *ad-hoc* policy to avoid judicial scrutiny of its unlawful and unconstitutional tax upon thousands of unknowing applicants in order to

continue the collection of unlawful tax revenues and avoid disgorgement of the same.

V. SUMMARY OF ARGUMENT

The County cannot lawfully create an artificial mootness device after Hopper had first filed an administrative appeal and lawsuit where: (1) its local permit fee dispute procedures and standing requirements to defeat permit fee challenges are unlawful under RCW 82.02.020 and RCW Chapter 82.02; (2) it employed non-reviewable *ad-hoc* and self-imposed process penalties to create a mootness fiction not recognized under Washington law; (3) the County could have issued a decision on the merits of Hopper's claims even after Hopper had filed his administrative appeal and lawsuits; (4) Hopper never requested a full refund of all permit fees and faces the same permit fee issues in later permit stages for his project; and (5) Hopper's fee claims are not moot because he will again pay fees in later development stages of his project; and (6) where the County's full refunds after PDS Staff performed permit services constitute an unconstitutional gift of public monies.

Even if technically moot, the trial court erred in not applying a recognized exception for cases involving continuing and substantial public interest and in not finding the County's actions violative of due process and local adjudicative hearing requirements.

VI. ARGUMENT

On appeal, challenged conclusions of law are reviewed *de novo*. Sunnyside Valley Irrig. Dist. V. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). For purposes of this appeal, summary judgment is proper only when “...the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c); Hartley v. State, 103 Wn.2d at 774, 698 P.2d 77 (1985). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to Hopper as the nonmoving party. Yakima Fruit v. Central Heating, 81 Wn.2d 528, 530, 503 P.2d 108 (1972); Barber v. Bankers Life & Cas. Co., 81 Wn.2d 140, 142, 500 P.2d 88 (1972). Summary judgment is proper when reasonable persons looking at all the evidence could reach only one conclusion. Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993).

A. RCW 82.02.020 Which Regulates Permit Fees Is Preemptive of Any County Procedures.

The trial court’s dismissal of Appellant’s claims is predicated on upholding the lawfulness of SCC 30.86.011, which as applied, allows the County to create *ad-hoc* devices to moot applicants’ challenges to the

lawfulness and reasonableness of permit fees not expressly permitted under the provisions of RCW Chapter 82.02 or RCW 82.02.020.

Washington state courts have not addressed this issue. Namely, whether the County can interpose administrative dispute/appeal procedures under the state's preemptive taxing prescriptions of RCW 82.02.020 as a pre-condition to challenge the lawfulness and reasonableness of permit fees. After Hopper challenged the lawfulness of the County's permit fees, the County fully "refunded" all of Hopper's permit fees, which were not requested by Hopper, asserting that his claims were legally moot.

RCW 82.02.020 is a state taxing statute. It preemptively regulates direct or indirect taxes, fees and charges affecting the development of land and buildings. Isla Verde v. City of Camas, 146 Wn.2d 740, 753, 49 P.3d 867 (2002). Permit fees may only be collected under RCW 82.02.020 to cover reasonable administrative costs of processing applications, inspecting and reviewing plans. In Home Builders v. City of Bainbridge Island, supra at 350, the Court limited costs that may be charged as fees to permit applicants:

We reject the City's and the trial court's expansion of RCW 82.02.020's exception beyond the costs of processing applications, inspecting and reviewing plans, or preparing SEPA statements to include a portion of all costs allowed by accounting and cost allocation guidelines for government agencies. If the legislature

meant to allow such a broad exception for the basis of fees charged permit applicants, it was capable of so stating. We are constrained to interpret the statute according to its clear meaning and we leave any expansion of this narrow exception to those charged with the duty to create laws. (citations omitted)

Because RCW 82.02.020 requires strict compliance with its terms, "...any tax, fee, or charge, either direct or indirect, imposed on development is invalid unless it falls within one of the exceptions specified in the statute." Isla Verde, supra at 755, 49 P.3d 867; see also Henderson Homes, Inc. v. City of Bothell, 124 Wn.2d 240, 247, 877 P.2d 176 (1994).

B. The County's Ad-Hoc "Dispute" Procedures Are Unlawful.

Local "dispute" procedures creating standing requirements for challenges to the reasonableness of permit fees are not allowed under RCW 82.02.020 or in any provision of this statute. RCW 82.02.070 (4) authorizes procedures for impact fees to be paid under protest and for appeal of impact fees under RCW 82.02.070. However, no such provisions exist for challenging permit fees. In fact, RCW 82.02.090(3) specifically excludes and distinguishes "permit fees" from the definition of "impact fee" thereby removing any dispute provision for permit fees.

The parties stipulated that permit fees do not represent final land use decisions under RCW 36.70C.020. CP 384-386. The County's "dispute" provisions in SCC 30.86.011 are not facially allowed or expressly permitted by the state Legislature under RCW Chapter 82.02 or RCW

82.02.020. App. A. SCC 30.86.011 conflicts with the state's general laws and is accordingly invalid. Benchmark v. Battleground, 146 Wn.2d 685, 698, 49 P.3d 860 (2002).

In Hopper's case, the County when challenged, merely returned his entire grading permit application fees and subsequent wetland review fees under the pretense that a "mandatory deadline had been missed." CP 1419; (*Mock Dep. p. 24, ll. 1-11.*) Unless this court declares otherwise, any local jurisdiction can create *ad-hoc*, standardless,⁴ arbitrary, and record-less devices, such as "full refunds," to defeat standing thereby rendering the cost proscriptions of RCW 82.02.020 meaningless.

The County has cited its general police powers of Article 11, Sec.11 as its source of authority to make *ad-hoc* decisions. See CP 1121-1122; CP 1126. As noted in Heinsma v. City of Vancouver, 144 Wn.2d 556, 560, 29 P.3d 709 (2001), local charter authority under Article 11, Section 11 of the State Constitution allows the County to:

"... make and enforce within [their] limits all such local police, sanitary and other regulations as are not in conflict with general laws...However, this power ends when the legislature adopts a law

⁴ "Standardless" is a reference to the decision in Anderson v. Issaquah, 70 Wn.App. 64, 75-78, 851 P.2d 744 (1993) where the court found that unconstitutionally vague terms and the absence of specificity left the reviewing City's reviewing officials with their "own individual, subjective feelings" through the use of such terms as "interesting" and "harmonious" violated constitutional procedural due process warning rights and was the "...epitome of discretionary, arbitrary enforcement of the law." SCC 30.86.011 does not provide or reference any "dispute" review criteria, grounds, reasons, or standards to determine when, how, and why to refund disputed fees.

concerning a particular interest, unless the legislature has left room for concurrent jurisdiction. Lenci v. City of Seattle, 63 Wash.2d 664, 669, 388 P.2d 926 (1964). When the state's interest is paramount or joint with the city's interest, the city may not enact ordinances affecting the interest unless it has delegated authority. Massie v. Brown, 84 Wash.2d 490, 492, 527 P.2d 476 (1974).” (Emphasis added).

RCW Chapter 82.02, and the permit fee exception of RCW 82.02.020, as applied in Home Builders v. City of Bainbridge, supra at 348 citing Isla Verde v. City of Camas, supra at 755 and Cobb v. Snohomish County, 64 Wn.App. 451, 461, 829 P.2d 169 (1992), is preemptive and requires “strict compliance with its terms.” Heinsma, supra at 561, holds that:

“A city is preempted from enacting ordinances if the legislature has expressly or by implication stated its intention to preempt the field. Brown v. City of Yakima, 116 Wash.2d 556, 559-60, 807 P.2d 353 (1991). When the legislature has expressly stated its intent to preempt the field, a city may not enact any ordinances affecting the given field...”

SCC 30.86.011 dispute provisions and the County’s *ad-hoc* “full refunds” as a device to defeat standing are in direct conflict with RCW Chapter 82.02 and RCW 82.02.020. There simply are no state delegated procedures or cost categories that allow local government to deviate from the cost restrictions of RCW 82.02.020, or create “dispute” or appeal provisions for permit fees. SCC 30.86.011 is unconstitutional because of its conflicts and cannot be harmonized with RCW 82.02.020 and RCW Chapter 82.02. The legislature left no room for concurrent local jurisdiction. Rabon v. Seattle, 135 Wn.2d 278, 287, 957 P.2d 621 (1998).

Home Builders affirms that the “burden” is on the County “...to show that its fees fall within the specific exception and that they are reasonable.” Id. at 347, 351. By not enforcing preemptive RCW Chapter 82.02 cost standards and procedures by declaring the County’s SCC 30.86.011 “dispute” requirements and full refund of fees to be unlawful and null and void, the trial court has allowed County to unlawfully evade the mandatory “reasonableness” burden placed upon cities and counties under RCW 82.02.020 and Home Builders. The uniformity of cost standards and procedures desired by the State legislature limiting direct cost categories and authorizing appeals only for impact fees cannot be harmonized and would otherwise be rendered meaningless.⁵

C. SCC 30.86.011 “Dispute” Procedures Do Not Authorize the Waiver of Permit Fees.

Presented with undisputed evidence showing the absence of any knowledge of RCW 82.02.020,⁶ and confirming that SCC 30.86.011 contained no procedures or criteria for review of its fee charges,⁷ the trial court incorrectly concluded that the expiration of the 30-day review period mandated, either explicitly or impliedly, a full refund to Mr. Hopper

⁵ Courts avoid literal readings of a statute which would result in unlikely, absurd, or strained consequences. Tingey v. Haisch, 159 Wn.2d 652, 663-64, 152 P.3d 1020 (2007).

⁶ CP 1419(*Mock Dep.*, p. 25); CP 1427 (*Mock Dep.*, p. 61) – Witness Mock was instructed not to answer question of whether the County was attempting to apply RCW 82.02.020 to its permit fees and permit fee disputes.

⁷ CP 1416, CP 1418, CP 1428 (*Mock Dep.*, pp. 14-15, 24, 62).

whether Hopper had requested it or not. CP 1369-1370; (*Oral Ruling Page 4, lines 13-15*) The trial court Ruling refers to additional rights that the PDS Director had under another code section, SCC 30.86.015, to make a full refund, even though this code was not cited in the County's July 13, 2010 Decision letter. CP 1370 (*Oral Ruling, p. 4, ll. 16-17*).

The trial court received undisputed evidence showing that Hopper never requested a full refund at any stage of his project applications. CP 1414; CP 1418; CP 1423; CP 1425; CP 1433 (*Mock Dep. pp. 9, 24, 42, 45, 52, 82*). He requested only that PDS recalculate his fees to remove only the unlawful portions for indirect costs and the 3% surcharge; and to stop the ongoing practices of charging indirect costs and the 3% technology surcharge. CP 146; CP 219; CP 464, ¶I, ll. pps. 7-8; CP 468, ¶V; CP 469, ¶Z; CP 499-530; CP 26, ¶13 (Hopper verification). These undisputed facts showing that a "full refund" would not have "made Mr. Hopper whole." In fact, Hopper faced, and continues to face, ongoing permit fees with his current project; not to mention future development projects. (CP 1414, 1418, 1423, 1425, 1433; *Mock Dep. pp. 9, 24, 42, 45, 52, 82*.)

D. Neither RCW Chapter 82.02 Nor the Reform Act, RCW Chapter 36.70B, Require a Self-Imposed Timeliness or "Process" Penalty.

In the following Ruling excerpt at CP 1371, the trial court incorrectly reasoned that the failure to provide a timely process was a

sufficient ground to refund all fees:

“Mr. Hopper next argues that the county code provisions are contrary to 8202020 [sic] and also constitutional provisions and the argument that the county’s required to charge for some costs for reasonable services provided and there’s some evidence that services were provided. And that evidence is in the record provided by Mr. Hopper.

However, I think this is an incorrect framing of the issue. Here both the county and its citizen are entitled to process. If the county fails at its end in answering an appeal as a matter of procedure, it is entitled to refund all monies. Here, the remedy is completely unrelated to the services it provided, because the remedy relates to procedure and not to services rendered. It in fact provides a penalty to the county for failing to timely respond to an appeal by a citizen.” (Emphasis added). CP 1370.

The trial court is trying to legislate something that is not provided in the code, or RCW Chapter 82.02. This is not the function of a court. Nor is this reasoning based upon the application of mootness or the standing doctrine under Orwick v. Seattle, 103 Wn.2d 249, 692 P.2d 793 (1984). Rather, it is based upon an undefined, unauthorized, and self-imposed timeliness of process “penalty” concept not appearing in SCC 30.86.011.

Neither RCW 82.02.020, nor RCW Chapter 82.02, requires that all permit fees be refunded where a local jurisdiction does not timely process a fee dispute. Here, the trial court simply adopted the arbitrary *ad-hoc* rationale of Mock’s July 13, 2010 Decision that only references SCC 30.86.011 without regard to RCW 82.02.020. The trial court erred in not considering PDS Director Mock’s admission that she was not aware of

RCW 82.02.020 until two (2) days before her deposition; and that her Decision letter was drafted by the Prosecutor's Office after Hopper filed his administrative appeal and lawsuit. CP 1418 (*Mock Dep.*, p. 25).

The State's Regulatory Reform Act, RCW Chapter 36.70B also does not recognize "full refunds" as a procedure, "process," remedy, or "penalty" for the processing of project permits.⁸ Even if permit fees were considered to be a category of project permits (which they are not), Ms. Mock needed only to make written findings consistent with RCW 36.70B.080(1) that she needed more time to process Hopper's dispute. See SCC 30.70.110. App. A. Indeed, Ms. Mock stated in her July 13, 2010 Decision letter that "staffing transition" caused by the retirement of her predecessor prevented her from making a timely decision. CP 164-165. Nothing prevented PDS Director Mock from contacting Hopper informing him that additional time was needed to make a decision under SCC 30.86.011.

Because no official reviewable written record of decision-making preceded the July 13, 2010 Decision and full refund to Hopper,⁹ the actions of PDS and the trial court are not supported by substantial

⁸ See Schultz v. Snohomish County, 101Wn.App. 693, 700-01, 5 P.3d 767 (2000) confirms that the Reform Act provisions are mandatory. The County has stipulated that permit fees are not final land-use decisions under LUPA. Similarly, project permits as defined by RCW 36.70B.020(4) do not include permit fees.

⁹ The County admitted in deposition testimony and written arguments to the trial court that there was no written record of decision-making by PDS or the Examiner. CP 1417.

evidence. To uphold the lawfulness of returning all of Hopper's permit fees as a "process" penalty, the trial court would have ignored the following evidence: (1) Hopper never requested a full refund of his permit fees; (2) the full refund letter was drafted by the Prosecutor's Office after Hopper had appealed the County's failure to act; (3) no notice, hearing, procedures, criteria, or published forms implement SCC 30.86.011; (4) the County will assess additional permit fees in later development activity by Hopper;¹⁰ (5) the County admitted it was in the process of future reviews of Hopper's applications;¹¹ (6) during summary judgment proceedings the PDS Director made another full refund of Hopper's second permit (critical areas review) application fees before Hopper could file another fee dispute cutting off any "chance of redress" by Hopper;¹² (7) there was no administrative hearing to address the merits of Hopper's permit fee;¹³ (8) the County will not alter its policy in charging indirect costs and 3% technology surcharges;¹⁴ (9) no formal appeal provisions or standing test is required by RCW 82.02.020 to challenge the lawfulness of fees; and (10) the court had available equitable and writ remedies available to direct

¹⁰ CP 1416. (*Mock Dep.*, pp. 14-15)

¹¹ CP 1414, (*Mock Dep.*, pp. 7-9).

¹² CP 960-972; CP 1398-1410 (*Attorney Seder Declaration attaching October 20, 2010 White letter*).

¹³ CP 1370.

¹⁴ CP 1429 (*Mock Dep.*, p. 66.)

PDS to make a determination on Hopper's dispute notwithstanding the expiration of the 30-day review period under SCC 30.86.011.

Under these circumstances the County was neither legally authorized nor legislatively compelled to refund all of Hopper's permit fees. The refund was, pure and simple, a self-serving "penalty" to evade judicial review of the County's permit fee charges. The only true "penalty" authorized by the dispute provisions of SCC 30.86.011, even if lawful, would have fallen on Hopper, whose permit was "stayed during the pendency [sic] of the dispute resolution." SCC 30.86.011. CP 18; CP 22; CP 1356.

Accordingly, it was error for the trial court to refuse to issue mandatory writ relief compelling the County to act on Hopper's permit fee dispute to correct void, illegal, or erroneous proceedings and accept jurisdiction to determine the lawfulness of the County's permit fee system under RCW 82.02.020 where the exercise of writ authority for this purpose was requested by Hopper. See Hopper's Motion for Reconsideration, p. 11; CP 1346-1452 citing Norco Constr. v. King County, 97 Wn.2d 680, 690, 649 P.2d 103 (1982) and RCW 7.16.040 at CP 1356.

E. Refund of Some of the County's Ongoing Permit Fee Charges Does Not Render Hopper's Claim Moot.

Mr. Hopper's current development project has and will necessarily subject him to ongoing fee charges at each state of the development. Mr. Hoppers claims and challenges relate specifically to the two permit fees paid, refunded, and returned to the County as well as all ensuing project fee charges. In its rush to evade judicial review of the components of its fee charges, the County has, as noted above, by *ad-hoc* activities conjured up between the PDS Director and an assistant County Prosecutor, refunded the first to of but many fee charges Mr. Hopper will continue to face in pursuing his current project.

The County sought dismissal relying on the reasoning in Orwick v. Seattle: "The County refunded his money, so he lacks standing and the case is moot." CP 977, 981-985. In Orwick, the Court held that where speeding tickets had been dismissed by a lower municipal court, the allegedly incorrect procedures followed by the Seattle Municipal Court and Police Department could not have been corrected by an injunction.

These simply are not the case circumstances here. Not only did the trial court here find that "there had not been an adjudication on the merits" that preceded the July 13, 2010 Decision letter, it possessed injunctive and writ authority under RCW 7.16.040 to require the County to issue a formal decision under SCC 30.86.011.

Further, Hopper's claims were not moot where the undisputed facts establish that: (1) Hopper had not requested a full refund (CP 467, ¶R; CP 496; CP 629-630); (2) Hopper's permit fee challenge (recalculation of his fees to remove indirect costs and 3% surcharges and to stop such practices under RCW 82.02.020) had not been addressed by the PDS Director (CP 26-27; CP 167-168; CP 629-631); (3) where permit processing services had been provided by the County (CP 1427, CP 1431; CP 962-964) and (4) an unwanted full refund would amount to an unconstitutional gift of public monies.¹⁵ Under these undisputed facts, it was error for the trial court to conclude that it could "no longer provide effective [declaratory, injunctive, and writ] relief" sought by Hopper for fees imposed under the current grading permit application under Orwick.

Most importantly, it is undisputed that Hopper faces ongoing permitting changes for the current project and future project permit fees; See October 20, 2010 PDS Letter on CAR application, CP 967-968; CP 467, ¶S; CP 1414, CP 1423-CP 1425 (*Mock Dep., pages 7-9, 42, 44, 45, 46, 52, 53*). Hopper's claims of unlawful costs and charges continue as demonstrated in Hopper's critical area review application and permit fees.

¹⁵ Article 8, section 7 of the State Constitution prohibits public funds from being gifted for private use, but makes an exception for the support of the poor or infirm. Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray, 133 Wn.App. 479, 487, 136 P.3d 776 (2006). The County has not demonstrated how the return of all permit fees to Hopper after it performed review and processing services represents the support of the poor or infirm.

CP 489-493; CP 962-966 (Ex. C Hopper Declaration). Because Hopper's project is active, permit fees containing such costs and charges will continue to be charged and collected by the County. (CP 467, ¶¶S; (CP 962-966; CP 1414, CP 1423-CP 1425 (*Mock Dep., pages 7-9, 42, 44, 45, 46, 52, 53*). Ms. Mock testified that "...the County is in the process of reviewing it and will be writing Mr. Hopper a letter in the near term explaining the shortcomings, and how he can remedy them, and the next step. CP 1414 (*Mock Dep., p. 8*).

F. Whether Hopper's Challenge is Technically Moot, This Matter Is of Continuing and Substantial Public Interest with the Reasonable Expectation of Recurrence Triggers the Exception to the Mootness Doctrine.

An excellent review of the exception to the mootness doctrine is found in Hart v. DSHS, 111 Wn.2d 445, 759 P.2d 1206 (1988). The court succinctly sets out the three factors considered essential to invoke the exception as: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.

1. Public Matter. Whether a county can, contrary to a state statute, by unconstitutionally taxing thousands of persons who have sought, and will continue in the thousands in the future, seek to develop real property under the guise of permit fees incorporating unallowed indirect cost components.

It is a public matter in that it involves one of the governmental departments most integrally involved with the regulation of building and development. It is a matter of paramount public importance that involves the economic interplay between a county, its citizens and applicants that directly impacting development as recognized in Home Builders, supra at 346.

2. An Authoritative Determination is Important. During the course of Mr. Hopper's latest development project, Snohomish County has cycled through three P.D.S. Directors. Ms. Mock, who was involved in the first fee refund was not aware of the very statute governing the type of costs, which a county can charge in connection with permit fees. Her predecessor presumably had no knowledge as the fee schedule challenged by Mr. Hopper was implemented prior to Ms. Mock's tenure. Whether Ms. Mock's successor has any knowledge of the prescribing legislation of RCW 82.07.020 is unknown.

The matter of property development fee charges varies by governmental entities throughout the state. The statewide concern about property development fee charges under RCW 82.02.020 by Washington courts is evident from cases such as Home Builders, Id. at 346. The importance of guidance in interpreting RCW 82.02.020, its allowed costs, permit fees, and procedures make the need for uniform guidance by the courts highly desirable.

3. The Issues Raised Are and Will Continue to Recur. The fact that the “full refund” of the initial application fee and subsequent critical areas fee were used as a device to evade judicial review after Hopper filed his administrative appeal and lawsuit invites invocation of the exception. As noted in Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed2d 350 (1975) citing Super Tire Engineering Co. v. McCorkle, 416 U.S. 115, 122, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974) an exception to the mootness doctrine under circumstances where “...the issues presented are ‘capable of repetition, yet evading review,’ so that petitioners are adversely affected by government ‘without a chance of redress.’” See also Client A v. Yoshinaka, 128 Wn.App. 833, 841-42, 116 P.3d 1081 (2005); Hart v. DSHS, 111 Wn.2d 445, 447-50, 759 P.2d 1206 (1988).

Super Tire Engineering involved the eligibility of workers to New Jersey public assistance who were engaged in a strike and alleged interference with collective bargaining under the Labor Management Relations Act, 29 USC §141 *et seq.* Before the case was tried, the labor dispute was settled and the strike terminated. In examining whether a “case” or “controversy” existed under Article III, §2 of the federal Constitution, the Supreme Court found that it “suffices that the litigant show an immediate and definite action or policy that has adversely affected and continues to affect a present interest.” *Id.* at 116-117. The union argued that the

controversy had been mooted because the employees returned to work. *Id.* at 121. The court considered whether these facts involving governmental action and short term nature of the actions where the strikes did not “last long enough for judicial review” or were settled were “capable of repetition, yet evading review” so that the petitioners were “adversely affected” by government “without a chance of redress.” *Id.* at 122, 123, 126. The court found that:

“...the challenged governmental activity...is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interest of the petitioning parties.”

The Court concluded that the state’s policy was “fixed and definite” and “not at all contingent” where public funds were available to employees if they went out on strike. *Id.* at 124-125. Applied here, the County has demonstrated that it will continue to use SCC 30.86.011 dispute procedures as a device to continue its legislative policies under SCC 30.86.010 and SCC 30.86.030 that charge Hopper, and other permit applicants, unlawful indirect costs and a 3% technology surcharge. CP 1429; (*Mock Dep.*, p. 66.) The County’s Supplemental Brief itself confirms the existence of a “live controversy” recognizing that multiple permitting stages occur with project permits where it is reasonable to expect Hopper, or any other applicant, to pay additional permit fees. CP 1275. At the same time, the

payment of permit fees and use of *ad-hoc* fee dispute procedures under SCC 30.86.011 do not “last long enough for judicial review” or, as the County has demonstrated, are “capable of repetition, yet evading review.”

These circumstances are illustrated in Hopper’s application for critical areas review. As instructed by PDS biologist Braaten on June 9, 2010, Hopper applied for a critical areas permit in a second stage of his project development. CP 962-966. PDS Director White immediately refunded all of Hopper’s permit fees on October 20, 2010. CP 967-968; CP 1405-1406. Remarkably, the new PDS Director returned all of Hopper’s \$741.60 of fees when Hopper had made no request and where no 30-day deadline had been missed under SCC 30.86.011. CP 967-968; CP 1405-1406. This second full refund of fees was then used in the County’s Reply and Supplemental Brief for its motion to dismiss only two (2) days before the October 22, 2010 hearing in support of its mootness arguments to evade the very judicial review sought by Hopper. Id. at 122. CP 952-972; CP 1267-1279.

These undisputed facts fall within mootness exception criteria of Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) as discussed in Hart v. DSHS supra at 450-52 that references and applies the Weinstein v. Bradford mootness exceptions test:

“The Supreme Court has stated ‘a mere physical or theoretical possibility’ is not enough to meet the ‘capable of repetition, yet evading review’ standard. Murphy v. Hunt, 455 U.S. at 482, 102 S.Ct.

at 1183. It has required a “‘reasonable expectation’ or a ‘demonstrated probability’ that the same controversy will recur involving the same complaining party.’ Murphy v. Hunt, at 482, 102 S.Ct. at 1184 (quoting Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975)). The likelihood of Hart's dispute recurring does not rise to a sufficient level of probability. After the expiration of her modified certificate, Hart did not seek recertification. To presume that her same dispute with DSHS over the issuance of a modified certificate would recur would be speculative and certainly not a reasonable expectation.” (Emphasis added).

Here, unlike the facts in Hart v. DSHS, the latest PDS Director, not Ms. Mock, refunded Mr. Hopper’s latest project, critical area review, fees by way of letter dated October 20, 2010, even without Hopper requesting it; and before Hopper could file a second “dispute” under SCC 30.86.011. Hopper’s second critical areas permit application fee charge is an existing controversy. Together with Hopper’s ongoing permit applications needed for residential development, these continuing applications not only demonstrate a “‘reasonable expectation’ or a ‘demonstrated probability’ that the same controversy will recur involving the same complaining party,” but proves a demonstrated fact of the recurrence and a reasonable expectation that the same controversy will recur.

Given that Hopper will apply for later development approvals with PDS, these circumstances demonstrate: the “existence of an immediate and definite governmental action or policy that has adversely affected and continues to affect a present interest.” *Id.* 125-26. The County admitted that

it was reviewing Hopper's critical areas review application and it will respond in writing in the near term. CP 1391. The PDS Director's conduct represents "short term" actions that are "capable of repetition, yet evading review" "without a chance of redress" that adversely affect Hopper and other permit applicants. Weinstein v. Bradford, 423 U.S. at 148; *Id.* at 122. The Court's finding in Weinstein that "economic strikes do not last long enough for complete judicial review of the controversies they engender," supported conclusions that "[t]he judiciary must not close the door to the resolution of the important questions these concrete disputes present." *Id.* at 126-127.

The County itself confirmed in arguments to the trial court that permit applications often take years to process and finalize "...thus providing an applicant with ample time to challenge any permit fees charged." CP 1275. Despite these undisputed facts, the County argues that these circumstances cannot meet the federal test of a "...reasonable expectation' or 'demonstrated probability' that a 'real and immediate' injury will occur again." CP 1276. The trial court in the case at bar accordingly erred in not recognizing the use of full refunds as "immediate" governmental action to evade and defeat judicial review are contrary to the mootness doctrine and the state's Declaratory Judgments Act, RCW Chapter 7.24. Weinstein, *supra* at 125-126.

Because no official reviewable written record of decision-making preceded the July 13, 2010 Decision and full refund to Hopper, questions of fact remain. Following Hopper's filing of his Notice of Appeal on December 2, 2010, the trial court denied Hopper's Motion for Reconsideration concluding that the July 13, 2010 Decision letter "...referenced only one County Code section but not another which is in the very same Code section (SCC 30.86.011, 30.86.015)" to justify the trial court's opinion that Hopper was neither denied due process nor was subject to repetitive activity. CP 1342-1343. (*Judge's Order of December 20, 2010*).

The County, as party asserting mootness claims, has the burden of showing that that there is no reasonable expectation that the wrong will be repeated and could not reasonably be expected to recur. Anderson v. Evans, 371 F.2d 475, n. 27 (9th Cir. 2004). The only evidence presented as part of the motion, which was not Hopper's burden to prove, established that the County's actions were ongoing and could reasonably be expected to recur. This evidence could not have been more palpable than the PDS Director's October 20, 2010 full refund of Hopper's critical areas review fees only two (2) days before the motion to dismiss hearing

even though it was not requested by Hopper.¹⁶ Even the trial court's erroneous test of "hypothetical refunds...when they become a reality..." would have been satisfied by such evidence. CP 1343; (Emphasis added).

The correct test was not "evidence of denial of due process or repetitive activity." CP 1342-1343. Rather, the correct test, which the trial court failed to apply, was whether the "action or policy" of the County is "an issue 'capable of repetition, yet evading review.'" Weinstein, Id.; (Emphasis added). Within this context, the exceptions enunciated in the Weinstein v. Bradford and Super Tire decisions should control.

Vague SCC 30.86.015(5)(a) refund procedures based upon "error" are no better than no standards under SCC 30.86.011 dispute provisions. Actions under both local code policies are "capable of repetition" for the purpose "evading review" under Weinstein v. Bradford and Super Tire. Nothing prevents the County from continuing to use either SCC 30.86.011 and/or SCC 30.86.015(5)(a) to make "full refunds" to prevent other applicants from ever obtaining judicial review of the lawfulness of the County's permit fees under RCW 82.02.020.

Accordingly, it was manifest error for the trial court to conclude under these circumstances that "future action by Snohomish County may present evidence of repetitive action and may well justify relief" and that

¹⁶ CP 960-972.

“the circumstances of a hypothetical future payment for development costs for Mr. Hopper and hypothetical refunds for same are the subject of court actions if and when they become reality.” CP 1343. How many fee payments have to be refunded before the hypothetical, actual in the case at bar, become a repetitive reality, 3? 4? 5? Evidence in this case supports only one conclusion, namely, that the County’s refunds were not “process” penalties. Rather, they were self-serving contrivances created after Hopper filed his appeal and lawsuit in order to evade judicial review of repetitive ongoing unlawful conduct.

G. The County’s Actions Violated Procedural Due Process, Appearance of Fairness, and Local Hearing Requirements.

Should the appellate court consider the County’s permit fee dispute procedure lawful under RCW 82.02.020, it still does not afford Hopper due process. “At a minimum, due process¹⁷ requires notice and the opportunity to be heard at a meaningful time and in a meaningful manner.” Mansour v. King County, 131 Wn.App. 255, 264 (2006). The appearance of fairness doctrine prohibits *ex parte* contact with adjudicative decisionmaker. RCW 42.36.060. This doctrine is intended to ensure fair and impartial fact-finding hearings free of entangling influences. Narrowsview Pres. Ass’n v. City of Tacoma, 84 Wn.2d 416,

¹⁷ Article 1, Section 3 of the Washington State Constitution provides that: “No person shall be deprived of life, liberty, or property, without due process of law.”

420, 526 P.2d 897 (1974). SCC 2.02.020 provides similar procedures designed to ensure that the Examiner is acting impartially.¹⁸ App. A.

SCC 2.02.125 (7) hearing procedures required that any challenge to Hopper's appeal before the Examiner based upon "standing" or "mootness" as alleged by the County in its Motion to Dismiss be preceded by some form of hearing:

"The examiner may summarily dismiss an appeal in whole or in part without hearing if the Examiner determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of the Examiner's jurisdiction or brought merely to secure a delay. The Examiner may also summarily dismiss an appeal if he/she finds, in response to a challenge raised by the respondent and/or by the permit applicant and after allowing the appellant a reasonable period in which to reply to the challenge, that the appellant lacks legal standing to appeal. Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later." App. A; (Emphasis added).

The trial court erred in concluding that due process was followed using a "paper motion" record. CP 1122; CP 1369 (*Ruling p. 3, l. 25; p. 4, ll. 1-7*) It is undisputed that Hopper never received any "paper motion" to dismiss his appeal for lack of standing or mootness from the County. CP 464. The only evidence of any written decision was the July 13, 2010, letter drafted by the County's attorney. CP 164-165.

¹⁸ SCC 2.02.060 - Freedom from improper influence. "No person, including county officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way..." App. A.

Not only did the County repeatedly admit that a written record of decision-making that would be needed for a “paper motion”¹⁹ did not exist, the County explained the fictitious July 15, 2010 Examiner’s Order that it relied upon for its Motion to Dismiss as a “clerical error.” CP 958. It is still unable to show how the Examiner would even have received the July 13, 2010 PDS Decision letter from PDS absent unpermitted *ex parte* contacts in violation of RCW 42.36.060. CP 952-972; CP 1422 (*Mock Dep., p. 39, ll. 1-12*); CP 958 (County’s Reply, ¶F, ll. 10-16):

Q Did you confer or meet with the hearing to relate to the hearing that you had made a decision and issued a refund in connection with your July 13, 2010 letter?

A No, I did not.

Q Do you know how the hearing examiner would have any knowledge of your letter and your refund to make a ruling that the matter was moot, or that there was no standing?

MR. SEDER: Speculation, legal conclusion. You may respond.

A No.

The County later claimed that the July 15, 2010 Order attached to its Motion to Dismiss was “generated by staff and appears to contain an electronic signature...” (Emphasis added). CP 961, ll. 10-11. If Ms. Dykes’ signature, which was represented to Hopper and the trial court as an official act, was “electronic” as this sworn declaration states, there

¹⁹ CP 1121-1122; CP 1268-1268; CP 1416 (*Mock Dep., p. 14, ll. 24-25; p. 15, ll. 1-8*).

simply is no written adjudicative record identifying the names and department(s) of phantom “staff” who prepared this document. No evidence was presented by the County explaining how or why “staff” was delegated authority to sign it for the Examiner; and why “staff” did not notify Hopper or his attorneys of this adjudicative decision.

Such actions later used to make purported findings of fact in the July 15, 2010 Examiner’s Dismissal Order and thereafter cited by the County as the basis if its Motion to Dismiss violate appearance of fairness and minimum due process standards for adjudicative proceedings. Barrie v. Kitsap County, 93 Wn.2d 843, 852, 613 P.2d 1148 (1980); RCW 42.36.060. In Loveless v. Yantis, 82 Wn.2d 754, 513 P.2d 1023 (1973), the court held that:

“A full and complete record is important in all types of proceedings. However, the necessity of an adequate record is especially acute when the court is called upon to review adjudicatory proceedings.”

Hopper received no notice, written or otherwise, of any challenge by PDS or the County with his appeal filed with the Examiner and was permitted no hearing (oral or “paper”) required by SCC 2.02.125(7). CP 464-465. Not only can the County not explain how it received a copy of July 15, 2010 Order of Examiner Dykes that it filed with the Court as

evidence of lack of standing and mootness,²⁰ it is evident that to make findings relied upon by the County in its Motion to Dismiss, Examiner Dykes would have had *ex parte* contact with PDS to support her finding that she had reviewed the PDS refund letter:

“Whereas, on July 13, 2010 the Acting Director of PDS granted your appeal pursuant to SCC 30.86.011 and returned to you the permit fees at issue.” (Emphasis added).

Using a manufactured post-appeal record that blatantly violated procedural due process and SCC 2.02.125(7) is further evidence of the County’s attempt to evade any judicial review of the lawfulness of its permit fee system is capable of being repeated. Accordingly, it was error for the trial court to have denied the County’s Motions and not stricken false evidence and a false record as violative of due process, appearance of fairness, and SCC 2.02.125 (7). App. A.

The trial court misapplied, or failed to apply, rules of statutory construction summarized in Sleasman v. Lacey, 159 Wn.2d 639, 642, n. 4, 151 P.3d 990 (2007) citing Morin v. Johnson, 49 Wn.2d 275, 279, 300 P.2d 569 (1956) which holds that zoning ordinances “must be strictly construed in favor of property owners and should not be extended by implications to cases not clearly within their scope and purpose.” Rules of

²⁰ CP 983, p. 7, ll. 1-4; CP 1-32-1034. The County argued that: “The Hearing Examiner dismissed Hopper’s appeal to the Hearing as moot and returned the filing fee Hopper paid with respect to that appeal...Thus, Hopper has suffered no injury in fact with respect to the County’s permit fees.” (Emphasis added).

statutory construction apply to permit fees under RCW 82.02.020, and requires “strict compliance with its terms.” Home Builders, supra at 348.

Assuming *arguendo* that permit fee dispute procedures are even allowed under RCW 82.02.020, the trial court failed to follow rules of statutory construction. As an official ordinarily entitled to deference with expertise in interpreting the County’s own code,²¹ Ms. Mock admitted that SCC 30.86.011 was the only applicable authority she cited in refunding all of Hopper’s permit fees. CP 1417 (*Mock Dep., p. 20, ll. 3-11*) No other county codes or state laws were cited by Examiner Dykes in her dismissal Order.²² Mock admitted that SCC 30.86.011 did not require a full refund of fees for missing the 30-day decision period.²³ CP 1418; CP 1421.

Only two (2) days before the October 22, 2010 motions hearing, PDS Director White refunded all of Hopper’s October 8, 2010 critical areas permit fees (\$741.60). CP 960-972. Unlike Mock’s July 13, 2010 refund letter, Mr. White added SCC 30.86.015(5)(a) footnoted below allowing a refund of all fees collected “in error.”²⁴ CP 967-968.

²¹ See Rules of statutory construction as applied in Mall, Inc v. Seattle, 108 Wn.2d 369, 377, 739 P.2d 668 (1987) holding that: “It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement. Keller v. Bellingham, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).”

²² CP 1019-1020.

²³ CP 1428 (*Mock Dep., p. 62, ll. 20-25; p. 63, ll. 1-20.*)

²⁴ SCC 30.86.015 - Fee refunds.

SCC 30.86.015(5) contains no express “full refund” criteria or standards for missing a fee dispute deadline in SCC 30.86.011. Administrative staff possesses no authority to amend legislation to add language not appearing in either SCC 30.86.011 or SCC 30.86.015. See Mission Springs v. Spokane, 134 Wn.2d 947, 961-63, 954 P.2d 250 (1998).

The trial court incorrectly believed that SCC 30.86.015 was part of the “very same Code section (SCC 30.86.011, SCC 30.86.015).” CP 1342-1343; (Emphasis added). While SCC 30.86.015 is part of the same Code “Chapter,” the refund criteria of SCC 30.86.015 is not referenced in SCC 30.86.011 as the sole “dispute” criteria applied by Ms. Mock in her July

(1) Fee refund requests shall be submitted in writing to the department. A request shall reference the applicable project file number, the specific reason for the request and the amount of refund requested.

(2) The date of the refund request shall be the date the written refund request is received by the department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.

(3) When authorized, refunds shall be made within 60-days of the refund request.

(4) Fee refunds shall not include the following:

(a) Base fees;

(b) Fees expended to satisfy public notice requirements;

(c) State Building Code Council surcharges.

(5) The director may authorize the following refunds:

(a) 100 percent of fees collected by error of the department;

(b) Fee refunds for permit applications or services requested before the commencement of services or 60-days, whichever occurs first;

(c) Fees collected for the DOT and Health Department;

(d) SEPA environmental impact statement (EIS) refunds pursuant to SCC 30.86.500(6)(c);

and

(e) Appeal related refunds pursuant to SCC 30.71.050(4), SCC 30.72.070(5) and SCC 30.86.610(1).

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 08-122, § 5, Nov. 10, 2008, Eff date Jan. 1, 2009). App. A; (Emphasis added).

13, 2010 decision letter. CP 1418. Similarly, SCC 30.86.011 is not referenced in the refund provisions of SCC 30.86.015.

Indeed, the County repeatedly admitted and argued that there were no forms, procedures, or standards to apply in SCC 30.86.011 related fee disputes that Ms. Mock cited in her July 13, 2011 Decision letter as the sole basis for her decision. CP 1417; CP 1268-1269. In its Objections to Depositions at CP 1119-1120, the County stated:

“When Mr. Hopper filed this lawsuit, it came to the County’s attention that the 30-day deadline in SCC 30.86.011 had been missed. That section states:

Fees are due and payable at the time services are requested unless otherwise specified in this chapter or state law. Any dispute involving fees shall be resolved by the director. A written request to resolve a fee dispute shall be submitted within 30 days of the fee payment. For the purposes of computing elapsed calendar days, the day after the fee payment date shall be counted as day one. **The director shall issue a written determination within 30 days of receipt of the request.** The director’s decision shall be final. Permit review shall be stayed during the pendency of the dispute resolution.

SCC 30.86.011 (emphasis added). Counsel and PDS met and discussed the problems related to this language and Mr. Hopper’s disputing the amount. The problems noted, inter alia, that the 30 days had come and gone, and the Snohomish County Code section says, “shall.” Since a mandatory deadline was missed, it was determined that the money should be returned. Ms. Mock will be prepared to answer questions regarding this section.” (Emphasis supplied).

Had there been any SCC 30.86.015(5)(a) refund standards referenced as substantive dispute criteria under SCC 30.86.011, there would have been no reason for Ms. Mock to have contacted the Prosecutor’s Office for an *ad-hoc* case-by-case determination. Had

Had Hopper been instructed to apply for a refund of all his fees under SCC 30.86.015(5)(a), Ms. Mock could have simply cited these refund provisions as the basis for her decision which she failed to do. These conclusions are consistent with the instructions given to Hopper, and confirmed by Ms. Mock, that he “write a letter” to PDS. CP 1416 (*Mock Dep., pp. 14-15*). Hopper’s permit fee dispute was entirely separate from refund applications made under SCC 30.86.015. Had the County Council chosen to employ refund criteria and the procedures of SCC 30.86.015 for fee disputes under SCC 30.86.011 it could have done so.

The trial court cannot substitute its judgment, expand the legal rationale, or add reasons that were followed by Ms. Mock in her July 13, 2010 Decision to make the full refund for missing a 30-day deadline under SCC 30.86.011. Ancheta v. Daly, 77 Wn.2d 255, 259-60, 461 P.2d 531 (1969). The court erred in not recognizing the County’s poorly concealed attempt to “reverse engineer” and retroactively apply the “collected error” criteria of SCC 30.86.015(5)(a) in place of the original reason of “missing a deadline” letter of July 13, 2010. The Court committed error by adding language not appearing in SCC 30.86.011, and by adding reasons for the full refund that did not appear in the July 13, 2010 “final decision” letter.

Even if SCC 30.86.015(5)(a) was an incorporated standard into SCC 30.86.011 [which it was not] there is no definition of what is, or is not,

“error.” The ordinary meaning of “error” applying a dictionary definition²⁵ within the context of “collected by error” would mean an incorrectly calculated monetary amount. Ms. Mock testified, however, that Hopper’s fees (\$459.24) were correctly calculated, paid, and then collected for his grading permit (Folder 10 103799 000 00 GP) as “mandatory” fees that also included a 3% technology surcharge. CP 1435 (*Mock Dep., pp. 90-91*); CP 1439-1446. Hopper also paid, and the County collected, \$741.60 as critical areas fees which tracks Exhibit 19 “mandatory” application fees again confirmed by Ms. Mock in her deposition statements footnoted below at CP 1434-1435.²⁶

²⁵ Honeywell, Inc. v. Babcock, 68 Wn.2d 239, 243, 412 P.2d 511 (1966). The ordinary meaning of “error” under Webster’s New World Collegiate Dictionary (1985) is: “1. the state of believing what is untrue, incorrect, or wrong; 2. a wrong belief, incorrect opinion; 3. something incorrectly done through ignorance or carelessness; mistake; 4. a departure from the accepted moral code; transgression; wrongdoing; sin; 5a. the difference between a computed or estimated result and the actual value, as in mathematics; 5b. the amount by which something deviates from what is required; ...7. Law-a mistake in judgment or procedure of a court of record, usually prejudicial to one of the parties...” (Emphasis added).

- ²⁶ Q Is a grading fee mandatory as part of a grading application?
A Yes.
Q And is a resident grading application base fee mandatory?
A Yes.
Q And is a residence grading yardage fee mandatory?
A Yes.
Q In the sense that you and I understand it?
A Correct.
Q And all the rest of the charges there would be mandatory in the sense that you and I understand it?
A Correct.
Q And again, even though they're mandatory, Mr. Hopper has not had to pay any of those, correct?
MR. SEDER: Objection, misstates the evidence. You may respond.

Ms. Mock's testimony confirms that the County calculated and collected the correct fee amount, which PDS then returned to Hopper under the purported authority of SCC 30.86.011. There could not have been a "collection error" as a matter of law under SCC 30.86.011.

Even if SCC 30.86.011 was ambiguous, Director White's October 20, 2010 letter to Mr. Hopper that suddenly cited SCC 30.86.015 refund provisions is not "absolutely controlling." See Brown v. City of Seattle, 117 Wn.App. 781, 790 (2003) holding that the City's interpretation was not entitled to deference because the specific language of the Seattle Municipal Code being reviewed was not ambiguous. Courts will not defer to an interpretation which conflicts with unambiguous language. Faben v. Mercer Island, 102 Wn.App. 775, 778-80, 11 P.3d 322 (2000).

H. The County's Refunds Are *Ultra Vires* and An Unconstitutional Gift of Public Funds.

The trial court ignored clear evidence that the County had already expended PDS staff services and could not as a matter of law make a full refund under SCC 30.86.015(5)(a). Assuming that RCW 82.02.020 and Article 8, section 7 of the Washington Constitution allowed full refunds where services had been incurred by PDS, SCC 30.86.015(5)(b) expressly

A Mr. Hopper did pay all the fees.

Q He has not had to pay them in the sense that you refunded them all, is that correct?

A He's paid the fees and we have refunded them, yes. CP 1435; (Emphasis added).

disallowed full refunds where services have been commenced. Director Mock admitted that public Staff services were incurred in visiting the Hopper property on June 8, 2010 well before the July 13, 2010 full refund letter. CP 1422; (*Mock Dep.*, pp. 37, ll. 19-23; 37, ll. 1-2; 38, ll. 1-17). The trial court accordingly erred in not applying the plain meaning of SCC 30.86.015(5)(b) that would have precluded any “full refund” of fees to Hopper.

Public services were provided, and legitimate costs to the County were incurred, in reviewing Hopper’s applications. Article 8, section 7 of the State Constitution prohibits public funds from being gifted for private use except for supporting the poor or infirm.²⁷ Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray, 133 Wn.App. 479, 487, 136 P.3d 776 (2006). Both refunds of \$459.24 and \$741.60 issued to Mr. Hopper were on warrants issued by the County’s Finance Department effecting a gift to Mr. Hopper in his private capacity. CP 229; CP 965-969; CP 1407.

It was error to not recognize the County’s unconstitutional gift as a device to evade Hopper’s request for recalculation of his fees to remove the unlawful portions only. The trial court’s ruling and order denying

²⁷ “No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.” (Emphasis added).

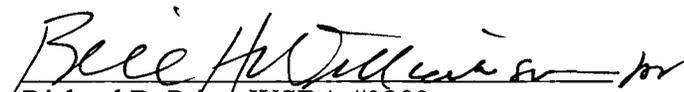
reconsideration simply accepted SCC 30.86.011 and SCC 30.86.015 as the source of authority for the County to impose financial penalties for missing decision deadlines without regard to Article 8, section 7. The County's full refund is *ultra vires*. Noel v. Cole, 98 Wn.2d 375, 379, 655 P.2d 245 (1982).

VII. CONCLUSION

Hopper seeks a determination whether justice allows the County to evade judicial review of its alleged unlawful and unconstitutional charges by way of a post appeal artifice. The trial court's order and entered judgment should be reversed. The case should be remanded for trial on the lawfulness of County permit fees with instructions to set a trial date on the lawfulness of the County's permit fee system under RCW 82.02.020.

RESPECTFULLY SUBMITTED this 18th day of February 2011.

LAW OFFICE OF RICHARD B. PRICE, P.S., INC.


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Attorney for Petitioner/Appellant

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that filed with the court and I mailed a copy of the foregoing to the undersigned by placing the same in a postage prepaid envelope and depositing in the U.S. Mail to:

Richard D. Johnson (**Original, One Copy**)
Clerk/Administrator
Court of Appeals, Division I
One Union Square
600 University St
Seattle, WA 98101-1176

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Dated at Seattle, Washington, this 18th day of February, 2011.


Bill H. Williamson

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APPENDIX A

Snohomish County Code Provisions

**APPELLANT HOPPER'S OPENING BRIEF
HOPPER V. SNOHOMISH COUNTY
DIVISION I – 66325-9**

Chapter 2.02 - HEARING EXAMINER

Sections:

- 2.02.010 - Purpose.
- 2.02.020 - Creation of hearing examiner.
- 2.02.030 - Appointment and terms.
- 2.02.040 - Qualifications.
- 2.02.050 - Removal.
- 2.02.060 - Freedom from improper influence.
- 2.02.070 - Conflict of interest.
- 2.02.080 - Organization.
- 2.02.090 - Rules.
- 2.02.100 - Powers.
- 2.02.122 - Procedures for appeal of land use decisions authorized under Title 30 SCC.
- 2.02.125 - Procedures for appeals within the examiner's jurisdiction.
- 2.02.127 - Filing location for appeals.
- 2.02.130 - Report of department.
- 2.02.140 - Open record hearings.
- 2.02.155 - Hearing examiner's decision.
- 2.02.160 - Notice of examiner's decision.
- 2.02.165 - Definitions.
- 2.02.170 - Reconsideration of hearing examiner decision.
- 2.02.185 - Clerical mistakes—Authority to correct.
- 2.02.195 - Appeal to court from examiner's decision.
- 2.02.200 - Examiner's report to council and planning commission.
- 2.02.210 - Interlocal agreements.
- 2.02.215 - Severability.

2.02.010 - Purpose.

The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings; provide an efficient and effective hearing process for quasi-judicial matters; and comply with state laws regarding quasi-judicial land use hearings.

(Ord. 80-115 § 2, adopted December 29, 1980; Amended Ord. 96-003, § 2, Feb. 21, 1996, Eff April 1, 1996).

2.02.020 - Creation of hearing examiner.

Pursuant to those powers inherent in the home rule charter county, the office of Snohomish County hearing examiner, hereinafter referred to as examiner, is hereby created. The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform such other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term examiner as used herein shall include deputy examiners and examiners pro tem.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.030 - Appointment and terms.

The council shall appoint the examiner and any deputy examiners for terms which shall initially expire one year following the date of original appointment and thereafter expire two years following the date of each reappointment. The council may also by professional service contract appoint for terms and functions deemed appropriate by the council, examiners pro tem to serve in the event of absence or inability to act of the examiner or deputy examiners.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 00-008, § 1, March 29, 2000, Eff date April 10, 2000).

2.02.040 - Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in county government.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.050 - Removal.

An examiner may be removed from office for cause by the affirmative vote of the majority of the council.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.060 - Freedom from improper influence.

No person, including county officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; PROVIDED, That this section shall not prohibit the county prosecuting attorney from rendering legal service to the examiner upon request.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.070 - Conflict of interest.

No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. In an appeal from an examiner decision, the council shall be subject to the county ethics code, chapter 2.50 SCC.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 02-047 § 26, Oct. 16, 2002, Eff date Dec. 1, 2002).

2.02.080 - Organization.

The office of the examiner shall be under the administrative supervision of the examiner and shall be separate and not a part of the executive branch and shall be considered a part of the county council support staff for purposes of budget consideration.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.090 - Rules.

The examiner shall have the power to adopt and amend rules governing the scheduling and conduct of hearings and other procedural matters related to the duties of his or her office. Such rules may provide for cross examination of witnesses. The examiner shall within five days after adoption or amendment of any such rule transmit a copy of such rule to the clerk of the council for council review, which rule shall remain in effect unless rejected or modified by the council. The council may by motion modify or reject the rule. The examiner shall incorporate any such action within ten days after adoption of the motion.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 00-008, § 2, March 29, 2000, Eff date April 10, 2000).

2.02.100 - Powers.

The examiner shall have authority to:

- (1) Receive and examine available information,
- (2) Conduct public hearings and prepare a record thereof,
- (3) Administer oaths and affirmations,
- (4)

- Examine witnesses, PROVIDED That no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law,
- (5) Regulate the course of the hearing,
 - (6) Make and enter decisions,
 - (7) At the examiner's discretion, hold conferences for the settlement or simplification of issues and/or for establishment of special hearing procedures,
 - (8) Dispose of procedural requests or similar matters,
 - (9) Issue summary orders as provided for in SCC 2.02.125 and in supplementary proceedings, and
 - (10) Take any other action authorized by or necessary to carry out this chapter.

The above authorities may be exercised on all matters for which jurisdiction is assigned either by county ordinance or by other legal action of the county or its elected officials. The examiner's decision shall be final and conclusive and may be reviewable by the council, the shorelines hearings board or court, as applicable. The nature of the examiner's decision shall be as specified in this chapter and in each ordinance which grants jurisdiction.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 85-105, § 1, December 4, 1985; Amended Ord. 93-077, Sept. 8, 1993; Amended Ord. 96-003, § 3, Feb. 21, 1996, Eff date April 1, 1996).

2.02.122 - Procedures for appeal of land use decisions authorized under Title 30 SCC.

The provisions of this chapter relating to procedures for appeals within the hearing examiner's jurisdiction shall not apply to decisions and appeals authorized pursuant to Title 30 SCC. The provisions of Title 30 SCC pertaining to decisions and administrative appeals for permits and approvals authorized by Title 30 SCC shall be the exclusive procedures for such administrative decisions and appeals.

(Ord. 02-098 § 6, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.125 - Procedures for appeals within the examiner's jurisdiction.

Administrative appeals over which the examiner has jurisdiction shall be subject to the following procedural requirements:

- (1) Appeals shall be addressed to the hearing examiner but shall be filed in writing with the department whose decision is being appealed within 14 calendar days of the date of action or, in those cases requiring personal or certified mail service, the date of service of the administrative action being appealed. Appeals shall be accompanied by a filing fee in the amount of \$100.00; PROVIDED, That the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED, FURTHER, That the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of procedural defect such as but not limited to untimely filing, lack of standing, facial lack of merit, etc.
- (2) An appeal must contain the following items in order to be complete. The examiner, if procedural time limitations allow, may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal if such appeal is incomplete in some manner.
 - (a) Specific identification of the order, permit, decision, determination or other action being appealed (including the county's file number whenever such exists). A complete copy of the document being appealed must be filed with the appeal;
 - (b) The specific grounds upon which the appellant relies, including a concise statement of the factual reasons for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the appellant claims are violated.
 - (c) The name, mailing address and daytime telephone number of each appellant together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any;
 - (d)

The name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and

(e)

The required filing fee.

(3)

Timely filing of an appeal shall stay the effect of the order, permit, decision, determination or other action being appealed until the appeal is finally disposed of by the examiner or withdrawn; PROVIDED, That filing of an appeal from the denial of a permit shall not stay such denial. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county code.

(4)

No new appeal issues may be raised or submitted after the close of the time period for filing of the original appeal.

(5)

The department whose decision is being appealed shall forward the appeal to the examiner's office within three working days of its filing.

(6)

The examiner's office, within three working days after receipt of the appeal, shall send written notice of the filing of the appeal by first class mail, to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person.

(7)

The examiner may summarily dismiss an appeal in whole or in part without hearing if the examiner determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of the examiner's jurisdiction or brought merely to secure a delay. The examiner may also summarily dismiss an appeal if he/she finds, in response to a challenge raised by the respondent and/or by the permit applicant and after allowing the appellant a reasonable period in which to reply to the challenge, that the appellant lacks legal standing to appeal. Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later.

(8)

Appeals shall be processed by the examiner as expeditiously as possible, giving proper consideration to the procedural due process rights of the parties. An appeal hearing shall be held before a final decision is issued unless the summary dismissal provisions of subsection (7), above, are utilized or the appeal is withdrawn. The examiner may consolidate multiple appeals of the same action for hearing and decision making purposes where to do so would facilitate expeditious and thorough consideration of the appeals without adversely affecting the due process rights of any of the parties.

(9)

Notice of appeal hearings conducted pursuant to this section, shall be given as provided below not less than 15 calendar days prior to the hearing:

(a)

The examiner's office shall give notice of all appeal hearings by first class mail (unless otherwise required herein) to:

(i)

the appellant;

(ii)

the appellant's agent/representative, if any; and

(iii)

the respondent (by interoffice mail); and

(iv)

the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person; and

(v)

parties of record as defined by SCC 2.02.165.

(b)

At a minimum, the following information shall be included in the notice:

(i)

description of order, permit, decision, determination, or other action being appealed, assigned county file number, and county contact person,

(ii)

the date, time, and place of public hearing if scheduled at the time of notice, and

(iii)

any other information determined appropriate by the applicable department.

(10)

Notices required by the above subsections shall be deemed adequate where a good-faith effort has been made by the county to identify and mail notice to each person entitled thereto. Notices mailed pursuant to the above subsections shall be deemed received by those persons named in an affidavit of mailing executed by the person designated to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

(11)

The appeal hearing and examiner consideration of the appeal shall be limited solely to the issues identified by the appellant pursuant to SCC 2.02.125(2).

(Added Amended Ord. 93-077, Sept. 8, 1993; Ord. 95-004, § 5, Feb. 15, 1995; Amended Ord. 95-032, § 1, June 28, 1995; Amended Ord. 96-003, § 4, Feb. 21, 1996; Amended Ord. 97-057, § 1, July 2, 1997; Amended Ord. 97-075, § 1, Sept. 24, 1997; Ord. 02-098 § 7, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.127 - Filing location for appeals.

Any decision subject to administrative appeal under this chapter shall specify the county office at which the appeal must be filed.

(Ord. 02-098 § 8, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.130 - Report of department.

(1)

Where an appeal hearing is conducted before the examiner, the responsible department shall prepare a report summarizing the factors involved and the department's findings and recommendations.

(2)

At least seven calendar days prior to the scheduled appeal hearing, the report shall be filed with the examiner and copies thereof shall be mailed by the responsible department to the appellant and made available for public inspection. Copies thereof shall be provided to interested persons upon payment of reproduction costs.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 85-105, § 4, December 4, 1985; Amended Ord. 93-077, Sept. 8, 1993; Ord. 95-004, § 6, Feb. 15, 1995; Amended Ord. 96-003, § 5, Feb. 21, 1996; Ord. 02-098 § 9, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.140 - Open record hearings.

(1)

Where a public hearing is required by statute or ordinance, the examiner shall hold at least one open record hearing prior to rendering a decision on any such matter. All testimony at any such hearing shall be taken under oath. Notice of the time and place of the open record hearing shall be given as required by county ordinance. At the commencement of the hearing the examiner shall give oral notice of the opportunity to become a party of record as provided for in SCC 2.02.165.

(2)

Each person participating in an open record hearing shall have the following rights, among others:

(a)

To call, examine and cross-examine witnesses (subject to reasonable limitation by the examiner in accordance with the examiner's adopted rules of procedure) on any matter relevant to the issues of the hearing;

(b)

To introduce documentary and physical evidence;

(c)

To rebut evidence against him/her; and

(d)

To represent him/herself or to be represented by anyone of his choice who is lawfully permitted to do so.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 84-116, November 7, 1984; Amended Ord. 90-174, § 1, November 14, 1990; Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994; Amended Ord. 96-003, § 6, Feb. 21, 1996, Eff date April 1, 1996).

2.02.155 - Hearing examiner's decision.

(1)

A final decision on appeal shall be issued within 15 calendar days of the conclusion of a hearing, unless the appellant agrees in writing to extend the time period, or the time period has been extended by a request for reconsideration, or under some other authority.

(2)

The hearing examiner may affirm, may reverse in whole or in part, or may modify the permit or decision being appealed, or may remand the application to the applicable department for further processing.

(3)

If the application is remanded to the applicable department for further processing, the hearing examiner's decision shall not be considered a final decision. The hearing examiner's decision shall specify procedures for responding to the order. If a new decision is issued by the applicable department, a new appeal period shall commence in accordance with SCC 2.02.125.

(4)

The appeal decision shall include findings based upon the record and conclusions therefrom which support the decision.

(5)

The hearing examiner's decision shall include information on, and any applicable time limitations for, requesting reconsideration or for appealing the decision.

(Added Ord. 02-098 § 11, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.160 - Notice of examiner's decision.

A copy of the examiner decision shall be mailed by certified mail, return receipt requested, to the appellant, and by inter-office or regular mail, as appropriate, to any other party of record within the time period allowed by SCC 2.02.155.

(Ord. 80-115 § 1, adopted December 29, 1980; Amended Ord. 90-174, § 2, November 14, 1990; Amended Ord. 93-077, Sept. 8, 1993; Amended Ord. 96-003, § 8, Feb. 21, 1996; Ord. 02-098 § 12, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.165 - Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1)

"Parties of record" means for each appeal:

(a)

The appellant;

(b)

All persons, county departments and/or public agencies who testified at the appeal hearing;

(c)

All persons, county departments and/or public agencies who individually submitted written comments concerning the specific matter into the hearing record prior to the close of the appeal hearing (excluding persons who have only signed petitions or mechanically produced form letters); and

(d)

All persons, county departments and/or public agencies who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the appeal hearing.

A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same appeal; PROVIDED A new parties of record register shall be started whenever an appeal comes on for supplementary hearing eighteen or more months after the most recent examiner decision was issued. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

(2)

"Appeal hearing" means a hearing that creates the record on an appeal through testimony and submission of evidence and information. *(Added Ord. 90-174, § 3, November 14, 1990; Amended Ord. 92-075, July 22, 1992; Amended Ord. 96-003, § 9, Feb. 21, 1996; Ord. 02-098 § 13, Dec. 9, 2002, Eff date Feb. 1, 2003).*

2.02.170 - Reconsideration of hearing examiner decision.

(1)

Any party to an appeal may file a written petition for reconsideration with the hearing examiner within 10 calendar days following the date of the hearing examiner's written decision. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties to the appeal on the date of filing. The timely filing of a petition for reconsideration shall stay the hearing examiner's decision until such time as the petition has been disposed of by the hearing examiner.

(2)

The grounds for seeking reconsideration shall be limited to the following:

- (a) The hearing examiner exceeded the hearing examiner's jurisdiction;
- (b) The hearing examiner failed to follow the applicable procedure in reaching the hearing examiner's decision;
- (c) The hearing examiner committed an error of law;
- (d) The hearing examiner's findings, conclusions, and/or conditions are not supported by the record; or
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

(3)

The petition for reconsideration must:

- (a) Contain the name, mailing address, and daytime telephone number of the petitioner or petitioner's representative, together with the signature of the petitioner or of the petitioner's representative;
- (b) Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;
- (c) State the specific grounds upon which relief is requested;
- (d) Describe the specific relief requested; and
- (e) Where applicable, identify the specific nature of any newly discovered evidence.

(4)

The petition for reconsideration shall be decided by the same hearing examiner who rendered the decision, if reasonably available. The hearing examiner shall provide notice of the decision on reconsideration in accordance with SCC 2.02.160. Within 14 days, the hearing examiner shall:

- (a) Deny the petition in writing;
- (b) Grant the petition and issue an amended decision in accordance with the provisions of SCC 2.02.155 following reconsideration;
- (c) Accept the petition and give notice to all parties to the appeal of the opportunity to submit written comment. Parties to the appeal shall have 10 calendar days from the date of such notice in which to submit written comments. The hearing examiner shall either issue a decision in accordance with the provisions of SCC 2.02.155 or issue an order within 15 days after the close of the comment period setting the matter for further hearing. If further hearing is ordered, the hearing examiner's office shall mail notice not less than 15 days prior to the hearing date to all parties of record; or
- (d) Accept the petition and set the matter for further open record hearing to consider new evidence, and/or the arguments of the parties. Notice of such further hearing shall be mailed by the hearing examiner's office not less than 15 days prior to the hearing date to all parties of record. The hearing examiner shall issue a decision following the further hearing in accordance with the provisions of SCC 2.02.155.

(5)

A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration.

(6)

The hearing examiner may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

(Ord. 02-098 § 15, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.185 - Clerical mistakes—Authority to correct.

Clerical mistakes and errors arising from oversight or omission in hearing examiner decisions and/or orders issued pursuant to this chapter may be corrected by the hearing examiner at any time either on his/her own initiative or on the motion of a party of record. A copy of each page affected by the correction, with the correction clearly identified, shall be mailed to all parties of record.

(Added Ord. 93-077, Sept. 8, 1993; Ord. 02-098 § 17, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.195 - Appeal to court from examiner's decision.

Where the examiner's decision is final and conclusive, it may be appealed to superior court by an aggrieved party of record as may be provided by applicable law within 21 days of the issuance of the examiner's final decision on the matter. The following shall apply to any action for judicial review of the examiner's decision:

(1)

Where the reconsideration process of SCC 2.02.170 has been utilized, no action for judicial review may be filed until the reconsideration process has been completed and no action for judicial review by the petitioner for reconsideration may raise an issue which has not been the subject of a petition for reconsideration.

(2)

An action for judicial review may be brought by any aggrieved party of record within 21 calendar days following the date of the examiner's decision on reconsideration; PROVIDED, That only the petitioner for reconsideration may file an action for judicial review of the denial of a petition for reconsideration. The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent copying and assembling the record and preparing the return for filing with the court shall be borne by the appellant.

(Added Amended Ord. 93-077, Sept. 8, 1993; Amended Ord. 96-003, § 15, Feb. 21, 1996; Amended Ord. 99-115, § 2, Jan. 12, 2000; Ord. 02-098 § 19, Dec. 9, 2002, Eff date Feb. 1, 2003).

2.02.200 - Examiner's report to council and planning commission.

The examiner shall report in writing to and meet with the Snohomish County council and the planning commission at least annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the examiner's decisions since the last report.

(Ord. 80-115, § 1, adopted December 29, 1980; Amended Ord. 97-075, § 3, Sept. 24, 1997, Eff date Oct. 8, 1997).

2.02.210 - Interlocal agreements.

The examiner may provide services similar to those prescribed herein for other municipalities when authorized by interlocal agreement.

(Ord. 80-115 § 1, adopted December 29, 1980).

2.02.215 - Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provisions to other persons or circumstances is not affected.

(Added Amended Ord. 93-077, Sept. 8, 1993, Eff date Jan. 1, 1994).

30.70.100 Consistency determination.

(1) Pursuant to RCW 36.70B.040, the county shall review all project permit applications for consistency with applicable county development regulations or, in the absence of adopted development regulations, with the appropriate elements of the comprehensive plan or subarea plan adopted under chapter 36.70A RCW. In the consistency review, the county shall consider the following factors:

- (a) The type of land use permitted;
- (b) The level of development, such as units per acre or other measures of density;
- (c) Infrastructure, including public facilities and services needed to serve the development; and
- (d) The characteristics of the development, such as development standards.

(2) No specific or separate documentation of consistency is required, except that for projects receiving a written report or other documentation from the department, consistency shall be documented in the report. For projects not requiring a written report, consistency shall be indicated on the permit or decision.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.70.110 Processing timelines.

(1) Notice of final decision on a project permit application shall issue within 120 days from when the permit application is determined to be complete, unless otherwise provided by this section or state law.

(2) In determining the number of days that have elapsed after an application is complete, the following periods shall be excluded:

- (a) Any period during which the county asks the applicant to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the county mails notification to the applicant of the need for additional information until the date the county determines whether the additional information satisfies the request for information, or 14 days after the applicant supplies the information to the county, whichever is earlier. If the information submitted by the applicant under this subsection is insufficient, the county shall mail notice to the applicant of the deficiencies and the provisions of this subsection shall apply as if a new request for information had been made;
- (b) Any period during which an environmental impact statement is being prepared;
- (c) A period, not to exceed 30 calendar days, during which a code interpretation is processing in conjunction with an underlying permit application pursuant to chapter 30.83 SCC.
- (d) The period specified for administrative appeals of project permits;
- (e) Any period during which processing of an application is suspended pursuant to SCC 30.70.045(1)(b);
- (f) Any period during which an agreement is negotiated or design review is conducted for an urban center pursuant to SCC 30.34A.180(1) or (2); and
- (g) Any period of time mutually agreed upon by the applicant and the county.

(3) The time periods established by this section shall not apply to a project permit application:

- (a) That requires an amendment to the comprehensive plan or a development regulation in order to obtain approval;
- (b) That is substantially revised by the applicant, in which case a new 120-day time period shall start from the date at which the revised project application is determined to be complete;
- (c) That requires approval of a development agreement by the county council;
- (d) When the applicant consents to an extension; or
- (e) During any period necessary for reconsideration of a hearing examiner's decision.

(4) Subject to all other requirements of this section, notice of final decision on an application for a boundary line adjustment shall be issued within 45 days after the application is determined complete.

(5) The county shall notify the applicant in writing if a notice of final decision on the project has not been made within the time limits specified in this section. The notice shall include a statement of reasons why the

time limits have not been met and an estimated date of issuance of a notice of final decision.

(6) Failure of the county to make a final decision within the timelines specified by this chapter shall not create liability for damages.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Emergency Ord. 04-019, February 11, 2004, Eff date February 11, 2004; Amended by Amended Ord. 09-044, Aug. 12, 2009 (veto overridden Sept. 8, 2009), Eff date Sept. 18, 2009; Amended by Amended Ord. 09-079, May 12, 2010, Eff date May 29, 2010)

30.70.120 Consolidated permit review.

(1) The department shall consolidate permit review for all project permit applications for the same proposal when each application is subject to a predecision public hearing and where all permit applications have been submitted concurrently.

(2) If the applicant requests consolidated permit processing for applications that do not meet the requirements of SCC 30.70.120(1), applications may be consolidated when the department finds that consolidation would result in more efficient review and processing. If one or more of the permit applications is subject to the 120-day review time period established in SCC 30.70.110, all consolidated permit applications shall be reviewed within the 120-day period, except as provided in SCC 30.70.120(3).

(3) When a project permit application subject to a timeline requirement established in SCC 30.70.110 is consolidated with a project permit application that is exempt from the timeline requirement under SCC 30.70.110(3), the timeline requirement shall not apply.

(4) A project permit application being reviewed under the consolidated process is subject to all requirements of permit application submittal, notice, processing, and approval that would otherwise apply if the permit were being processed as a separate application.

(5) A final decision on certain consolidated permit applications may be preliminary and contingent upon approval of other permits or actions considered in the consolidated permit process.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.70.130 Authority to impose conditions or deny application.

The county may require modifications to a project permit application and may impose conditions to ensure consistency as required by SCC 30.70.100 and compliance with applicable development regulations. A project permit application that does not comply with applicable development regulations or is determined inconsistent under SCC 30.70.100 shall be denied.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.70.135 Clerical Mistakes -- Authority to Correct.

Clerical mistakes and errors arising from oversight or omission in hearing examiner and council decisions and/or orders issued pursuant to this chapter may be corrected by the issuing body at any time either on its own initiative or on the motion of a party of record. A copy of each page affected by the correction, with the correction clearly identified, shall be mailed to all parties of record.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

Snohomish County, Washington, Code of Ordinances >> Title 30 - UNIFIED DEVELOPMENT CODE >> - >> Subtitle 30.8 - ADMINISTRATION AND ENFORCEMENT >> Chapter 30.86 - FEES >>

Chapter 30.86 - FEES

Sections:

- 30.86.010 - Fees established.
- 30.86.011 - Fee payment and dispute resolution.
- 30.86.015 - Fee refunds.
- 30.86.030 - Technology surcharge.
- 30.86.100 - Subdivision fees.
- 30.86.110 - Short subdivision fees.
- 30.86.115 - Administrative site plan fees for single family detached units.
- 30.86.120 - Rural cluster subdivision fees.
- 30.86.130 - Binding site plan fees.
- 30.86.135 - TDR fees.
- 30.86.140 - Boundary line adjustment fees.
- 30.86.145 - Landscape and tree plan review and inspection fee.
- 30.86.200 - Rezone fees.
- 30.86.205 - PRD fees.
- 30.86.210 - Conditional use permit fees.
- 30.86.220 - Administrative conditional use permit fees.
- 30.86.225 - Special use permit fees.
- 30.86.230 - Variance fees.
- 30.86.300 - Special flood hazard areas permit fees.
- 30.86.310 - Shoreline Management Permit fees.
- 30.86.400 - Construction code fees.
- 30.86.410 - Mechanical permit fees.
- 30.86.420 - Plumbing permit fees.
- 30.86.430 - Fire code fees.
- 30.86.440 - Mobile home/commercial coach permit fees. See also Chapter 30.54A SCC.
- 30.86.450 - Sign fees.
- 30.86.500 - SEPA (environmental review) fees.
- 30.86.510 - Drainage and land disturbing activity fees.
- 30.86.515 - Stormwater modification, waiver and reconsideration request fees.
- 30.86.520 - Reserved.
- 30.86.525 - Critical areas review fees.
- 30.86.530 - Park and recreation impact mitigation fees.
- 30.86.540 - Road impact mitigation fees.
- 30.86.550 - School impact mitigation fees.
- 30.86.600 - Permit decision appeal fees.
- 30.86.610 - Code interpretation fees (Type 1).
- 30.86.615 - Reserved.
- 30.86.616 - Reserved.
- 30.86.620 - City or town's fees.
- 30.86.700 - Docketed comprehensive plan amendments to the Snohomish County GMA Comprehensive Plan Future Land Use Map.
- 30.86.710 - Engineering, Design and Development Standards (EDDS) deviations.
- 30.86.800 - Urban center development fees.

30.86.010 - Fees established.

This chapter establishes fees required to be paid by the applicant to compensate the county for the cost of administering title 30 SCC. Where any such fee is required to be paid, it shall be paid in accordance with the provisions and tables set forth herein. Such fees are in addition to any other fees required by law.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

30.86.011 - Fee payment and dispute resolution.

Fees are due and payable at the time services are requested unless otherwise specified in this chapter or state law. Any dispute involving fees shall be resolved by the director. A written request to resolve a fee dispute shall be submitted within 30 days of the fee payment. For the purpose of computing elapsed calendar days, the day after the fee payment date shall be counted as day one. The director shall issue a written determination within 30 days of receipt of the request. The director's decision shall be final. Permit review shall be stayed during the pendency of the dispute resolution.

(Added Amended Ord. 08-122, § 4, Nov. 10, 2008, Eff date Jan. 1, 2009).

30.86.015 - Fee refunds.

- (1) Fee refund requests shall be submitted in writing to the department. A request shall reference the applicable project file number, the specific reason for the request and the amount of refund requested.
- (2) The date of the refund request shall be the date the written refund request is received by the department. For the purpose of computing elapsed calendar days, the day after the date of application or deadline date as appropriate shall be counted as day one.
- (3) When authorized, refunds shall be made within 60-days of the refund request.
- (4) Fee refunds shall not include the following:
 - (a) Base fees;
 - (b) Fees expended to satisfy public notice requirements;
 - (c) State Building Code Council surcharges.
- (5) The director may authorize the following refunds:
 - (a) 100 percent of fees collected by error of the department;
 - (b) Fee refunds for permit applications or services requested before the commencement of services or 60-days, whichever occurs first;
 - (c) Fees collected for the DOT and Health Department;
 - (d) SEPA environmental impact statement (EIS) refunds pursuant to SCC 30.86.500(6)(c); and
 - (e) Appeal related refunds pursuant to SCC 30.71.050(4), SCC 30.72.070(5) and SCC 30.86.610(1).

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 08-122, § 5, Nov. 10, 2008, Eff date Jan. 1, 2009).

30.86.030 - Technology surcharge.

- (1) A technology surcharge is required for the cost of developing and implementing technology necessary to efficiently administer development and permit review by the department and to provide service improvements in permitting processes. The technology surcharge shall be paid in addition to any other fees required by law.
- (2) A technology surcharge of three percent of required fees, is required to be paid by the applicant on all PDS fee transactions required by chapters 13.01 and 30.86 SCC, except impact mitigation fees and fees collected on behalf of cities pursuant to SCC 30.86.530, SCC 30.86.540, SCC 30.86.550 and SCC 30.86.620.

(Added Amended Ord. 08-122, § 6, Nov. 10, 2008, Eff date Jan 1, 2009).

30.86.100 - Subdivision fees.

Table 30.86.100—SUBDIVISION FEES

OTHER FEES: All necessary fees for subdivision approval/recording are not listed here. Examples of fees not collected by the department include: (1) Applicable private well and septic system approvals (Snohomish Health District); (2) right-of-way permit (department/department of public works), see SCC 13.110.020; and (3) subdivision recording fees (auditor).

PRE-APPLICATION CONFERENCE FEE	\$480
PRELIMINARY SUBDIVISION FILING FEE ^{(1), (2)}	
Base fee	\$4,680
Plus \$ per lot	\$132
Plus \$ per acre	\$78
Total maximum fee	\$21,600

Table 30.86.110—SHORT SUBDIVISION FEES

OTHER FEES: All necessary fees for subdivision approval/recording are not listed here. Examples of fees not collected by the department include: (1) Applicable private well and septic system approvals (Snohomish Health District); (2) right-of-way permit (the department/department of public works), see SCC 13.110.020; and (3) short subdivision recording fees (auditor).

PRE-APPLICATION CONFERENCE FEE	\$480
PRELIMINARY SHORT SUBDIVISION FILING FEES ⁽¹⁾	
Base fee	\$1,560
Plus \$ per acre	\$78
Plus \$ per lot	\$78
SHORT SUBDIVISION MODIFICATION APPLICATION	\$960
PLAN/DOCUMENT RESUBMITTAL FEE ⁽²⁾	\$240
SHORT SUBDIVISION REVISIONS AFTER PRELIMINARY APPROVAL	\$312
SHORT SUBDIVISION FINAL APPROVAL	\$600
SHORT SUBDIVISION FINAL DOCUMENT CHECK	\$1,800
RECORDING OF FINAL SHORT SUBDIVISION	\$30
ALTERATIONS TO RECORDED SHORT SUBDIVISIONS	\$420
PRELIMINARY SHORT SUBDIVISION EXTENSION ⁽³⁾	\$500

Reference notes:

(1) A preliminary filing fee consists of the sum of a base fee, a per lot fee, a per acre fee, and a supplemental fee if applicable.

(2) This fee applies to the re-submittal of short subdivision plans and documents after a second review for which the applicant did not include corrections noted by the department, or the applicant made revisions, which necessitate additional review and comments. (3) This fee applies to preliminary short subdivision approval extensions pursuant to SCC 30.41B.300.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-061, § 45, Aug. 1, 2007; Amended Ord. 07-108, § 6, Nov. 19, 2007, Eff date July 1, 2008).

(Amended Ord. No. 09-018, § 10, June 3, 2009, Eff date June 25, 2009)

30.86.115 - Administrative site plan fees for single family detached units.

Table 30.86.115—ADMINISTRATIVE SITE PLAN FEES FOR SINGLE FAMILY DETACHED UNITS

OTHER FEES: All necessary fees for single family detached units approval/recording are not listed here. Examples of fees by the department include: (1) critical areas review; (2) drainage review, etc. Examples of fees not collected by the department include: (1) Applicable private well and septic system approvals (Snohomish Health District) and (2) recording fees (auditor).

FEES	
PRE-APPLICATION CONFERENCE	
ADMINISTRATIVE SITE PLAN	
Application fee	\$1,440
Minor revision request ⁽¹⁾	\$780
Reference notes:	
(1) Subsequent to initial approval of the administrative site plan.	

Reference notes:

(1) A "concurrent land development application" is another land development application using a master permit application, commercial building permit application, or other land development application which includes a site plan approval, submitted simultaneously with a BSP application.

(2) This fee is paid upon submittal of a proposed record of survey, or upon submission of a major revision to a proposed or existing record of survey and will include the review of any right-of-way establishment or dedication offered or required. Copies of a recorded subdivision or a record of survey which show the proposed binding site plan area and are in conformance with RCW 58.09.090(1)(d)(iv) shall not be subject to the survey information review fee, unless a right-of-way establishment or dedication is offered or required.

(3) This fee applies when an applicant resubmits a record of survey after the department has performed two reviews of the record of survey and (a) the record of survey fails to include corrections required by the department on "markup" plans, drawings, or other documents generated during a prior review; or (b) the applicant makes a minor revision or addition to the record of survey.

(4) Revisions to binding site plans being reviewed concurrently with another land development application shall be exempt from this fee.

(5) Survey information resubmittal review fees of SCC 30.86.130 shall also apply.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-108, § 8, Nov. 19, 2007, Eff date July 1, 2008).

| 30.86.135 - TDR fees.

Table 30.86.135—TDR FEES

Activity	Fees
Processing and review of application for TDR certificates and issuance of TDR certificate letter of intent pursuant to SCC 30.35A.050 (1)(a)	\$600
Issuance of TDR certificates pursuant to SCC 30.35A.050 (1)(b)	\$150
Review of conservation easement pursuant to SCC	\$250

30.35A.060 (3) Review of deed of transferable development rights pursuant to SCC	\$150
30.35A.070 (3) Site inspection pursuant to SCC	\$250
30.35A.050 (1)(b)	

(Added Amended Ord. 04-123 § 4, Dec. 15, 2004; Ord. 07-137, § 3, Dec. 12, 2007, Eff date Dec. 28, 2007).

30.86.140 - Boundary line adjustment fees.

FILING FEE	\$600 plus \$78 per lot for each lot over 2 lots
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(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-108, § 9, Nov. 19, 2007, Eff date July 1, 2008).

30.86.145 - Landscape and tree plan review and inspection fee.

- (1) A plan review fee in the amount of \$400 shall be submitted to the department for any landscape plan, tree plan, or combination landscape and tree plan at the time of application for any permit or approval requiring a landscaping or tree plan.
- (2) A landscape modification review fee of \$200 shall be paid to the department at the time of application for a landscape modification.
- (3) A landscape site inspection fee of \$150 shall be paid to the department at or before permit issuance. An additional fee of \$50 shall be paid prior to any re-inspection of required site landscaping.

(Added Amended Ord. No. 08-101, § 64, Jan. 21, 2009, Eff date April 21, 2009)

30.86.200 - Rezone fees.

Table 30.86.200—REZONE FEES

	FEES (1), (2)
PRE-APPLICATION CONFERENCE Application fee	\$480
FINAL PLAN FILING FEE (fractions rounded to the next highest acre) Chapter 30.31A.SCC BP, IP, PCB Zones	\$50/acre
OFFICIAL SITE PLAN (3)	
Application fee	\$1,440
Minor revision request (administrative)(4)	\$780
Major revision request (public hearing)(4)	\$1,248

REZONE TYPE	Rezone Area Acreage					
	0-<2.9	3-<9.9	10-<29.9	30-<199	200-<499	500+
COMMERCIAL (All Commercial Zones)						
Base fee	\$5,400	\$5,940	\$7,740	\$15,840	\$24,840	\$33,840
Plus \$ per acre	\$960	\$720	\$480	\$120	\$60	\$36
INDUSTRIAL (All Industrial Zones)						
Base fee	\$7,200	\$7,740	\$9,540	\$17,640	\$35,640	\$58,140
Plus \$ per acre	\$1,080	\$840	\$600	\$240	\$120	\$60
MULTIPLE FAMILY RESIDENTIAL (LDMR & MR Zones)						
Base fee	\$5,400	\$5,670	\$6,570	\$11,970	\$38,970	\$47,970
Plus \$ per acre	\$720	\$600	\$480	\$240	\$60	\$36
ALL OTHER RESIDENTIAL, AGRICULTURE, RECREATION & MC Zones						
Base fee	\$1,140	\$1,170	\$2,070	\$3,420	\$5,220	\$9,720
Plus \$ per acre	\$360	\$240	\$120	\$60	\$48	\$36
Reference notes:						
(1) The rezone fee amount is based on the highest intensity use requested being applied to the gross acreage noted on the application, and is equal to the sum of all applicable parts. Application fees for public agencies shall be the same as for nongovernmental applicants.						
(2) A base fee shall be increased by 25 percent when an official site plan is required or offered for rezone approval.						
(3) This fee is only applicable for official site plan approvals when no zoning change is requested.						
(4) Subsequent to initial approval of the official site plan.						

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-108, § 10, Nov. 19, 2007, Eff date July 1, 2008).

30.86.205 - PRD fees.

Table 30.86.205—PRD FEES

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-108, § 11, Nov. 19, 2007, Eff date July 1, 2008).

30.86.210 - Conditional use permit fees.

Table 30.86.210—CONDITIONAL USE PERMIT (CU) FEES

PRE-APPLICATION CONFERENCE FEE ⁽¹⁾	\$480
STANDARD CU PERMIT ⁽¹⁾	\$3,300
LANDFILL CU PERMIT	
Base fee	\$2,160
Plus \$ per acre	\$60

Total maximum fee	\$3,600
TIME EXTENSION REQUEST	\$120
MINOR REVISION REQUEST	\$240
MAJOR REVISION REQUEST	\$960
*TEMPORARY WOODWASTE RECYCLING PERMIT	\$600
*TEMPORARY WOODWASTE STORAGE PERMIT	\$600
ANNUAL RENEWAL FEE FOR ANY TEMPORARY USE	\$48

Reference note:
 (1) Administrative conditional use permit fees for playing fields on designated recreational land in accordance with SCC 30.28.076 and chapter 30.33B shall be set at \$0.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-04 § 20, March 15, 2006; Amended Ord. 07-108, § 13, Nov. 19, 2007, Eff date July 1, 2008).

30.86.225 - Special use permit fees.

Table 30.86.225—SPECIAL USE PERMIT (SU) FEES

PRE-APPLICATION CONFERENCE FEE	\$480
STANDARD SU PERMIT	\$3,300

(Added Amended Ord. 05-040 § 11, July 6, 2005; Amended Ord. 07-108, § 14, Nov. 19, 2007, Eff date July 1, 2008).

30.86.230 - Variance fees.

Table 30.86.230—VARIANCE FEES

PRE APPLICATION CONFERENCE FEE	\$480
STANDARD VARIANCE	\$1,200
SINGLE FAMILY RESIDENCE REQUEST FOR A SINGLE REVISION TO A	\$600

DIMENSIONAL REQUIREMENT	
TIME EXTENSION REQUEST	\$120
MINOR REVISION REQUEST	\$312
MAJOR REVISION REQUEST	\$1,248

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-108, § 15, Nov. 19, 2007, Eff date July 1, 2008).

30.86.300 - Special flood hazard areas permit fees.

Table 30.86.300—SPECIAL FLOOD HAZARD AREA PERMIT FEES

FLOOD HAZARD AREA PERMIT	\$300
FLOOD HAZARD AREA VARIANCE	See Table 30.86.230
PRE-APPLICATION CONFERENCE FEE	\$400
FLOOD HAZARD AREA PERMIT FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 and CHAPTER 30.33B SCC	\$0
FLOOD HAZARD AREA DETERMINATION	\$200

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-004 § 10, March 15, 2006; Amended Ord. 07-108, § 16, Nov. 19, 2007, Eff date July 1, 2008).

30.86.310 - Shoreline Management Permit fees.

Table 30.86.310—SHORELINE MANAGEMENT PERMIT FEES

SHORELINE VARIANCE	\$1,440
SHORELINE SINGLE FAMILY RESIDENCE VARIANCE	\$800

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT OR SHORELINE CONDITIONAL USE PERMIT:	
UP TO \$10,000	\$780
\$10,001 TO \$100,000	\$1,560
\$100,001 TO \$500,000	\$4,680
\$500,001 TO \$1,000,000	\$6,240
MORE THAN \$1,000,000	\$7,800
SHORELINE MANAGEMENT HEARING FEE (IF REQUIRED)	\$1,248 ⁽¹⁾
SHORELINE EXEMPTIONS	\$540
SHORELINE FEES FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 AND CHAPTER 30.33B SCC	\$0
Reference note: (1) The additional fee shall be paid prior to scheduling the proposed permit for public hearing.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-004 § 11, March 15, 2006; Amended Ord. 07-108, § 17, Nov. 19, 2007, Eff date July 1, 2008).

30.86.400 - Construction code fees.

- (1) Occupancies Defined. Fees established in SCC 30.86.400 shall be assessed based on whether an occupancy type is commercial or residential. SCC Table 30.86.400(3) defines the occupancy groups in these two occupancy types.
- (2) Outstanding Fees. Any outstanding fees or portions of fees shall be added to the required fee(s) of any future plan review or permit prior to application acceptance or permit issuance. Any fee shall not relieve the applicant from a duty to obtain permits for moving buildings upon roads and/or highways from the appropriate authorities. The permit fee for construction of a new foundation, enlargement, or remodeling of the move-in building shall be in addition to the pre-move fee. The fee for any factory built structure as approved by the Washington State Department of Labor and Industries is specified in SCC 30.86.440 under mobile homes.
- (3) Commercial and residential occupancies defined.

Table 30.86.400(3)—COMMERCIAL AND RESIDENTIAL OCCUPANCIES DEFINED

OCCUPANCY TYPES	OCCUPANCY GROUPS
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COMMERCIAL	A, I, R, E, H, F, M, S, B, and U
RESIDENTIAL	R-3, U
REVIEW FEE ⁽²⁾	\$400
SITE REVIEW (at applicant's request)	\$100
ADDED SERVICES REQUEST	\$60/hour
REVIEW FEE FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 and CHAPTER 30.33B SCC	\$0
Reference notes: (1) Prior to making application for a commercial building permit, an applicant may request pre-application review to learn about submittal requirements. The department will provide a written outline of requirements, and may include identification of site-specific issues when known, depending on the detail and scope of the submitted materials. (2) Includes a conference with only a senior planner in attendance, and does not include review of detailed construction plans and specifications.	

(5) Base permit fees.⁽¹⁾

Table 30.86.400(5)—BASE PERMIT FEES

COMMERCIAL	\$250
COMMERCIAL PLUMBING	\$125
COMMERCIAL MECHANICAL	\$125
COMMERCIAL MECHANICAL AND PLUMBING (not in conjunction with a commercial building permit)	\$125
MECHANICAL, PLUMBING, OR MECHANICAL, AND PLUMBING	\$80
RESIDENTIAL	\$80
COMMERCIAL REVIEW FEE FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN	\$0

ACCORDANCE
WITH SCC
30.28.076 and
CHAPTER
30.33B SCC

Reference notes:

(1) Base fees shall compensate the department for preliminary application screening and the establishment and administration of the permit application file.

(6) Plan review fees.⁽¹⁾

Table 30.86.400(6)—PLAN REVIEW FEES

PLAN, DRAWING, OR DOCUMENT BEING REVIEWED	
• R-3, and U Occupancies for residential purposes	65% of building permit fee
• A, I, R-1, R- -2, R-4, E, H, F, M, S, U and B Occupancies	85% of building permit fee
EXCEPTIONS	
Successive construction (2) (3)	
• R-3, and U Occupancies for residential purposes	20% of building permit fee
• R-1, R-2 and R-4 Occupancies	45% of building permit fee
The plan review fee shall be supplemented for A, I, R-1, R-2, R-4, E, H, F, M, S, U and B Occupancies as follows:	
• Commercial permit application for 1 or more buildings or additions requiring site review	\$640
• Commercial permit application for 1 or more buildings or additions with a previously approved official site plan	\$500

• Tenant improvements not requiring site plan review	\$100
ADDITIONAL REVIEW ⁽⁴⁾	\$200 or 25% of the plan review fee, whichever is less.
PLAN REVIEW FEE FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 and CHAPTER 30.33B SCC	\$0
<p>Reference notes:</p> <p>(1) Plan review fees shall compensate the department for the plan review necessary to determine compliance with the adopted construction codes and other county regulations.</p> <p>(2) A plan review fee for successive construction will be assessed where more than one building or structure is proposed to be constructed in accordance with a single basic plan for the following classifications of buildings and structures:</p> <p>(a) Group R occupancies.</p> <p>(b) Garages, carports, storage buildings, agricultural buildings, and similar structures for private use.</p> <p>(3) Procedures for approval of basic plans for successive construction shall be established by the director.</p> <p>(4) This fee is charged whenever an applicant re-submits documents failing to make county-required corrections noted on "markup" plans, drawings, or such other documents during plan review; or whenever as a result of changes, additions, or revisions to previously approved plans, drawings or such other documents, a subsequent plan review is required.</p>	

(7) Building permit fees.⁽¹⁾

Table 30.86.400(7)—BUILDING PERMIT FEES

TOTAL BUILDING/STRUCTURAL VALUATION ⁽²⁾	PERMIT FEE ⁽³⁾
\$1-\$500	\$23.50
\$501-\$2,000	\$23.50 for the first \$500 plus \$3.05 for each additional \$100 or fraction thereof, including \$2,000
\$2,001-\$25,000	\$69.25 for the first \$2,000 plus \$14.00 for each additional \$1,000 or fraction thereof, including \$25,000
\$25,001-\$50,000	\$391.25 for the first \$25,000 plus \$10.10 for each additional \$1,000 or fraction thereof, including \$50,000
\$50,001-\$100,000	\$643.75 for the first \$50,000 plus \$7.00 for each additional \$1,000 or fraction thereof, including \$100,000
\$100,001-\$500,000	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof, including \$500,000
\$500,001-\$1,000,000	\$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000 or fraction thereof, including \$1,000,000
Over \$1,000,000	\$5,608.75 for the first \$1,000,000 plus \$3.15 for each additional \$1,000 or fraction thereof.

FIRE SPRINKLER SYSTEM PLAN REVIEW	100% of valuation plus \$1.50/square foot
BUILDING/STRUCTURAL PERMITS INCLUDING REQUIRED FIRE SPRINKLER SYSTEM PLANS	100% of valuation plus \$1.50/square foot
Reference notes: (1) Permit fees shall compensate the department for inspections necessary to determine compliance with the adopted construction codes, other county regulations, and the approved plan. The fee table shall be applied separately to each building within a project and used for the calculation of all plan review and permit fees, except those for which a separate permit fee is required to be paid in accordance with title 30 SCC. (2) The department shall use the building valuation multipliers provided in the most current building valuation data (BVD) published by the International Code Council that is in effect on January 1 of the year in which the permit is applied for by the applicant. (3) Permit fees for playing fields on designated recreational land in accordance with SCC 30.28.076 and chapter 30.33B SCC shall be set at \$0, regardless of valuation. All buildings on the site shall be permitted on one permit. (4) For new construction of Group R-3 occupancies, a fee of 11 percent of the building permit fee shall apply for mechanical and plumbing inspections. (See SCC 30.86.410 and 30.86.420)	

(8) Certificates of occupancy/changes of use fees.

Table 30.86.400(8)—CERTIFICATES OF OCCUPANCY/CHANGE OF USE FEES

CERTIFICATE OF OCCUPANCY	
Home occupation in detached accessory structures	\$100
Temporary or final, when applicant requests phased issuance for each structure or structures	\$100
COMMERCIAL BUILDING CHANGE OF USE OR OCCUPANCY ⁽¹⁾	
Under 10,000 square feet	\$250
Over 10,000 square feet	\$500
Reference notes: (1) This fee shall be deducted from the permit fee if a permit is required.	

(9) Special inspections and investigation fees.

Table 30.86.400(9)—SPECIAL INSPECTIONS AND INVESTIGATION FEES

BUILDING AND MOBILE HOME PRE-MOVE INSPECTIONS	
Snohomish County inspection	\$60/hour- 2 hour min.
Outside Snohomish County inspection for move to Snohomish County	\$120 plus County's standard mileage rate/mile
INSPECTIONS OUTSIDE NORMAL COUNTY BUSINESS HOURS	\$60/hour- 2 hour min.
INSPECTIONS FOR WHICH NO FEE IS OTHERWISE INDICATED	
REINSPECTION FEE ⁽¹⁾	\$60
INVESTIGATION FEE ⁽²⁾	100% of permit fee
Reference notes: (1) A fee assessed for work requiring an inspection or re-inspection when said work is not complete at the last inspection or re-inspection. No further inspection or re-inspection of the work will be performed until the required fees have been paid. (2) A fee charged for work requiring a permit, which is commenced without first obtaining said permit. This fee shall be collected regardless of whether a permit is subsequently issued or not.	

(10) Miscellaneous review and permit fees. ⁽¹⁾

TABLE 30.86.400(10)—MISCELLANEOUS REVIEW AND PERMIT FEES

PRE-APPLICATION SITE REVIEW (\$200 to be applied towards site review/permit fees at time of application)	\$250
ACCESSORY BUILDINGS LESS	50% of site review fee

THAN 1,000 SQUARE FEET	
BUILDING ADDITIONS	
CONVERSION OPTION HARVEST PLAN REVIEW	\$300
Sites larger than 10 acres	\$5/acre
COMPLETION PERMIT	\$50
CONDOMINIUM CONVERSION PERMIT (per unit)	\$50
DECK PERMIT	\$50
DEMOLITION PERMIT	\$50
DOCK PERMIT	\$50
FIREPLACE PERMIT	\$50
SWIMMING POOL PERMIT	\$50
TEMPORARY BUILDING PERMIT	\$50
TITLE ELIMINATION	\$30
LOT STATUS DETERMINATION	\$120 per tax parcel researched. No fee if submitted with a subdivision or building permit application
PRE- APPLICATION DESIGN REVIEW	\$2,500
ROOFING PERMIT ⁽²⁾	
11 to 25 squares	\$37
More than 25 squares	\$55
SITE REVIEW FOR NEW BUILDINGS OR ADDITIONS ⁽³⁾	\$100
SUCCESSIVE CONSTRUCTION SET-UP FEE	\$200
Reference notes:	
(1) These fees are charged in addition to building/structural plan and permit fees.	
(2) No permit is required for use of 10 squares or less of roofing material.	
(3) If permits are sought for more than one lot within the same subdivision and the subdivision has been recorded within the previous year, and all the permit applications are submitted at the same time, the first lot's site review fee shall be for the full amount and the site review fee for each of the other lots shall be one-half the full fee amount.	

(Added Amended Ord. 02-064, § 19 (part), Dec. 9, 2002; Eff date February 1, 2003; Amended Ord. 03-142 § 2, Nov. 19, 2003, (Eff date Sections 1, 3 and 8 on Dec. 1, 2003, Section 2 on Jan. 1, 2004, Sections 4 through 7 on Jan. 1, 2005); Ord. 03-153 § 2, Jan. 28, 2004; Amended Ord. 03-142, § 5, Nov. 19, 2003, Eff date Jan. 1, 2005; Amended Ord. 04-116, November 23, 2004, Eff date

Dec. 17, 2004 (amended the effective date of Sections 4 through 7 of Amended Ord. 03-142 to Jan. 1, 2006); Ord. 05-106, November 21, 2005, Eff date Dec. 18, 2005 (amended the effective date of Sections 4 through 7 of Amended Ord. 03-142 to Sept. 30, 2007; Amended Ord. 06-004 § 12, March 15, 2006, Eff date April 4, 2006; Ord. 06-088, § 1, Nov. 20, 2006, Eff date Dec. 7, 2006 (amended the effective date of Sections 1, 3 and 8 of Amended Ord. 03-142 to Dec. 7, 2006 and Section 2 to Jan. 1, 2008); Amended Ord. 06-061, § 46, Aug. 1, 2007; Amended Ord. 07-084, § 23, Sept. 5, 2007; Amended Ord. 07-108, § 18, Nov. 19, 2007; Amended Ord. 08-122, § 7, Nov. 10, 2008, Eff date Jan. 1, 2009).

30.86.410 - Mechanical permit fees.

TABLE 30.86.410—MECHANICAL PERMIT FEES

MECHANICAL INSPECTION FEES FOR CONSTRUCTION OF NEW GROUP R-3 OCCUPANCIES (ONE- AND TWO-FAMILY RESIDENTIAL).	For new construction of Group R-3 occupancies, 11 percent of the building permit fee shall apply for mechanical and plumbing inspections. See SCC 30.86.400(7).
GAS-PIPING SYSTEM	\$5 per outlet
VENTILATION FAN OR SYSTEM—installed, which is not a portion of any heating or air conditioning system authorized by permit	\$5
AIR-HANDLING UNIT—install, and including ducts attached thereto	\$15 each
APPLIANCE VENT TO THE OUTSIDE—install or relocate, and not included in an appliance permit	\$15
BOILER, COMPRESSOR, OR ABSORPTION SYSTEM—install or relocate ⁽¹⁾	\$15
DOMESTIC OR INDUSTRIAL-	\$15

TYPE INCINERATOR— install or relocate	
FLOOR FURNACE— install or relocate, including exhaust vent, suspended heater, recessed wall heater, or floor-mounted unit heater	\$15
FURNACE OR BURNER— forced air or gravity-type: Install or relocate, including ducts and vents attached	\$15
HOOD—install, which is served by mechanical exhaust, including the ducts for such hood	\$15
INSTALLED APPLIANCE, or PIECE OF EQUIPMENT	
Regulated by this code, but not classed in other appliance categories, or for which no other fee is listed in this code	\$15
SOLID FUEL BURNING APPLIANCE— install, relocate, replace	\$25 each
TANK—above- ground, underground, or LPG in a	

residential application ⁽²⁾	
125-250 gallon capacity	\$25 each
over 250 gallon capacity	\$50 each
Reference notes:	
(1) This fee shall not apply to an air-handling unit, which is a portion of a factory-assembled appliance, cooling unit, evaporative cooler, or absorption unit for which a permit is required elsewhere in this code.	
(2) No permit is required for tanks with less than a 125-gallon capacity.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-084, § 24, Sept. 5, 2007; Amended Ord. 08-122, § 8, Nov. 10, 2008, Eff date Jan. 1, 2009).

30.86.420 - Plumbing permit fees.

TABLE 30.86.420—PLUMBING FEES

PLUMBING INSPECTION FEES FOR THE CONSTRUCTION OF NEW GROUP R-3 OCCUPANCIES (ONE- AND TWO-FAMILY RESIDENTIAL).	For new construction of Group R-3 occupancies, 11 percent of the building permit fee shall apply for mechanical and plumbing inspections. See SCC 30.86.400(7).
FOR FACTORY-BUILT MODULAR STRUCTURES (the fee will be assessed for each fixture built into the structure by the manufacturer)	\$3.50
FOR EACH:	
⇒ Backflow protective devices,	\$7
⇒ Industrial waste pre-treatment interceptor, including its trap and vent,	\$7
⇒ Installation, alteration, or repair of water piping,	\$7
⇒ Plumbing fixture,	\$7

⇒ Rainwater systems-per drain (inside building) repair or alteration of drainage or vent piping,	\$7
⇒ Set of fixtures on one trap, (including water, drainage, piping)	\$7
⇒ Trap,	\$7
⇒ Water heater or vent,	\$7
⇒ Water treating equipment.	\$7
FOR EACH BUILDING SEWER AND EACH TRAILER PARK SEWER	\$15

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-084, § 25, Sept. 5, 2007; Amended Ord. 08-122, § 9, Nov. 10, 2008, Eff date Jan. 1, 2009).

30.86.430 - Fire code fees.

TABLE 30.86.430—FIRE CODE FEES

ANNUAL FIRE INSPECTION FEE ⁽¹⁾			
Building size in square feet		FEE	
	B, M, R (Less than 20 Units), U Occupancies (Group 1)	A, E, R (More than 20 Units) Occupancies (Group 2)	F, H, I, S Occupancies (Group 3)
0-1,000	\$45	\$75	\$95
1,001-2,500	\$65	\$105	\$165
2,501-5,000	\$95	\$155	\$245
5,001-7,500	\$115	\$185	\$285
7,501-10,000	\$125	\$195	\$300
10,001-12,500	\$145	\$230	\$315
12,501-15,000	\$165	\$275	\$330
15,001-17,500	\$175	\$295	\$345
17,501-20,000	\$190	\$310	\$365

20,001-30,000	\$215	\$350	\$375
30,001-40,000	\$230	\$375	\$385
40,001-50,000	\$245	\$400	\$400
50,001-60,000	\$260	\$425	\$425
60,001-70,000	\$275	\$450	\$450
70,001-100,000	\$300	\$475	\$475
100,001-150,000	\$350	\$500	\$500
150,001-200,000	\$400	\$525	\$525
OVER 200,000	\$450	\$550	\$550
REINSPECTION FEES			
For uncorrected violations at time of first re-inspection			\$25
For uncorrected violations at time of second re-inspection			\$50
FIRE PLAN REVIEW AND PERMIT FEES			
Riser system			\$50 each
Fuel storage tank			
Alarm system			
SPECIAL EVENT PERMIT FIRE INSPECTIONS			
During regular business hours			\$100
After regular business hours/weekends			\$60/hour of actual time spent
PYROTECHNIC FIREWORKS			
Retail fireworks	\$100		
Wholesale fireworks	\$100		
OPEN BURNING PERMITS			
Residential			\$30.00
Residential—Annual Renewal			\$15.00
Land Clearing			\$300.00

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 04-030, § 3, April 28, 2004; Amended Ord. 07-084, § 26, Sept. 5, 2007, Eff date Sept. 21, 2007).

30.86.440 - Mobile home/commercial coach permit fees. See also Chapter 30.54A SCC.

TABLE 30.86.440—MOBILE HOME/COMMERCIAL COACH PERMIT FEES

MOBILE HOMES	
On a lot outside of an approved mobile home park	\$240 each
Within an approved	\$160 each

mobile home park	
Temporary placement during construction of permanent single-family residence on same site (1)	\$100 each
Temporary dwelling (relative-per SCC 30.22.130 (18))	\$200 each
Plus annual renewal fee	\$40
	100% of permit fee-
INVESTIGATIVE FEE (per SCC 30.83.200 and SCC 30.54A.020)	PLACEHOLDER POSITION
	\$360 plus a plan
COMMERCIAL COACH	review fee for each
	100% of permit fee
INVESTIGATIVE FEE (per SCC 30.83.200 and SCC 30.54A.020)	PLACEHOLDER POSITION
Reference notes: (1) The building permit for the permanent single family residence must be valid and active while the mobile home is on site.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

| 30.86.450 - Sign fees.

Table 30.86.450—SIGN FEES ^{(1) (2)}

WALL SIGN	\$50
POLE OR ROOF SIGN	\$100
BILLBOARD	\$150
Reference notes: (1) A permit is not required for signs four square feet or less in area. (2) A SEPA threshold determination may be required, which includes a \$550 environmental checklist submittal fee.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 07-084, § 27, Sept. 5, 2007, Eff date Sept. 21, 2007).

| 30.86.500 - SEPA (environmental review) fees.

Table 30.86.500—SEPA FEES⁽¹⁾

CHECKLIST REVIEW/THRESHOLD DETERMINATION (TD) ^{(2), (6)}	
Single family dwellings or duplex	\$350
Short Subdivisions	
0 to 4 lots	\$660
5 to 9 lots	\$780
Subdivisions	
0 to 10 lots	\$780
11 to 20 lots	\$900
21 to 50 lots	\$1,080
51 to 100 lots	\$1,320
101 to 200 lots	\$1,620
Greater than 200 lots	\$1,920
Commercial (project actions requiring commercial zoning or commercial building permits, and multiple family construction in any zone):	
0 to 2 acres	\$600
3 to 5 acres	\$840
6 to 10 acres	\$1,020
11 to 20 acres	\$1,200
21 to 100 acres	\$1,440
Greater than 100 acres	\$1,680
Industrial (project actions requiring industrial zoning):	
0 to 2 acres	\$720
3 to 5 acres	\$960
6 to 10 acres	\$1,200
11 to 20 acres	\$1,440
21 to 100 acres	\$1,800
Greater than 100 acres	\$2,400
Threshold determinations (TD) for all other project actions not specifically listed	\$600
Staff review of special studies	\$72/Hour

submitted to supplement the environmental checklist	
MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS) ^{(3), (6)}	
Review fee for school, park, and road mitigation	\$180
County professional staff time spent in making the determination beyond the scope of initial review of mitigation	\$72/Hour
ENVIRONMENTAL IMPACT STATEMENT ^{(5), (6)}	
WITHDRAWAL OF DETERMINATION OF NONSIGNIFICANCE (DNS) OR DETERMINATION OF SIGNIFICANCE (DS) AND NEW TD ^{(4), (6)}	Fee equal to original fee for environmental checklist review
Reference notes:	
(1) These fees, which are in addition to any other fees provided for by law, shall be charged when Snohomish County is the lead agency for a non-county proposal.	
(2) The fee shall be collected prior to undertaking the threshold determination. Time periods provided in SCC 30.61.060 for making a threshold determination shall not begin to run until fee payment occurs.	
(3) For every mitigated threshold determination considered as provided by SCC 30.61.120 and WAC 197-11-350, one, or a combination of the following fees, shall be paid by the applicant. If after 30 days of the date an applicant receives "Notice of Payment Due" by certified mail, the required fees remain unpaid, the county shall discontinue action on the proposal, including postponement of scheduled hearings, until the fees are paid. Such fees are in addition to the initial threshold determination fees above.	
(4) This fee shall be charged for the additional environmental review conducted when a determination of significance is withdrawn and a new threshold determination is made for the same proposal. The fee shall be paid prior to issuance of the new threshold determination.	
(5)(a) The following EIS preparation and distribution costs shall be borne by the applicant or proponent:	
(i) Actual cost of the time spent by regular county professional, technical, and clerical employees required for the preparation and distribution of the applicant's impact statement. The costs shall be accounted for properly. No costs shall be charged for processing of the application which would be incurred with or without the requirement for an EIS or which are covered by the regular application fee;	
(ii) Additional costs, if any, for experts not employed by the county, texts, printing, advertising, and for any other actual costs required for the preparation and distribution of the EIS; and	
(iii) When an EIS is to be prepared by a consultant, actual consultant fees which shall be solely the responsibility of and billed directly to the applicant or proponent. The applicant or proponent shall also bear such additional county costs as provided for in (i) and (ii) above as are incurred in the review, revision, approval, and distribution of the EIS.	
(b) When an EIS is to be prepared by the county, following consultation with the applicant, the lead department shall inform the applicant of estimated costs and completion date for the draft EIS	

prior to accepting the deposit required by (4) above. Such estimate shall not constitute an offer or covenant by the lead department nor shall it be binding upon the county. In order to assure payment of the above county costs, the applicant or proponent shall post with the county a performance security in the minimum amount of \$1,800 in accordance with chapter 30.84 SCC.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected pursuant to reference note (4) above which remain after incurred costs are paid.

(6) The county shall collect a reasonable fee from an applicant pursuant to SCC 30.70.045(6) to cover the cost of meeting the public notice requirements of this title relating to the applicant's proposal.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-004 § 13, March 15, 2006; Amended Ord. 06-061, § 47, Aug. 1, 2007; Amended Ord. 07-108, § 19, Nov. 19, 2007, Eff date July 1, 2008).

(Amended Ord. 10-025, § 3, June 9, 2010, Eff Sept. 30, 2010; Amended Ord. No. 10-086, § 42, Oct. 20, 2010, Eff date Nov. 4, 2010)

30.86.510 - Drainage and land disturbing activity fees.

- (1) This section establishes drainage and land disturbing activity fees that apply when drainage or land disturbing activity review is a required component of a permit application or is a condition of a land use approval. Such fees are in addition to any other fees required by law. Construction applications referenced in this code section include applications for grading permits submitted prior to September 30, 2010, and building, right-of-way and land disturbing activity permit applications.
- (2) Fees for plan review and inspection of drainage plans and land disturbing activities are established in SCC Table 30.86.510(2)(A) and (B). SCC Table 30.86.510(2)(A) and (B) includes fees for plan review and inspection of independent activities as well as fees for plan review and inspection of multiple activities. Whenever two or more proposed activities subject to fees in SCC Table 30.86.510(2) are submitted concurrently as part of the same project, the applicant shall only pay one fee; the applicable fee shall be the one associated with the proposed activity that meets the highest threshold level in SCC Table 30.86.510(2)(A) and (B).
- (3) Drainage and land disturbing activity fees shall be based upon the fee table in effect at the time of payment.
- (4) For complete applications submitted to the department on or after September 30, 2010, the applicable drainage and land disturbing activity fees in SCC Table 30.86.510(2)(A) and (B) shall be paid as follows:
 - (a) For applications that require preliminary land use approval or for which site plan approval is required or requested prior to the submittal of construction applications, the following percentages of the fees shall be paid as follows:
 - (i) Fifty percent of the fees shall be paid upon submittal of the initial application(s) for land use or site plan approval;
 - (ii) Twenty-five percent of the fees shall be paid upon submittal of the construction application(s); and
 - (iii) Twenty-five percent of the fees shall be paid prior to permit issuance;
 - (b) For all other applications, except single-family residential building permit applications, 75 percent of the fees shall be paid upon submittal of the construction application(s) and 25 percent of the fees shall be paid prior to permit issuance; and
 - (c) For single-family residential building permit applications, 50 percent of the fees shall be paid upon submittal of the construction application(s) and 50 percent of the fees shall be paid prior to permit issuance.
- (5) When inspection services are requested for complete construction applications submitted to the department before September 30, 2010, and for which permits or approvals are issued on or after September 30, 2010, the following percentages of the applicable fees in SCC Table 30.86.510(2)(A) shall be paid as follows:
 - (a) Fifty percent of the fees shall be paid prior to single-family residential building permit issuance when the permit application included the submittal of a stormwater site plan or stormwater pollution prevention plan; and
 - (b) Twenty-five percent of the fees shall be paid prior to permit issuance for all applications, except as provided above in subsection (5)(a).

Table 30.86.510(2)—FEES FOR DRAINAGE AND LAND DISTURBING ACTIVITIES

(A) FEE LEVELS FOR PLAN REVIEW AND INSPECTION⁽¹⁾	DRAINAGE (new, replaced, or new plus replaced impervious surface in square feet)	GRADING (cut or fill in cubic yards, whichever is greater)	FEE
Level 1(a): Drainage only	1–1,999		\$375
Level 1(b): Grading only		1–500	\$350
Level 1(a)+(b): Drainage and Grading	1–1,999 and 1–500		\$ 725
Level 2	2,000–4,999 and 0–500		\$1,575
Level 3	5,000–9,999 and/or 501–4,999		\$2,450
Level 4	10,000–39,999 and/or 5,000–14,999		\$4,800
Level 5	40,000–99,999 and/or 15,000–69,999		\$12,700
Level 6	100,000 or more and/or 70,000 or more		\$34,700
(B) FEE LEVELS FOR PLAN REVIEW AND INSPECTION⁽¹⁾	CLEARING⁽²⁾		FEE
Level 1	1–6,999 sq. ft.		\$750
Level 2	7,000 sq. ft. or more		\$1,650
Level 3: Conversion only	Converts three-quarters of an acre (32,670 sq. ft.) or more of native vegetation to lawn/landscaped areas, or converts 2.5 acres (108,900 sq. ft.) or more of native vegetation to pasture.		\$2,800
(C) FEES FOR ACTIVITIES NOT OTHERWISE LISTED:			
Pre-application site review			\$250
Subsequent plan review ⁽³⁾			\$350
Field revisions ⁽⁴⁾			\$350
Modification, waiver, or reconsideration issued pursuant to SCC 30.63A.830 through 30.63A.842			See SCC 30.86.515
Investigation penalty ⁽⁷⁾			100% of the applicable drainage and land disturbing activity fee
Renewal of a land disturbing activity application or permit ⁽⁵⁾			\$400 plus a percentage of the original application or permit fee equal to the percentage of approved or permitted activity to be completed
Dike or levee construction or reconstruction grading plan review and inspection fee when implementing a Snohomish County approved floodplain management plan			\$60 per hour
Drainage plan review for mining operations ⁽⁶⁾			\$156 per acre
Monitoring associated with drainage plan review for mining operations			\$141 per hour
Consultation pursuant to SCC 30.63B.030(2) or 30.63B.100(2)			
(a) Land Use			(a) \$850
(b) Engineering			(b) \$975
(a)+(b) Land Use and Engineering Combination			(a)+(b) \$1,655
(D) SECURITY DEVICE ADMINISTRATION FEES:			
Performance Security			\$ 19.50 per subdivision or short subdivision lot or \$0.005 per square foot of impervious area for all other permits

Maintenance Security	\$ 15.00 per subdivision or short subdivision lot or \$0.003 per square foot of impervious area for all other permits
REFERENCE NOTES:	
(1) Drainage and land disturbing activity reviews associated with projects administered by Snohomish Conservation District shall not be subject to plan review and inspection fees.	
(2) Fee includes drainage plan review and inspection for clearing activity only. When clearing is combined with other land disturbing activities in SCC Table 30.86.510(2)(A), fee levels 1–6 for drainage and/or grading plan review and inspection also apply.	
(3) These fees apply on third and subsequent plan review submittals when an applicant fails to submit required corrections noted on "markup" plans, drawings, or other required submittal documents.	
(4) These fees apply whenever an applicant proposes changes, additions, or revisions to previously approved plans, drawings, or other required submittal documents.	
(5) Requests for renewals of land disturbing activity approvals or permits must include a written statement of the percentage of approved or permitted activity that remains to be completed. Applicants may provide this written statement for all level 1 projects. The engineer of record must provide the written statement for all other projects.	
(6) Acreage for drainage plan review for mining operations is based on mined area. Mined area includes all area disturbed in conjunction with the mining operation which shall include, but is not limited to, areas cleared, stock piles, drainage facilities, access roads, utilities, mitigation areas, and all other activity which disturbs the land. Fees for phased mine developments and mining site restoration plans of phased mine developments shall be calculated separately for each phase of mining based upon the area for each phase.	
(7) Any person who commences any land disturbing activity before obtaining the necessary permits shall be subject to an investigation penalty in addition to the required permit fees.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-004, § 14, March 15, 2006; Amended Ord. 08-122, § 10, Nov. 10, 2008, Eff date Jan. 1, 2009).

(Added Amended Ord. 10-025, § 5, June 9, 2010, Eff date Sept. 30, 2010; Amended Ord. No. 10-073, § 4, Sept. 22, 2010, Eff date Sept. 30, 2010; Amended Ord. No. 10-086, § 41, Oct. 20, 2010, Eff date Nov. 4, 2010)

Editor's note— Ord. No. 10-025, §§ 4 and 5, adopted June 9, 2010, effective Sept. 30, 2010, repealed § 30.86.510 and enacted a new section as set out herein. The former § 30.86.510 pertained to drainage and derived from Ord. No. 02-064, § 19(part), adopted Dec. 9, 2002; Ord. No. 06-004, § 14, adopted March 15, 2006; and Ord. No. 08-122, § 10, adopted Nov. 10, 2008.

30.86.515 - Stormwater modification, waiver and reconsideration request fees.

This section establishes fees for a modification, waiver or reconsideration request, submitted pursuant to SCC 30.63A.830 through 30.63A.842 and modifications requested pursuant to SCC 30.63C.060(4). These fees are established by the county to compensate the department for the costs of administering this title. Such fees are in addition to any other fees required by law.

Table 30.86.515—STORMWATER MODIFICATION, WAIVER AND RECONSIDERATION FEES

STORMWATER MODIFICATION, WAIVER AND RECONSIDERATION FEES:	
Stormwater modification requests pursuant to SCC 30.63A.830 and modifications requested pursuant to SCC 30.63C.060(4)	\$1,350
Stormwater waiver requests pursuant to SCC 30.63A.840	\$3,600
Reconsideration of a stormwater modification or waiver decision pursuant to SCC 30.63A.835 or 30.63A.842	\$630

(Added Amended Ord. 10-025, § 6, June 9, 2010, Eff date Sept. 30, 2010)

30.86.520 - Reserved.

Editor's note— Ord. No. 10-025, § 7, adopted June 9, 2010, effective Sept. 30, 2010, repealed § 30.86.520 which pertained to grading fees and derived from Ord. No. 02-064, § 19 (part), adopted Dec. 9, 2002; Ord. No. 06-004, § 15, adopted March 15, 2006; Ord. No. 06-061, § 48, adopted Aug. 1, 2007; Ord. No. 08-122, § 11, adopted Nov. 10, 2008; and Ord. No. 10-014, § 19, adopted April 7, 2010.

30.86.525 - Critical areas review fees.

- (1) This section establishes the fees required for all critical areas reviews, evaluations, delineations, categorization, inspections, and monitoring conducted by the county in order to compensate the department for the costs of review and services provided by the department.
- (2) Fees include first and second reviews. Third and subsequent reviews shall require additional fees as listed below.
- (3) Fees for work not covered in other fees shall be charged hourly.
- (4) Such fees are in addition to any other fees required by law.

Table 30.86.525(5)—CRITICAL AREAS REVIEW FEES

Activity	Fees
Third and subsequent reviews	50% of original fee
Additional work not covered by the fees listed below	\$96/hour
SHORT SUBDIVISIONS	
Critical Area Site Evaluation	\$180
Critical Area Review	\$300
SINGLE FAMILY RESIDENTIAL (SFR) DWELLINGS, DUPLEXES, AND ACCESSORY STRUCTURES, AND COMMERCIAL STRUCTURES 8,000 SQUARE FEET OR LESS	
Review of complete professional critical area study and/or habitat management plan submitted at the time of application	\$250
Delineation and categorizing services provided for erosion and landslide hazard areas only	\$450
Delineation and categorizing services provided for streams and wetlands with or without erosion and landslide hazards	\$1,200
Delineation, categorizing and habitat management plan services provided for endangered or threatened critical species	\$1,600
ALL OTHER PERMITS ⁽¹⁾	
Critical area study (CAS) review pursuant to SCC 30.62.340, 30.62A.120, 30.62B.120 and 30.62C.120	\$720
Habitat management plan (HMP) review pursuant to SCC 30.62.110 or 30.62A.460	\$720
Wetland Certification	\$2,000
MITIGATION PERFORMANCE - Monitoring, inspection, and administration of the performance security required for mitigation planting pursuant to SCC 30.62.070 or 30.62A.150	\$96/hour
SEPA MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS) ^{(2) (3)}	
Review fee for wetland and related critical areas mitigation	\$720
Review fee for wetland and related critical areas mitigation for an individual single family residence	\$150

GRADING—review of earthwork proposed within critical areas	\$250 for 500 cubic yards of grading or less
PETITION FOR SPECIES AND HABITAT OF LOCAL IMPORTANCE - Submittal and review of nomination petition pursuant to 30.62A.470(2).	\$1,000
Critical area review fees for playing fields on designated recreational land in accordance with SCC 30.28.076 and chapter 30.33B SCC	\$0
<p>Reference notes:</p> <p>(1) Fees for review of permits not listed separately in this table, including, but not limited to the following permits: shoreline, conditional use, subdivision, official site plan with rezone, PRD with rezone, and commercial.</p> <p>(2) For every mitigated threshold determination considered as provided by SCC 30.61.120 and WAC 197-11-350, one, or a combination of the following fees, shall be paid by the applicant. If after 30 days of the date an applicant receives "Notice of Payment Due" by certified mail, the required fees remain unpaid, the county shall discontinue action on the proposal, including postponement of scheduled hearings, until the fees are paid. Such fees are in addition to the initial threshold determination fees above.</p> <p>(3) The county shall collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this title relating to the applicant's proposal.</p>	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 06-004 § 16, March 15, 2006; Amended Ord. 06-061, § 49, Aug. 1, 2007; Amended Ord. 07-108, § 20, Nov. 19, 2007, Eff date July 1, 2008).

| 30.86.530 - Park and recreation impact mitigation fees.

Fees associated with park and recreation impact mitigation are shown on SCC Table 30.66A.040, Mitigation fee schedule. Mitigation options are more fully described in SCC 30.66A.030 through 30.66A.070.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

| 30.86.540 - Road impact mitigation fees.

Fees associated with road impact mitigation are found on SCC Table 30.66B.330 Road system capacity-impact fees. Mitigation options are more fully described in chapter 30.66B SCC.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

| 30.86.550 - School impact mitigation fees.

Fees associated with school impact mitigation are found on SCC Table 30.66C.100. Mitigation options are more fully described in SCC 30.66C.045 and 30.66C.100 through 30.66C.200.

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

| 30.86.600 - Permit decision appeal fees.

Table 30.86.600—APPEAL FEES

PERMIT TYPE	APPEAL FEE
TYPE 1-NON-	\$500

SHORELINE (1)	
TYPE 2 (1)	\$500
Reference notes: (1) This filing fee shall not be charged to a department of the county; provided that the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing pursuant to SCC 30.71.060 or 30.72.075.	

(Added Ord. 02-064, § 19 (part), Dec. 9, 2002; Amended Ord. 08-122, § 12, Nov. 10, 2008, Eff date Jan. 1, 2009).

| 30.86.610 - Code interpretation fees (Type 1).

Table 30.86.610—CODE INTERPRETATION FEES (Type 1).

APPLICATION FEE	\$250
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(Added Ord. 02-064, § 19 (part), Dec. 9, 2002, Eff date Feb. 1, 2003).

| 30.86.615 - Reserved.

Editor's note— Amended Ord. 09-044, § 13, adopted Aug. 12, 2009, Eff date Sept. 18, 2009, repealed § 30.86.615 which pertained to fully contained communities permit fees and derived from Amended Ord. 05-101, § 5, adopted Dec. 21, 2005.

| 30.86.616 - Reserved.

Editor's note— Amended Ord. 09-044, § 14, adopted Aug. 12, 2009, Eff date Sept. 18, 2009, repealed § 30.86.616 which pertained to sector plan permit fees and derived from Amended Ord. 05-101, § 6, adopted Dec. 21, 2005.

| 30.86.620 - City or town's fees.

Pursuant to the terms of an executed interlocal agreement, the department may request and collect fees on behalf of the city or town, which are voluntarily paid by an applicant for the city's or town's cost of review of an urban center development, submitted under chapter 30.34A SCC, located in a city's or town's associated urban growth area. The department will forward these fees to the city or town within 60 days.

(Added Ord. 03-017, § 2, April 2, 2003, Eff date April 25, 2003).

(Amended Ord. 09-079, § 20, May 12, 2010, Eff date May 29, 2010)

| 30.86.700 - Docketed comprehensive plan amendments to the Snohomish County GMA Comprehensive Plan Future Land Use Map.

Table 30.86.700—DOCKETED COMPREHENSIVE PLAN MAP AMENDMENT FEES

Pre-application	\$0
Initial Review	\$1,555
Final Review	\$2,275
SEPA Review	See SCC 30.74.070

(Added Amended Ord. 07-108, § 21, Nov. 17, 2007, Eff date July 1, 2008).

30.86.710 - Engineering, Design and Development Standards (EDDS) deviations.

Table 30.86.710—ENGINEERING, DESIGN AND DEVELOPMENT STANDARDS (EDDS) DEVIATION FEES

Activity	Fee
Application for deviation from Engineering, Design and Development Standards (EDDS) ¹	\$1,350
(1) Modifications and waivers of chapter 5 of the EDDS are authorized under SCC 30.63A.170. The fee for a modification or waiver is established in SCC 30.86.515. Deviations from chapter 5 of the EDDS are not authorized.	

(Added Amended Ord. 07-108, § 22, Nov. 19, 2007, Eff date July 1, 2008).

(Amended Ord. 10-025, § 8, June 9, 2010, Eff date Sept. 30, 2010)

30.86.800 - Urban center development fees.

A fee consistent with the Rezoning Fees for commercial zones (SCC 30.86.200) and any other applicable fees required by code (i.e., drainage, landscaping review, traffic concurrency, and subdivision or binding site plan, etc.) must be paid upon submittal.

(Added Ord. 09-079, § 21, May 12, 2010, Eff date May 29, 2010)

APPENDIX B

APPELLANT HOPPER'S OPENING BRIEF
HOPPER V. SNOHOMISH COUNTY
DIVISION I – 66325-9

APPENDIX B

Supplemental Declaration of Seder

**APPELLANT HOPPER'S OPENING BRIEF
HOPPER V. SNOHOMISH COUNTY
DIVISION I – 66325-9**

The Honorable Jim Rogers
Date of Hearing: October 22, 2010
Time of Hearing: 10:00 a.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SCOTT C. HOPPER, a married person
acting in his separate capacity, for himself
and all others similarly situated,

Plaintiff/Petitioner,

vs.

SNOHOMISH COUNTY, a political
subdivision of the State of Washington

Defendant/Respondent

NO. 10-2-24746-7SEA

SUPPLEMENTAL DECLARATION
OF ROBERT TAD SEDER

ROBERT TAD SEDER hereby declares under penalty of perjury under the
laws of the State of Washington as follows:

1. I am one of the attorneys for Defendant Snohomish County I am
over the age of eighteen (18) years and competent to be a witness to those matters
stated herein. I make this Declaration based upon facts within my personal
knowledge which would be admissible in a court of law.

2. Attached hereto as Exhibit A is a true and correct copy of Snohomish
County's letter dated June 9, 2010 asking plaintiff to provide the Critical Area
Study.

SUPP. DECL. OF ROBERT TAD SEDER -1

S:\CivilLitigation\Hopper Consolidated C10-061 &
C10-077 (KCSC)\Pleadings\SUPPLEMENTAL
DECLARATION OF ROBERT TAD SEDER.docx

Snohomish County
Prosecuting Attorney - Civil Division
Robert J. Drewel Bldg., 7th Floor, MS 504
3000 Rockefeller Ave
Everett, Washington 98201-4060
(425)388-6330 Fax (425)388-6333

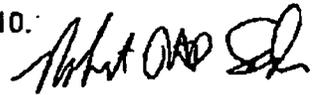
1 3. Attached hereto as Exhibit B is a true and correct copy of the check
2 Hopper tendered on October 8, 2010, which states "paid under protest" in the
3 memo section.

4 4. Attached hereto as Exhibit C is a letter dated October 20, 2010, from
5 Planning and Development Services Director White to plaintiff returning the
6 \$741.60.

7 5. Hearing Examiner Barbara Dykes stopped working for Snohomish
8 County in July of 2010. As she was winding up all pending matters, she was
9 working from home much of the time. The first Order was generated by staff and
10 appears to contain an electronic signature and date of July 15, 2010. Ms. Dykes
11 came in to the County to, among other things, physically sign the order in this
12 matter. on July 21, 2010. Copies of both Orders are attached as Exhibit D.

13 6. I have investigated the "two-order conspiracy" and have concluded,
14 on information and belief, that the first one was created and the electronic
15 signature attached on July 15, 2010. The second Order was created and
16 physically signed by Ms. Dykes on July 21, 2010. They are identical except for the
17 dates and the line spacing.
18
19

20 DATED this 20th day of October, 2010.



21
22 ROBERT TAD SEDER, WSBA #14521



**Snohomish County
Planning and Development Services**

**Aaron Reardon
County Executive
(425) 388-3311
FAX (425) 388-3872**

**M/S #604
3000 Rockefeller Avenue
Everett, WA 98201-046**

June 9, 2010

**Contact Person for the Applicant:
Jeff Haynes CSP Engineering
1037 65th ST Suite 153
Seattle, WA 98115**

**Project No. 10-103799 GP Scott Hopper
Tax Account No. 004035-000-003-00**

Dear Mr. Haynes:

This letter serves as our formal response to your Grading Permit permit application submitted on Wednesday, May 26, 2010. The comments provided below are to inform you that additional information is necessary to continue reviewing your permit application.

PROJECT INFORMATION:

The site was visited by a Snohomish County Planning and Development Services Site Review Biologist on June 8, 2010. The purpose of the site visit was to review the location of your project and associated grading to insure compliance with applicable development regulations. The following comments concerning your proposal are provided for your information.

Project Description: Application to bring in 442 cubic yards of fill on a single family lot

Site Description: This parcel is currently undeveloped. The southern portion of the lot contains an un-typed stream that drains westerly (will likely be classed as Type-Ns (seasonal)).

Please provide the following information to assist County staff in completing the review process for your project.

A. Critical Areas – SCC 30.62

The site plan submitted with the application is proposing site disturbance that includes clearing within 800 feet of a critical area; therefore, this application is subject to submittal requirements for critical areas.



Applicant: Jeff Haynes CSP Engineering
Project File Number: 10-103799 GP
8/10/2010 Page 2

Critical Areas are defined as (1) Wetlands or Streams, (2) Fish and Wildlife Habitat Conservation Areas for species listed as threatened or endangered under state or federal law, Bald Eagle Habitat Management Areas, and (3) Geologically Hazardous Areas.

Information for Critical Areas That Contain Wetland or Streams:

- Accurately show the location and label the wetlands and streams within 800 feet of any proposed site disturbance and clearing limits on a revised site plan (RSP) drawn to scale.
- A buffer shall be established from the edge of the wetlands and streams and accurately shown on the RSP.
- Provide a critical area study and a mitigation/restoration plan complying with county code requirements for the portions of the critical area that are proposed for disturbance.
- Assistance from a professional wetland specialist is recommended to prepare the wetland delineation, critical area study, mitigation/restoration plan and critical area site plan.

B. Permit and Review Fees SCC 30.86.526(5)

The following fees are an estimate calculated on your current development activity proposal.

Critical Area Review Fees:

- \$720.00 Review of a complete professional critical area study, habitat management plan or geotechnical report.

C. Critical Area Protection Areas SCC 30.62A.160:

All wetlands, fish and wildlife habitat conservation areas, and buffers shall be designated on a critical areas site plan (CASP) as critical area protection areas (CAPA), which are to remain permanently undisturbed in a substantially natural state. Critical area site plans shall be recorded with the county auditor and documentation of recording shall be provided to the department prior to permit issuance. Please do NOT record the CASP until after final review and approval by the Planning and Development Services biologist.

Your site development plan identifying the CAPA must be drawn legibly on the enclosed CASP Recording Sheet. Please refer to the Critical Area Site Plan Requirements handout for instructions on the correct preparation of a CASP. Incorrectly drawn or illegible CASPs may result in delays in permit issuance.

If you have questions about the requirements, please contact the reviewer listed at the end of this letter.

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Applicant: Jeff Haynes CSP Engineering
Project File Number: 10-103799 GP
6/10/2010 Page 3

D. Revised Site Plan (RSP) Requirements:

Address the site plan review comments and mark-ups.

All resubmittals listed above must be made by appointment only.

Please call (425) 388-3311, ext. 2659 to schedule an appointment with me.

All information requested in this letter and original site plan mark-ups must be provided or the resubmittal will not be accepted.

Sincerely,

Michael Braaten
Site Review Biologist

- Enclosures:
- Site Plan Mark-up
 - Critical Areas Site Plan Requirements
 - Critical Areas Site Plan Recording Cover Sheet
 - Critical Areas Site Plan Recording Sheet

SCOTT C. HOPPER
NANCY S. HOPPER
9428 - 232ND ST. SW
EDMONDS, WA 98020-6088

17-2015
328

2965

DATE 10-7-10

PAY TO THE
ORDER OF

Snohomish County

\$1,720.00

Seven Hundred Twenty /100

DOLLARS

CHASE

Member Chase Bank, N.A.
Seattle, Washington 98101
www.Chase.com

MEMO Paid under Prok. C.A.R. Fee Scott C. Hopper

⑆3 250 70 760⑆

6 113 120 115 2965

SNOHOMISH COUNTY PLANNING AND DEVELOPMENT SERVICES
TRANSACTION STATEMENT

For faster service in person or by phone please refer to Project File# 10 103799 GP

Applicant Name: Scott Hopper
 Assessor Property ID#: 004035-000-003-00
 You have applied for: Grading Permit
 Building Type: Grading
 Cashier Ref #: 633374
 Applicant Ref #: 410653

For information regarding this project, call (425) 388-3311, Ext. 2475. Status may also be checked on the internet at www.co.snohomish.wa.us/pds/permitinfo

Fees Due: Oct 8, 2010

Bill # 331956

2140	2140-CAR Review Residential	\$720.00
3000	3000-Technology Surcharge	\$21.60

=====

SNOHOMISH COUNTY
 PLANNING & DEVELOPMENT SERVICES
 (425) 388-3311

REG-RECEIPT: 10088 -133448
 CASHIER ID : scdrar
 Date Printed: 10/8/2010 09:33:02

=====

10103788GP	\$741.60
<hr/>	
SubTotal	\$741.60
Sales Tax	\$0.00
NC-Sales Tax	\$0.00
TOTAL DUE	\$741.60

RECEIVED FROM :

Scott Hopper	
CHECK	\$720.00
CASH	\$40.00
<hr/>	
TOTAL TENDERED	\$760.00
<hr/>	
CHANGE DUE	\$18.40

=====

Total **\$741.60**

\$0.00

2nd floor, Snohomish County Robert J. Drewel Bldg. (Admin East), M/S 604, 3000 Rockefeller Ave., Everett, WA 98201-4046



Snohomish County
Planning and Development Services

Aaron Reardon
County Executive

(425) 388-3311
FAX (425) 388-3670

M/S #604
3000 Rockefeller Avenue
Everett, WA 98201-4046

October 20, 2010

Scott C. Hopper
9428 - 232nd Street SW
Edmonds, WA 98020

**Re: Disputed Fees for Grading Permit Application No. 10-103799 GP;
Tax Parcel No. 004035-000-003-00; Street Address: 1410 - 169th PL SW,
Lynnwood, WA 98037**

Dear Mr. Hopper:

I have recently become aware that by letter dated June 1, 2010, you appealed the amount of fees associated with the above-referenced grading permit application (the "Grading Permit Application") as permitted by SCC 30.86.011. I have also become aware that by letter dated July 13, 2010, Ms. Barbara Mock, who was then the Acting Director of PDS, granted your appeal in full due to the fact that PDS failed to respond to your appeal within the 30 day time period required by SCC 30.86.011.

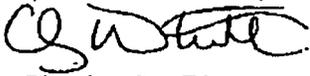
I understand that you recently submitted a critical areas study to PDS as part of the Grading Permit Application. I also understand that in connection with your recent submittal, you were charged and paid a critical area review fee in the amount of \$741.60. The majority of that amount, \$720, you paid by check, on which you noted "paid under protest."

As you noted on your check, pursuant to Ms. Mock's July 13, 2010, decision, it appears PDS should not have required you to pay any additional permit fees related to your Grading Permit Application. Accordingly, the \$741.60 in fees that you recently paid to PDS was collected in error. SCC 30.86.015(5)(a) authorizes the Director of PDS to refund in full any permit application fees collected in error. I am therefore refunding to you the \$741.60 you recently paid in relation to the Grading Permit Application. A refund check in that amount is enclosed with this letter.

October 20, 2010
Page 2 of 2

Please accept my apologies for any inconvenience this mistake may have caused you.

Very Truly Yours,



Clay White, Director
Department of Planning and Development Services

Enclosures

SCOTT HOPPER
 9428 232ND ST SW
 EDMONDS WA 98020

DATE	VENDOR NO.	VENDOR NAME	WARRANT NO.		
10/20/10	W0610	SCOTT HOPPER	1599855		
INVOICE DATE	INVOICE NO.	DESCRIPTION	INVOICE AMT.	DISCOUNT	BALANCE
10/18/10	10-103799 000 GP	10-103799 000 GP	741.60		741.60
TOTAL					*****\$741.60

SNOHOMISH COUNTY, STATE OF WASHINGTON
 DEPARTMENT OF FINANCE, ACCOUNTS PAYABLE SECTION (425)388-3401

Page # 000001

WARNING: ORIGINAL DOCUMENT IS PRINTED WITH A BLUE BACKGROUND, PANTOGRAPH AND A MICROPRINTED BORDER. ADDITIONAL SECURITY FEATURES LISTED ON REVERSE



Snohomish County
 Department of Finance
 Everett, WA 98201

88-0362
 1235

CLAIMS FUND

WARRANT NO. 1599855

DATE 10/20/10

***\$741.60

Pay SEVEN HUNDRED FORTY-ONE DOLLARS AND SIXTY CENTS *****



PAY TO THE ORDER OF: SCOTT HOPPER
 9428 232ND ST SW
 EDMONDS WA 98020

Scott Hopper
 County Executive

⑈ 1599855 ⑆ 123308825 ⑆ 104000064890 ⑈

ORDER CLOSING APPEAL

Subject: Appeal from PDS Director's Final Decision

File No.: 10 103799 GP

Appellant: Scott Hopper

Respondent: Department of Planning and Development Services (PDS)

WHEREAS, the Hearing Examiner's Office is in receipt of your Appeal of PDS Director's Final Decision – SCC 30.86.011 filed on July 7, 2010. Your appeal challenges the "refusal/failure of PDS Director to grant relief requested under PDS File No. 10-103799 GP related to disputed permit fees charged for grading permit application." See pg 2 of Appeal; and

WHEREAS, on July 13, 2010 the Acting Director of PDS granted your appeal pursuant to SCC 30.86.011 and returned to you the permit fees at issue. Accordingly, there is no dispute for this office to review and we are closing this matter; and

WHEREAS, closure of this matter terminates the appeal proceedings.

- 10103799 (2).docx

WHEREAS, SCC 30.71.050(4) provides that, "the filing fee shall be refunded in any case where an appeal is dismissed in whole without hearing pursuant to SCC 30.71.060." Therefore, it is hereby ordered that the filing fee be refunded.

NOW, THEREFORE, the Examiner enters the following:

ORDER

Closure of this matter is acknowledged and there will be no further proceedings regarding this appeal.

The Respondent, PDS, is requested to refund the appeal filing fee to the party which tendered it.

ORDER issued July 15, 2010.

Barbara Dykes

Barbara Dykes, Hearing Examiner

Distribution:

Scott Hopper, appellant

Richard Price / Bill Williamson, appellant's attorneys

PDS

10103799 (2).docx

2



Snohomish County

Hearing Examiner's Office

Email: Hearing.Examiner@co.snohomish.wa.us

ORDER CLOSING APPEAL

Subject: Appeal from PDS Director's Final Decision
File No.: 10 103799 GP
Appellant: Scott Hopper
Respondent: Department of Planning and Development Services (PDS)

Barbara Dykes
Hearing Examiner

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

WHEREAS, the Hearing Examiner's Office is in receipt of your Appeal of PDS Director's Final Decision - SCC 30.86.011 filed on July 7, 2010. Your appeal challenges the "refusal/failure of PDS Director to grant relief requested under PDS File No. 10-103799 GP related to disputed permit fees charged for grading permit application." See pg 2 of Appeal, and

WHEREAS, on July 13, 2010 the Acting Director of PDS granted your appeal pursuant to SCC 30.86.011 and returned to you the permit fees at issue. Accordingly, there is no dispute for this office to review and we are closing this matter; and

WHEREAS, closure of this matter terminates the appeal proceedings.

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NOW, THEREFORE, the Examiner enters the following:

ORDER

Closure of this matter is acknowledged and there will be no further proceedings regarding this appeal.

The Respondent, PDS, is requested to refund the appeal filing fee to the party which tendered it.

ORDER issued July 21, 2010.


Barbara Dykes, Hearing Examiner

Distribution:

Scott Hopper, appellant
Richard Price / Bill Williamson, appellant's attorneys
PDS

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