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DIVISION ONE

APR 20 2011

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 REPLY BRIEF

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I. Hopper and Other Permit Applicants Are Continuously Injured by the County's Indirect Costs and "Dispute" Process for Permit Fees.

The "Hopper has not been injured" mantra advanced in defense of the County's misconduct alleged by Hopper does not address the facts of this case and, in and of itself, does not protect the County's illegal conduct against continued prosecution of this case. Hopper, in fact, continues to be injured because his request of the County that his permit fees be recalculated to remove unlawful indirect costs and a 3% technology surcharge affecting his current ongoing development project, as well as his future project applications, was denied. The County's refund of permit fees paid to date neither addresses Hopper's challenge nor stops the continuing unlawful charges (injury) that will necessarily have to be paid as his current project progresses.

The so called "refund," refused by Hopper, process relied upon to support the County's mootness defenses is not a remedy authorized by the County in the "dispute" provisions of SCC 30.86.011. The refund remedy was conjured up, not pursuant to any legislative authority. Rather it only came into existence as a result of a letter drafted by the Prosecuting Attorney's Office, after Hopper had first filed his appeals, for the sole purpose of evading judicial scrutiny of its violations of RCW 82.02.020.

The County has not accorded the relief requested in Hopper's letter disputing the County's fee charges. CP 145-146; CP 218; CP 495-496. It has not repealed Ordinance ("Ord.") 10-025, which employs multiple indirect "cost layers" not permitted under RCW 82.02.020. These unlawful cost layers will continue to plague Mr. Hopper. Appendix ("App.) A and C.¹ It has not repealed SCC 30.86.030 which imposes a 3% "technology surcharge" "in addition to any other fees required by law." It has not repealed or amended the SCC 30.86.011 "dispute" provisions of Ord. No. 08-122. App. C. It has not repealed the County's over-arching policy at SCC 30.86.010 that fees "...be paid by the applicant to compensate the county for the cost of administering title 30 SCC" which code provision is also in violation of RCW 82.02.020 (Emphasis added).

In deposition testimony, PDS Director Mock testified that the County will not alter these permit fee practices and dispute policies. CP 1212-1213; CP 1232-1233; CP 1423-1424; CP 1428-1429. As such, Mr. Hopper will continue to be subjected to new unlawful permit fee charges as he makes additional permit applications that are necessary for later development stages of his project to construct two homes on his parcels.

¹ Section 2D of Ord. 10-025 confirms that the County's fees are based upon a "cost of services" model with "full cost" layers of: "labor (salary and benefits); non-labor expenses; county-wide overhead; and additional costs related to development review. Within the labor cost layer of the cost of services model are three categories (direct, indirect and overhead costs) that are included in the proposed fees." App. C.

CP 26, ¶14; CP 27-¶20; CP 141-142; CP 293-294; CP 460; CP 473-475; CP 1392; CP 1426. When Hopper challenges these continuing permit fees, his injury will continue because his application will again be frozen or “stayed” under SCC 30.86.011. Or, Hopper will again receive a full refund before he can dispute the fees under SCC 30.86.011.

Hopper’s permitting stages track the permit fee provisions of Ord. 10-025 and the payment of mandatory fees that are required to be collected by PDS at each stage of development. App. C; See Mock Deposition (“Dep.) Exhibit 19, CP 1435-1446. The County acknowledges these stages in its Brief at Page 4 where it references a June 9, 2010 letter from PDS notifying Hopper that he needed an additional critical areas permit application.

The County, in violation of its earlier CR2A stipulation and Order declaring that permit fees are not final land-use decisions,² now argues at pages 5, 20, 22, and 23 of its Brief that Hopper did not appeal a purported final grading permit decision of January 13, 2011 that occurred two (2) months after the trial court’s decision now on appeal. Not only has the County violated RAP 9.12 and CR 56 by attempting to insert post record evidence never considered by the trial court in its November 12, 2010 decision, it confirms that the grading permit application is only one of the

² CP 56-58; CP 384-386.

multiple stages of the permit issuance process for residential development. CP 1648-1652. Nothing prevents Hopper from submitting a new grading permit and critical areas permit applications with alternative site plans to complete his residential development.

This continuing development process is illustrated in the Table of permit fees for SCC Chapter 30.86 at Appendix A of Hopper's Opening Brief. It starts with a pre-application and continues thereafter with SEPA review, critical areas review, plan and site review, drainage review, clearing and landscaping, inspection, consultation and any appeals. This permit issuance process ultimately ends with the payment of building permit fees and issuance of a building permit and final inspections for occupancy. See Ord. 10-025, Section 2 at App. C; and SCC Sections 30.86.115, 30.86.145, 30.86.400, 30.86.410, 30.86.420, 30.86.430, 30.86.440, 30.86.500, 30.86.510, 30.86.515, 30.86.525, and 30.86.600.

When Hopper files these new applications, he like any other applicant, will again be subjected to the same permit fee schedules containing the same unlawful "cost layers" and 3% technology surcharges. See App. C. He will again be subjected to the same standardless³ "dispute"

³ Conner v. City of Seattle, 153 Wn.App. 673, 692, 223 P.3d 1201 (2009) reaffirms the procedural due process test applied against local regulations where the court citing Anderson v. Issaquah, 70 Wash.App. 64, 75-78, 851 P.2d 744 (1993) determined that: "The ambiguities of the Issaquah code gave neither the applicant nor the development commission itself a basis for determining whether a given proposal met code

process employed by the County under SCC 30.86.011 that also freezes permit review. Accordingly, these controversies created as a result of the County's permit fee system are current, ongoing and not moot.

II. Respondent County Cannot Meet Its Statutory Burden to Show Its Fees Are Reasonable Under RCW 82.02.020.

As noted above, the County does not dispute that it will use permit fees to collect "cost layers" for "indirect services," "PDS overhead," "County-wide overhead," and other indirect costs for "the Examiner, Public Works, and Prosecutor's Office." CP 136, CP 207, CP 224-238; CP 436; CP 458-459; CP 463; CP 1191-1192; CP 1212-1213; CP 1418; CP 1423-1424; CP 1429. The court in Isla Verde v. City of Camas, 146 Wn.2d 740, 759, 49 P.3d 867 (2002) held for purposes of RCW 82.02.020 that "...the burden of establishing a statutory exception is on the party claiming the exception." See also CAPR v. Sims, 145 Wn.App. 649, 665, 187 P.3d 786 (2008). By creating standardless "dispute" procedures and creating out of whole cloth a "full refund" device, the County is attempting to evade its burden of showing "...that the fees it imposes within the statutory exceptions...are reasonable." (Emphasis added); Home Builders v. City of Bainbridge, 137 Wn.App. 338, 347-351, 153 P.3d 231 (2007) citing Isla Verde v. Camas, supra.

requirements, and provided no ascertainable criteria by which a court could review the ultimate decision."

The County's unwillingness to meet its burden cannot be legally excused by the claim that Hopper's "dispute" (which the County repeatedly refers to as an "appeal") was only the "first time" that the County's permit fees were challenged under SCC 30.86.011. County Brief, Page 6. Similarly, its argument at Page 8 that the "County Code does not specify what the consequence of failing to meet that deadline should be" confirms the unlawfulness and futility of SCC 30.86.011 requirements in safeguarding the burden imposed by RCW 82.02.020 on the County. Absent any standards and procedures, the County confirms in its Brief at Page 10 that PDS Director White refunded all of Hopper's critical areas review fees by then citing SCC 30.86.015, claiming that the fees were collected "in error." No such "error in collection" standard exists under RCW 82.02.020 or any RCW Chapter 82.02 provision as the basis for challenging or defending a permit fee "dispute" or "appeal."

The County Council surely knew in enacting Ord. 08-122 and Ord. 10-025 by its reference to RCW 82.02.020, that compliance was mandatory, and that it was obligated to demonstrate that its fees met the statute's cost categories. App. C. Home Builders, supra, preceded adoption of Snohomish County's Ord. 08-122 and Ord. 10-025. App. C. Creating a "dispute" procedure under SCC 30.86.011, which the County

now denominates an “appeal,”⁴ and disposing of Hopper’s dispute letter as having “granted your appeal,”⁵ add procedures and requirements not appearing on the face of RCW 82.02.020, RCW Chapter 82.02, RCW Chapter 36.70B, or even SCC 30.86.011.

The County argues that by “granting” Hopper’s “appeal,” and refunding fees, Hopper and the courts are precluded from ever reviewing the cost categories and reasonableness of the County’s fees thereby emasculating the restrictions of RCW 82.02.020’s permit fee exception.

Snohomish County is no stranger to RCW 82.02.020. Indeed, the Legislature’s adoption of RCW 82.02.020 largely resulted from Snohomish County’s earlier parks impact fee charges that were found to be an unconstitutional tax in Hillis Homes v. Snohomish Cty, 97 Wn.2d 804, 805, 650 P.2d 193 (1982). In Cobb v. Snohomish Cty, 64 Wn.App. 451, 462, 829 P.2d 169 (1992), the County was again reminded of the State’s preemptive taxing authority related to the construction of buildings and development of land. Compliance with both the substantive and procedural requirements of RCW 82.02 is mandatory and strictly construed. Cobb v. Snohomish Cty, supra at 457-58; Isla Verde v. Camas, 146 Wn.2d 740, 755, 778, n. 9, 49 P.3d 867 (2002) citing Trimen Dev. Co. v. King Cty, 124 Wn.2d 261, 270, 877 P.2d 187 (1994).

⁴ County’s Response Brief, Pages 2, 9, 17, 19.

⁵ PDS Director Mock’s letter of July 13, 2010. CP 620; CP 164-165; CP 620-621.

If the Legislature intended to create or authorize local government authority to adopt “dispute” or “appeal” procedures to address permit fees, as it did for impact fees under RCW 82.02.070(4), it would surely have done so. Allowing each city or county to adopt unique individual “dispute” or “appeal” procedures and as preconditions to challenging the cost categories of permit fees would foster unfair and inconsistent procedures among jurisdictions that would interfere with an area pre-empted by the Legislature.

Armed with these cases, the Court should accordingly be suspicious of any feigned claim that the County’s Director of PDS was somehow forced by SCC 30.86.011 to make an *ad-hoc* decision, written by the Prosecuting Attorney, after Hopper had first filed his judicial and administrative appeals. The County Council possessed no lawful or constitutional legislative authority to create a permit fee dispute process by adopting SCC 30.86.011 to protect its “full cost” model for permit fees and its 3% technology surcharge. The PDS Director possessed no lawful authority under RCW 82.02.020 to make such a decision. Nothing relieved the County from meeting its burden and justifying why its permit fees and surcharges were reasonable under RCW 82.02.020. Even if such authority existed, nothing prevented Ms. Mock from making a late decision.

III. The County Cannot Meet Its Burden of Proof Under Weinstein v. Bradford.

Assuming *arguendo* that Hopper’s “dispute” is moot [which it is not], the County, as a party asserting mootness, has the burden of showing 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 (2004). The County cannot possibly meet this burden where it has already demonstrated its intent to refund Hopper’s fees whenever challenged solely as a means to avoid having to justify the illegal indirect components of its permit fee charges.

Given that the County admits it will not discontinue its practice of charging indirect “cost layers,” the “wrong will be repeated” and will “reasonably be expected to recur” the same as noted in Anderson v. Evans, *supra*. Indeed, in argument to the trial court the County argued that the development process often takes years to process and finalize thereby proving that a one or two-time fee refund does not cure or obviate the County’s continuing conduct. CP 1275.

Because Hopper’s project requires additional permits in order to complete construction of the planned residences,⁶ the County was actively engaged in continuing its permit fee “refund” practices during trial. CP

⁶ CP 141-142; CP 293-294; CP 473-475; CP 1392; CP 1426.

467; CP 952-959; CP 967-968; CP 1415, CP 1424-1426. The County has not abandoned the collection of fees containing impermissible indirect cost layers and technology surcharges according to PDS Director Mock. CP 1212-1213; CP 1232-1233; CP 1423-1424; CP 1428-1429. Neither has it repealed local codes that facilitate the County's continued violation of RCW 82.02.020; SCC 30.86.010; SCC 30.86.011; and SCC 30.86.030.

In satisfying the three-factor test as to whether the public interest exception applies, the evidence in this case certainly satisfies the "likely to recur" third factor. The courts of this State have already determined that interpretation of the cost elements in the building permit fee exception of RCW 82.02.020 satisfy the other two factors establishing the court's interpretation as "matters of significant interest to the public and to governmental entities that regulate building and development." Home Builders, supra at 346.⁷ No express provision appears RCW 82.02.020 or its legislative history that authorizes local administrative "dispute" procedures, or *ad-hoc* refund procedures for permit fees after public services and costs are incurred in reviewing, processing, and inspecting

⁷ "The legal issues Home Builders raised are essential to every trial court's consideration of a permit fee challenge under RCW 82.02.020. They are a matter of significant interest to the public and to governmental entities that regulate building and development; and, therefore, it is in the best interest of judicial resources if we address them here. State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 110 (1988). It is of particular importance because we can find no authority interpreting whether the legislature intended to identify the bases of the questioned fees as an exception to the general prohibition of fees on construction and the corresponding allocation of the burden of proof under RCW 82.02.020."

development applications, or to interdict challenges for determining compliance with RCW 82.02.020.

The County argues at Page 23 that in applying Orwick v. Seattle, 103 Wn.2d 249, 253-54 (1984), the public interest exception cannot be raised where “...claims become moot prior to the summary judgment hearing.” Yet, Hart v. DSHS, 111 Wn.2d 445, 448-49, 759 P.2d 1206 (1988) holds that this general rule does not apply in cases involving constitutional interpretation, the validity and interpretation of statutes and regulations, and other matters deemed sufficiently important.

The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, see, e.g., Federated Publications, Inc. v. Kurtz, 94 Wash.2d 51, 54, 615 P.2d 440 (1980); the validity and interpretation of statutes and regulations, see, e.g., In re Wilson, 94 Wash.2d 885, 887, 621 P.2d 151 (1980); and matters deemed sufficiently important by the appellate court, see, e.g., In re Bowman, 94 Wash.2d 407, 411, 617 P.2d 731 (1980). (Emphasis added).

Hart v. DSHS is cited as authority in foreign state cases. See Norma Faye Pyles v. Putnam Cty, 301 S.W.3d 196, 211 (Tenn. 2009) which in turn cites City of White House v. Whitley, 979 S.W.2d 262, 265 n. 8 (Tenn.1998) (applying the public interest exception where the case presented a question of great public interest that was likely to recur); LaRouche v. Crowell, 709 S.W.2d 585, 588 (Tenn.Ct.App.1985) (“[t]he object sought by affording review in a case otherwise moot, is a

clarification of the law that will settle some dispute that is likely to arise in the future.”).

Applied here, all of the criteria to proceed with prosecution of this case as cited in Hart, have been met. First, Hopper’s issues are of a public nature in terms of the thousands of applicants subjected to the County’s conduct. Second, an authoritative determination is necessary as a guide to public officers. This is particularly true in light of the high turnover in Snohomish County PDS Directors who cite different code provisions and redefine the dispute process to an appeal process in an effort to defeat Hopper’s challenges. And, third, the “issue is likely to recur” where permit fees will be collected at every stage of Hopper’s current and future developments. Facing these disputed issues in later development stages raises a “reasonable expectation” or a “demonstrated probability” that the same controversy will recur involving the same complaining party.” Hart, supra at 452. This is especially the case here where the County has neither altered any of its practices, nor repealed or amended SCC 30.86.010, SCC 30.86.011, or SCC 30.86.030.

Although “[s]hort lived controversies will escape review,” as noted in Seattle v. State, 100 Wash.2d 232, 250, 668 P.2d 1266 (1983), this is not a “factor” in determining whether a matter, though technically moot, is nonetheless reviewable because of substantial public interest. The

County's attempt to artificially turn the County's ongoing violations (years) into "short-lived" controversies by immediately refunding any challenged fees is nothing more than a blatant effort to evade the law in order to continue filling its coffers with unlawful permit fee collections.

On October 20, 2010, only two (2) days before the motion to dismiss hearing, the County filed its Reply attaching a letter dated October 20, 2010 from the County's newly appointed PDS Director. CP 952-959; CP 960-972. Before Hopper could even "dispute" the \$741.60 critical areas review fees for his second stage permit, PDS Director White returned all of Hopper's critical areas permit fees for no other reason than to escape review by the court. App. B. County Planning directors are not known for their largesse in making gifts of public property to private persons. The only purpose in returning these fees without it even being requested was to defeat judicial review. This conduct again establishes the "likely to recur" factor. The County has amply demonstrated its intent to do whatever is necessary to evade judicial review.

The County contends at Page 28 that permit fee disputes cannot qualify as "short-lived" because the development process can years to complete. Hopper, however, made this argument in the context of his continuing development and likelihood that the unlawful permit fees would be continued to be charged at later project stages. The development

process is entirely separate from the “dispute” process under SCC 30.86.011 where Hopper showed that even before he could submit a written dispute of his critical areas review fee charges, the PDS Director simply refunded all of his fees. App. B; CP 952-959.

The County’s defense to its full refunds at Pages 33-34 of its Brief is that “Hopper is the only person who has ever attempted to challenge the County’s permit fee structure” which it claims is “not statistically significant.” To carry that argument to its logical conclusion, nobody could ever challenge the County’s permit fee structure solely because the first person to do it would not be statistically significant. Additionally, the class action aspect of Petitioner’s case certainly obviates that argument.

The County Council presumably understood what process it was creating when it drafted and adopted SCC 30.86.011 as part of Ord. 08-122, which became effective on January 1, 2009. App. C. PDS was aware of the dispute process when it instructed Hopper to “write a letter to management.” PDS Director Mock confirmed this in her testimony that: “To my knowledge, other than that code section, there is no written process that the County has created. If someone disputes the fees they write a letter, a decision is made.” CP 1416-1417.

This does not rationally explain away why the County would then choose to fully refund all of Hoppers fees under SCC 30.86.011 in its July

13, 2010 decision letter when it could simply have denied Hopper's dispute before or after the expiration of the 30-day review period. Had it actually "granted" Hopper's requested relief, PDS would have recalculated his fees by deleting indirect cost layered fee components. It would have deleted the 3% technology surcharge. And, it would also have removed these impermissible cost components and surcharges from Hopper's continuing permit fees by proposing changes to ordinances 08-122 and 10-025. By refunding all fees under the pretense/ruse that a critical decision period had been missed under SCC 30.86.011, the County created an *ad-hoc* legal fiction mootness device to forever prevent any possible review of the County's "permit fee structure." Finding no refuge in SCC 30.86.011 decision criteria (which does not exist), the County turned to a new argument by referencing the highly subjective "collected in error" refund criteria of SCC 30.86.015. This appeared on October 20, 2010 in another full refund letter of PDS Director White filed with the trial court only two (2) days before the summary judgment hearing in a Declaration of deputy Prosecuting Attorney, Mr. Seder. CP 960-972.

Albeit that the County has attempted to render Mr. Hopper's claims moot in order to avoid a legitimate challenge to its permit fee structure, the exceptions to the mootness doctrine are warranted. The substantial public interest exception under the circumstances of this case

involving the same statutory cost elements under RCW 82.02.020 is satisfied by Home Builders at 346-50.

The legal issues Home Builders raised are essential to every trial court's consideration of a permit fee challenge under RCW 82.02.020. They are a matter of significant interest to the public and to governmental entities that regulate building and development; and, therefore, it is in the best interest of judicial resources if we address them here. Scott, 110 Wash.2d at 685, 757 P.2d 492.

The City argued and, the trial court agreed, that the entire cost of the City's regulation of building within its city limits was the proper basis of the fees charged.

Because these fees are, by statute, an exception to the general prohibition against fees on construction and development, the City must show that its fees fall within the specific exception and that they are reasonable. Thus, the trial court erred and we vacate and remand the case for further proceedings allocating the burden of proof to the City. (Emphasis added).

The City would have us read these costs broadly, to include all costs the City attributes to its building and planning department.

A financial and management consultant for local governments confirmed that the City complied with guidelines for cost accounting and cost allocation for government agencies. But neither the Director nor the consultant testified that the City addressed the specific costs listed in RCW 82.02.020 in calculating the fees it charges permit applicants. (our emphasis)

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.

Home Builders at 348-50; (Emphasis added).

Hopper disputed the County's permit fee system in his June 1, 2010 letter contending that the County could not employ these same "full costs" under SCC 30.86.010 that authorizes permit fees to "compensate the county for the cost of administering title 30 SCC." CP 145; CP 218; CP 495-496. Based on established law, Hopper is entitled to have his claims addressed and not be denied by way of a governmental entities artifice to avoid a review of what, on their face, are unlawful collection practices, the burden of which to justify falls squarely on the County.

The County's Reply Brief at Page 36-37 places at issue the lawfulness of SCC 30.86.010, SCC 30.86.011, and SCC 30.86.030. It argues that RCW 82.02.020 establishes an "upper limit on the types and amounts of fees a jurisdiction may impose on development permit applications. Thus, RCW 82.02.020 establishes the maximum amount of permit fees a jurisdiction is allowed to charge." This court should accordingly rule that charging "full costs" with embedded "cost layers" that include "indirect services," "PDS overhead," "County-wide overhead," and "costs for the Examiner, Public Works, and Prosecutor's Office," plus additional 3% technology surcharges imposed under SCC 30.86.030, are unlawful under RCW 82.02.020.

IV. Taxpayers' Suits Are Not Required to Challenge Unlawful Permit Fees.

The County claims that Hopper should have filed a taxpayer derivative suit claiming that it “is always available to challenge the legality of government action” citing State ex rel Boyles v. Whatcom Cty. Sup. Ct., 103 Wn.2d 610, 614, 694 P.2d 27 (1985) and Robinson v. Seattle, 102 Wn.App. 795, 10 P.3d 452 (2000). None of the cited cases concern the construction of homes, development of land, or permit fees under RCW 82.02.020. Boyles concerned a work release program that mandated religious activities under First Amendment of the United States Constitution and Art. 1, §11 of the State Constitution. Robinson involved a municipal pre-employment urinalysis drug test requirement affecting the public at large.

The derivative suit in Washington Public Trust v. Spokane, 117 Wn.App. 178, 69 P.3d 351 (2003) was dismissed because the City did not first consent to the suit. Understandably, Washington cases alleging noncompliance with RCW 82.02.020 have not been brought as derivative taxpayer lawsuits by the courts. Home Builders above dealing with the same cost components of permit fees under RCW 82.02.020 was certified as a class action in a declaratory judgment action. Like Hopper, plaintiffs in Home Builders sought declaratory relief for violations of RCW

82.02.020 on behalf of all persons or entities that paid building permit fees for a purpose other than processing building permit. *Id.*, at 343. Similarly, Margola Associates v. Seattle, 121 Wn.2d 625, 633, 854 P.2d 23 (1993) was also certified as a class action seeking declaratory and injunctive relief for “all persons owning buildings in the City of Seattle which must be registered pursuant to the requirements of SMC 22.202.060.”

More recently, CAPR v. Sims, 145 Wn.App. 649, 653-54, 187 P.3d 786 (2008) also alleged violations of RCW 82.02.020. It also was not brought as derivative taxpayers’ action. These and other reported RCW 82.02.020 cases footnoted below were brought as LUPA appeals, statutory appeals, declaratory, injunctive actions, or writ actions.⁸ There

⁸ Isla Verde Intern. Holdings, Ltd. v. City of Camas, 147 Wn.App. 454, 196 P.3d 719 (2008); Humbert/Birch Creek Const. v. Walla Walla County, 145 Wn.App. 185, 185 P.3d 660 (2008); Burns v. City of Seattle, 161 Wn.2d 129, 164 P.3d 475 (2007); Lewis County v. Western Washington Growth Management Hearings Bd., 157 Wn.2d 488, 139 P.3d 1096 (2006); City of Olympia v. Drebeck, 156 Wn.2d 289, 126 P.3d 802 (2006); James v. County of Kitsap, 154 Wn.2d 574, 115 P.3d 286 (2005); Pavlina v. City of Vancouver, 122 Wn.App. 520, 94 P.3d 366 (2004); DeTray v. City of Olympia, 121 Wn.App. 777, 90 P.3d 1116 (2004); Isla Verde Intern. Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 49 P.3d 867 (2002); Benchmark Land Co. v. City of Battle Ground, 146 Wn.2d 685, 49 P.3d 860 (2002); Hatley v. City of Union Gap, 106 Wn.App. 302, 24 P.3d 444 (2001); Tapps Brewing, Inc. v. City of Summer, 106 Wn.App. 79, 22 P.3d 280 (2001); United Development Corp. v. City of Mill Creek, 106 Wn.App. 681, 26 P.3d 943 (2001); Isla Verde Intern. Holdings, Inc. v. City of Camas, 99 Wn.App. 127, 990 P.2d 429 (1999); New Castle Investments v. City of LaCenter, 98 Wn.App. 224, 989 P.2d 569 (1999); Nolte v. City of Olympia, 96 Wn.App. 944, 982 P.2d 659 (1999); Vintage Const. Co. v. City of Bothell, 135 Wn.2d 833, 959 P.2d 1090 (1998); Burton v. Clark County, 91 Wn.App. 505, 958 P.2d 343 (1998); Sintra, Inc. v. City of Seattle, 131 Wn.2d 640, 935 P.2d 555 (1997); Vintage Const. Co., Inc. v. City of Bothell, 83 Wn.App. 605, 922 P.2d 828 (1996); Organization to Preserve Agr. Lands v. Adams County, 128 Wn.2d 869, 913 P.2d 793 (1996); Sparks v. Douglas County, 127 Wn.2d 901, 904 P.2d 738 (1995); Castle Homes and Development, Inc. v. City of Brier, 76 Wn.App. 95, 882 P.2d 1172 (1994); Henderson Homes, Inc. v. City of Bothell, 124 Wn.2d 240, 877 P.2d 176 (1994); Trimen

simply is no merit to the County's claims that Hopper is limited to pursue his remedies through a derivative taxpayer action.

V. The County's Procedures and Actions Violate RCW 82.02.020, RCW Chapter 82.02, and RCW Chapter 36.70B.

The County's Brief seeks a determination that RCW 82.02.020 establishes a "maximum amount of permit fees a jurisdiction is allowed to charge." This is incorrect. RCW 82.02.020 does not establish a "maximum amount" of permitted charges. Rather, this court should confirm that it establishes a "reasonableness" test based upon discrete direct processing and review cost categories. As explained in Home Builders, supra at 349-50:

Because the issue of which costs are used in determining whether the City's fees comply with the exceptions in RCW 82.02.020 will arise on remand, we examine the statute's exceptions. The legislature clearly prohibited cities from imposing fees on construction or development unless those fees were specifically allowed by statute. The legislature itemized the costs to be used as a basis for reasonable fees charged to permit applicants. Those fees are based on costs of "processing applications, inspecting and reviewing plans, or

Development Co. v. King County, 124 Wn.2d 261, 877 P.2d 187 (1994); Margola Associates v. City of Seattle, 121 Wn.2d 625, 854 P.2d 23 (1993); View Ridge Park Associates v. Mountlake Terrace, 67 Wn.App. 588, 839 P.2d 343 (1992); Henderson Homes, Inc. v. City of Bothell, 67 Wn.App. 196, 834 P.2d 1071 (1992); Trimen Development Co. v. King County, 65 Wn.App. 692, 829 P.2d 226 (1992); Robinson v. City of Seattle, 119 Wn.2d 34, 830 P.2d 318 (1992); Sintra, Inc. v. City of Seattle, 119 Wn.2d 1, 829 P.2d 765 (1992); Cobb v. Snohomish County, 64 Wn.App. 451, 829 P.2d 169 (1991); Southwick, Inc. v. City of Lacey, 58 Wn.App. 886, 795 P.2d 712 (1990); R/L Associates, Inc. v. City of Seattle, 113 Wn.2d 402, 780 P.2d 838 (1989); Unlimited v. Kitsap County, 50 Wn.App. 723, 750 P.2d 651 (1988); San Telmo Associates v. City of Seattle, 108 Wn.2d 20, 735 P.2d 673 (1987); Prisk v. City of Poulsbo, 46 Wn.App. 793, 732 P.2d 1013 (1987); Ivy Club Investors Ltd. Partnership v. City of Kennewick, 40 Wn.App. 524, 699 P.2d 782 (1985).

preparing detailed statements required by chapter RCW 43.21C RCW[SEPA].”

The City would have us read these costs broadly, to include all costs the City attributes to its building and planning department. In support of its position, it produced a cost recovery survey for other cities in Western Washington. The survey persuaded the trial court that the fees the City charged were comparable. But there is no evidence in the record before us that the basis of the survey was RCW 82.02.020's limitation on fees to the costs of processing applications, inspecting and reviewing plans, or preparing detailed statements required by SEPA as the basis of the fees charged by various cities. (Emphasis added).

Implicit in the Legislature’s regulation of permit fees under RCW 82.02.020 is Legislature’s intent to allow appeals only for “impact fees. RCW 82.02.070(5). Permit fees were expressly excluded from the definition of impact fees at RCW 82.02.090(3) for good reason. Given that permit fees are imposed and collected at multiple development stages, allowing the County to impose a 30 day dispute period that also “stays” a permit application, would be extremely costly and disruptive. [It is little wonder that Hopper, under the application of these punitive provisions, would, as alleged by the County, be the only applicant to date to dispute the County’s new permit fee “dispute” system.]

SCC 30.86.011 also contains a waiver requirement. If any applicant disagrees with the amount, costs, or reasonableness of fees being charged, he would have to first challenge them at each stage of development within 30 days of payment or they could not be challenged.

No such waiver period provision appears in RCW 82.02.020 or RCW Chapter 82.02.⁹ Nor does it appear in the Regulatory Reform Act, RCW Chapter 30.70B (“Reform Act”) at RCW 36.70B.060 through RCW 36.70B.120, when construed *in pari materia* with RCW 82.02.020. Champion v. Shoreline Sch. Dist. No. 412, 81 Wn.2d 672, 674, 504 P.2d 304 (1972). If allowed to stand, the County could hold any project hostage and ignore the 120 day processing period of RCW 36.70B.080 causing significant delays and injury with increased carrying costs. A “dispute” or “appeal” at each development stage in order to contest cost layers and reasonableness of the County’s fees would defeat the Reform Act’s uniform requirements for expedited permit processing, consolidated hearings, and single closed record appeals. RCW 36.70B.010; RCW 36.70B.060 – RCW 36.70B.120.

The County contends that because RCW 82.02.020 is silent as to permit fee dispute or appeal procedures it is free to adopt local procedures for challenges to its permit fees under Art. 11, §11 of the State Constitution. Reliance upon its police powers directly conflicts with these general state laws. SCC 30.86.011, and the two refund letters, cannot be “harmonized” with these statutes by creating a mechanism to defeat any permit fee

⁹ Engrossed Senate Bill No. 4972 which was signed into law on April 20, 1982 as Chapter 49 of Washington Session Laws, 1st Extraordinary Session is silent on permit fee appeals.

challenge. See Schultz v. Snohomish Cty, 101 Wn.App. 693, 700, 5 P.3d 767 (2000) (ordinance violating or conflicting with the Reform Act by delaying permit processing is invalid and unconstitutional.) See also CAPR v. Sims, supra at 671.

VI. The County's Standing Arguments Are Predicated on Violations of Procedural Due Process.

After claiming that it “granted” Hopper’s “appeal,” the County asserts at Page 39 that Hopper is not entitled to due process protection because he has no “property interest at stake.” Both RCW Chapter 82.02 and RCW Chapter 36.70B, alone or together, place important substantive and procedural restrictions on permit fees and processing of applications. See Mission Springs v. Spokane, 134 Wn.2d 947, 963, 954 P.2d 250 (1998).¹⁰ Accordingly, this court should find that property rights attach under substantive permit fee restrictions of RCW 82.02.020 and the application process requirements of RCW Chapter 36.70B that warrant due process protection. The County has repeatedly admitted there is no

¹⁰ Moreover, procedural rights respecting permit issuance create property rights when they impose significant substantive restrictions on decision making. Bateson v. Geisse, 857 F.2d 1300, 1304-05 (9th Cir.1988) (“[A] statutory scheme which placed ‘significant substantive restrictions’ on the decision to grant a permit or license would be sufficient to confer due process rights.”); Wedges/Ledges of California, Inc. v. City of Phoenix, 24 F.3d 56, 62 (9th Cir.1994) (Procedural permitting requirements may transform a unilateral expectation into a property interest “ ‘ if the procedural requirements are intended to be a ‘significant substantive restriction’ on ... decision making.’ ”) (quoting Goodisman v. Lytle, 724 F.2d 818, 820 (9th Cir.1984)); Parks v. Watson, 716 F.2d 646 (9th Cir.1983) (same); Jacobson v. Hannifin, 627 F.2d 177, 180 (9th Cir.1980) (property interest is created where discretion to deny the permit or license is limited).

written decision-making record or written “appeal” process that the County has adopted.¹¹ It should find that absent any written record or hearing to assert his rights conferred under these statutes, Hopper’s due process rights under Art. 1, §3 of the state constitution were violated.

In applying due process tests, SCC 30.86.011 is predicated on an unpublished process that requires applicants to first submit personal “letters to management.” CP 1417; CP 1419. Mansour v. King Cty, 131 Wn.App. 255, 264, 128 P.3d 1241 (2006) holds that due process requires notice and the opportunity to be heard at a meaningful time and in a meaningful manner. The County does not dispute that SCC 30.86.011 contains no discernable criteria, grounds, or standards upon which to base a fee dispute or “appeal” even if allowed under RCW Chapter 82.02 or RCW Chapter 36.70B. On its face, and as applied here, SCC 30.86.011 is unconstitutionally void for vagueness. Anderson v. Issaquah, 70 Wn.App. 64, 75-78, 851 P.2d 744 (1993).

The County argues that the Examiner was not required to follow SCC 2.02.125(7) hearing requirements because SCC 30.71.060 controls. App. D. Yet, SCC 30.71.060 applies only to “Type 1” land-use permits. See SCC 30.71.020 - .130. Permit fees are not listed within the category of any “Type 1” permits under SCC 30.71.020. Nor are permit fees

¹¹ CP 1417 (Mock dep. P. 15, ll. 5-8); CP 1122, ll. 3-4; CP 1124, ll. 8-11; CP 1268-1269.

identified as “project permits” under the Reform Act, RCW 36.70B.020(4). The County having already stipulated that permit fees are not final land-use actions subject to LUPA have waived this argument. CP 56-58. Accordingly, the Examiner’s decision used to enter adjudicative “findings” of mootness relied upon by the County in its Motion to Dismiss was made without jurisdiction or authority. CP 977-989.

VII. Forced Full Refunds Are An Unconstitutional Gift.

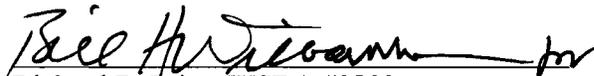
The County argues that its forced full refund of fees is not an unconstitutional gift where “legislation” furthers a public interest and where private interests are only “incidentally advanced.” The County admits that SCC 30.86.011 contains no full refund criteria and that it made an *ad-hoc* determination. CP 1182; CP 1416 (*Mock dep. p. 15, ll. 5-8*); CP 1122, ll. 3-4; CP 1124, ll. 8-11; CP 1268-1269. The County Council as the legislative body simply has not acted to authorize full refunds under SCC 30.86.011 to warrant the deference that the County now claims. The claim that the PDS Director believed a refund was “appropriate” is not supported where the County admits it provided substantial permit review services and incurred costs in reviewing Hopper’s 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. Pure and simple, the refund was a direct benefit (gift) to Hopper that violated Article 8, §7 of the State Constitution.

VIII. CONCLUSION

Petitioner's Appeal should be granted.

RESPECTFULLY SUBMITTED this 20th day of April 2011.

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


Richard B. Price, WSBA #3203
Attorney for Petitioner/Appellant

WILLIAMSON LAW OFFICE


William H. Williamson, WSBA #4304
Attorney for Petitioner/Appellant

Hopper-Reply Brief-041511.doc

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that I duly filed and mailed a copy of Petitioner/Appellant's Reply Brief to the undersigned by placing the same in a postage prepaid envelope and depositing in the U.S. Mail to:

Mr. Richard D. Johnson (**Original and Copy filed**)
Court Administrator/Clerk
Court of Appeals, Division I
600 University Street
Seattle, WA 98101-4170

Mark K. Roe, Prosecuting Attorney (US Mail and email)
Snohomish County Prosecuting Attorney's Office
Attention: Robert Tad Seder
3000 Rockefeller Avenue - M/S 504
Everett, WA 98201

Dated at Seattle, Washington, this 20th day of April, 2011.


Bill H. Williamson

APPENDIX C

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



CO00037023

LOG NUMBERS

BGT.

9/22/08 CEO 20042496

SEP 03 2008

EXECUTIVE/COUNCIL APPROVAL FORM

MANAGEMENT ROUTING:

EXECUTIVE Aaron G. Reardon
DEPUTY/EXEC. DIR. Peter Camp
DIRECTOR/ELECTED Craig Ladiser
DEPARTMENT PDS
DIV. MGR. Greg Morgan
DIVISION Administration
ORIGINATOR Carol Taber
DATE 8/20/2008 EXT. 3970

TO: COUNCIL CHAIRPERSON:

SNOHOMISH COUNTY COUNCIL

EXECUTIVE RECOMMENDATION:

Approve No Recommendation
Further Processing
Requested By

MARK SOINE

Deputy Executive

Executive Office Signature

CEO Staff Review

Received at Council Office

FEB 9/30/08
4 PM 9/14/08

DOCUMENT TYPE:

BUDGET ACTION:
Emergency Appropriation
Supplemental Appropriation
Budget Transfer
CONTRACT:
New
Amendment

GRANT APPLICATION
ORDINANCE
Amendment to Ord. # 30.86 and 13.111.020

PLAN
OTHER SNOHOMISH COUNTY COUNCIL

EXHIBIT # 3.1.1
FILE Ord 08-122

DOCUMENT / AGENDA TITLE:

RELATING TO DEVELOPMENT FEES FOR THE ADMINISTRATION OF SNOHOMISH COUNTY CODE (SCC) TITLE 30; ADDING NEW SECTIONS AND AMENDING CHAPTER 30.86 SCC AND SCC 13.111.020

APPROVAL AUTHORITY:

EXECUTIVE COUNCIL
CITE BASIS

HANDLING: NORMAL EXPEDITE URGENT DEADLINE DATE

PURPOSE:

To make adjustments to provisions and fee schedules in title 30 SCC as an initial step in cost recovery and fee simplification, and correct previously adopted fee tables containing legislative drafting mistakes; adding a technology surcharge to all permit fee transactions; amending a reference to a building industry publication to provide realistic building valuations on which to base one- and two family residential permit fees; simplifying mechanical and plumbing sub-trade fees for new construction of Group R-3 occupancies; and amending SCC 13.111.020 to incorporate the technology surcharge for Type D construction activities administered by PDS.

BACKGROUND:

Chapter 30.86 SCC establishes the permit fees required to be paid by applicants to cover the cost of administering title 30 SCC. While the Council adopted land use fee increases of 20%, effective July 1, 2008, fees for one- and two-family residential permits have not been increased since 2001. PDS performed an analysis of the costs and revenue requirements of providing permitting services to applicants. The analysis incorporated data from department timekeeping systems, financial accounting and payroll systems, forecasted permit activity volumes and land use fee increases to develop a model to assess the costs of permitting operations. The fee analysis demonstrated that PDS would under recover its costs by approximately \$1.2 million and \$1.4 million in 2009 and 2010, respectively. By amending a current reference to a building industry publication on which residential building permit fees are based, the costs of permit services would be recovered. The analysis also revealed that simplifying mechanical and plumbing sub-trade fees would be revenue neutral, while streamlining permit processes for both PDS and its customers.

Also, to ensure funding is in place when technology investments are required, a 3% technology surcharge on permit fee transactions, including those in SCC 13.111.020, is proposed. The surcharge will generate \$500,000 in 2009 and 2010.

9

FISCAL IMPLICATIONS:

EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU	CURRENT YR	2ND YR	1ST 6 YRS
TOTAL	0		

REVENUE: FUND, AGY, ORG, REV, SOURCE	CURRENT YR	2ND YR	1ST 6 YRS
193-3055104584	72,553	94,144	
193-3055114584	585,349	619,670	
193-3055134584	824,503	1,043,016	
193-3055144584	84,188	110,667	
193-3055174584	37,194	47,259	
193-3055214584	52,360	70,193	
TOTAL	1,656,148	1,984,948	

DEPARTMENT FISCAL IMPACT NOTES:

Floger Neumaier, Finance Director

BUDGET REVIEW: Analyst sc Administrator [Signature] Recommend Approval [Signature]

CONTRACT INFORMATION:

ORIGINAL _____ CONTRACT # _____ AMOUNT \$ _____
 AMENDMENT _____ CONTRACT # _____ AMOUNT \$ _____

CONTRACT PERIOD:

ORIGINAL Start _____ End _____
 AMENDMENT Start _____ End _____

CONTRACT / PROJECT TITLE:

CONTRACTOR NAME & ADDRESS (City/State only):

APPROVED:

RISK MANAGEMENT Yes N/A No _____

COMMENTS _____

PROSECUTING ATTY - AS TO FORM: Yes No _____

OTHER DEPARTMENTAL REVIEW / COMMENTS:

ELECTRONIC ATTACHMENTS : (List & include path & filename for each, e.g. G:\ECAF\deptname\docname_Motion)

- G:\ECAF\Dept\05_pds\ECAF_Fee Study Ordinance.doc
- G:\ECAF\Dept\05_pds\Fee Ordinance.doc
- G:\ECAF\Dept\05_pds\Fee Study Summary Ad.doc
- G:\ECAF\Dept\05_pds\Fee Study Staff Report.doc
- G:\ECAF\Dept\05_pds\Fee Study Index of Records.doc

G:\ECAF\Council\20042496
- ECAF.doc
- Ord.doc
- Summary.doc
- Records.doc

NON-ELECTRONIC ATTACHMENTS:

- Fee Ordinance
- Fee Study – Summary Ad
- Fee Study Staff Reports and Attachments
- Fee Study Index of Records



Snohomish County

Planning & Development Services

M/S #604

3000 Rockefeller Avenue

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M E M O R A N D U M

TO: SNOHOMISH COUNTY COUNCIL
Klaus Schilde, Legislative Analyst
Peggy Sanders, Legislative Analyst

FROM: Carol Taber, Manager, Accounting & Financial Services
Warren Cheney, Senior Fiscal Resource Analyst

DATE: August 18, 2008

SUBJECT: Staff Report for a proposed Ordinance relating to development fees for the administration of Snohomish County Code (SCC) Title 30; adding new sections and amending chapter 30.86 and SCC 13.111.020

This memorandum provides a summary of code amendments proposed by staff relating to permit fees. This document provides background information and a description of the major provisions of the draft ordinance. A draft ordinance (Attachment 1) will be delivered to the Council in conjunction with the 2009-2010 biennial budget.

SUMMARY

The proposed ordinance contains amendments relating to increasing building permit fees through the adjustment of a building valuation factor, restructuring mechanical and plumbing subtrade fees to achieve fee simplification and processing efficiencies for both PDS and its customers, and adding a new fee surcharge for technology investments. Miscellaneous amendments are made for internal code consistency and to correct mistakes in the fee tables in chapter 30.86 SCC.

BACKGROUND

In 2002, PDS retained the FCS Group consulting firm (Consultant) to determine its full cost of development regulation services and make recommendations for permit fee adjustments. The Consultant found that on average, PDS recovered only about 73% of

TO: SNOHOMISH COUNTY COUNCIL

August 18, 2008

Page 2

the costs of permitting from permit fees. The recovery rate on land use fees was only 23%.

In mid-2005, PDS again hired the Consultant to conduct a revenue requirements analysis given the changing development profile of the County. The first task in that study was an analysis of the financial performance of permitting for the year 2004. That year was characterized by higher levels of permitting activity. The analysis indicated that costs were still under recovered for permitting but had improved as PDS fees are primarily fixed per activity, thereby making costs and revenues more volume sensitive.

The 2005 study also initiated a supplemental timekeeping system (STS) which was implemented and used by PDS for 2006. Given the historic under recovery of land use costs, PDS staff spent a significant amount of time in the design of land use activity time codes in STS.

In early 2007, the Consultant analyzed the results of the STS data collection. The cost/permit volume relationships determined from actual 2006 operations were applied to anticipated volumes and employee levels for the year 2008. Using this information, the Consultant determined that PDS would recover only about 74% of its land use permitting costs at (then) current fee levels. Based on the findings of the study, PDS proposed and the Council adopted land use fee increases of 20% (effective July 1, 2008), the addition of four new land use fees, and a new Docket fee to support PDS' 2008 budget.

In a 2008 budget condition, the County Council determined that a comprehensive analysis of permitting fees was required, and requested PDS to submit an overall work plan for completing the review and analysis of all permit fees (in addition to the land use fees covered in the 2007 fee study). In a 2008 budget note, the Council also requested PDS to report to the Council Planning and Community Development Committee, at its first committee meeting each month, the status of PDS efforts to complete the new study and to develop an ordinance to adjust permit fees as appropriate. PDS submitted monthly status reports on January 8, February 12, March 11, April 14, May 13, and June 18, 2008, and provided regular briefings as requested by the Committee at its first committee meeting each month. The fee study work plan was submitted as part of the February 12 monthly status report. (Monthly status reports to the Council are included as an Attachment 2 to this report.) At that time, the Council also requested PDS to conduct a survey of best management practices relating to fee design.

The Council recognized the Department of Public Works (DPW) and the Offices of the Prosecuting Attorney (PA) and Hearing Examiner (HE) also had roles in permit processing. In another 2008 budget note, the Council requested DPW, PA, and HE to present written reports describing the costs to their agencies (through June 30, 2008) of processing permit applications. Written reports were submitted by DPW, PA and HE on or about August 1, 2008.

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In November and December, 2007, PDS conducted several foundational tasks to ensure that meaningful and accurate financial data was available to update and refine its costs of service and fee recalibration model.

- PDS permitting managers designed the “One Permit Process” that aligned permitting functions and tasks into one cohesive process that considered the nature and complexity of application submittals and regulatory requirements. A diagram of the “One Permit Process” is included as Attachment 3 of this report.
- New timekeeping codes were designed consistent with the new “One Permit Process,” and a new timekeeping system (NTS) was implemented on January 1, 2008 for both payroll and fee study purposes.
- New time codes were aligned with existing fee types/codes and AMANDA process lines to establish the categories for cost recovery measurement.

In January, 2008, a Fee Study Steering Committee was formed, comprised of representatives from the Executive, Council, PDS, Public Works, Finance, and Prosecuting Attorney. A Project Team was also formed with staff from PDS, Public Works, Hearing Examiner, Prosecuting Attorney, and Finance.

The Project Team began the initial investigation of fee structures by establishing a conceptual framework for fee design, consisting of competing and supporting objectives, as well as the policies to be used in the development of fee structures. The goal of the study was to balance the three competing objectives of Cost Recovery, Fee Simplification, and Equity while embracing the three supporting objectives of Transparency, Defensibility and Ease of Implementation. Two key policy questions were proposed for consideration in the development of fees: (1) which costs are recoverable through fees, and (2) whether financial reserves should be established for specific purposes. PDS adopted two fee-setting policies specifically answering these questions. These policies, shared with Council in the May fee study status report, are included as Attachment 4 to this report.

Cost drivers for all permitting services were identified and categorized as Project Cost Drivers and Applicant Cost Drivers. Project cost drivers include the complexity and dimension of the application. Critical area and shoreline reviews can add significant complexity to the review of an application, while the size of a project (e.g., 10-lot versus a 100-lot subdivision) can significantly impact the cost of reviews and inspections. Applicant cost drivers include the quality of a submittal, the number of revisions required, and the responsiveness or degree of compliance of the applicant. The Project Team selected the most appropriate fee structures (fixed fee, variable fee, fixed fee with variable component, etc.) to reflect the cost drivers of each permitting service.

A cost of service model was then developed and used to establish the average costs of providing permitting services and related fee requirements.

To forecast workload, PDS developed a permit activity forecast considering the latest population forecasts for Snohomish County released by Washington State’s Office of

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Financial Management in fall of 2007, annual countywide housing unit production, the inventory of available homes for sale, apartment vacancy rates, and three annexation scenarios for Snohomish County: slow, expected and rapid annexation. The permit activity forecast utilized the expected annexation scenario to establish the demand for permit services over a five-year timeframe. The forecast was reviewed in May, June and July to determine the need for revision of assumptions. No revisions have been made to date. The permit activity forecasts are included as Attachment 5 to this report.

All costs of service were categorized as direct, indirect or overhead. Direct costs are those costs identified specifically with a particular application type and which can be readily tracked to individual applications, permits, and services with a high degree of accuracy. Indirect costs are costs incurred in support of multiple permitting processes or application types, and which cannot be tracked in a cost-effective manner at the level of individual application or permit. Overhead costs are the costs necessary for the continued functioning of the department, are incurred in support of a range of permit services, but are not uniquely attributable to an individual service.

To determine direct costs, departmental timekeeping data from PDS' new timekeeping system (NTS-2008), its supplemental timekeeping system (STS-2006/7), AMANDA (PDS' permit tracking and work management system) timekeeping data for inspections, and timekeeping data from DPW, PA and HE as well as Project Team input was used to translate the forecasted demand for permit services into average direct labor requirements by number of hours for each job classification for each service provided. These average direct labor requirements were incorporated into the cost of services model.

Indirect and overhead costs were identified and segregated by program and allocated in the cost of services model to each program and service type based on average direct labor hours.

Detailed year-to-date labor data was then matched with permit data from AMANDA to determine the full cost of individual permit types, based on the unique cost drivers identified for them.

The cost of service model provided the analytical framework to assess the adequacy of current fees to recover permitting costs. The model projects that at current fee amounts cost recovery will improve to 91% in 2009, resulting in an under-recovery of \$1,656,148. To achieve full-cost recovery, PDS proposes an adjustment to building fees for new single family residences and duplexes and the addition of a technology surcharge fee.

Building fees are based on commercial or residential occupancy types. Permits for new single family residential (SFR) and duplex construction are classified as buildings and structures in the Group R-3 Occupancies (one- and two-family residential uses). Building fees are also based on the valuation of the building. Currently, SFR building valuation is based upon multipliers (construction cost per square foot) contained in the building valuation data (BVD) sheet provided in the May/June "Building Standards"

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magazine published by the International Conference of Building Officials (ICBO). The ICBO is no longer in existence and the "Building Standards" magazine is no longer published. The county has continued to use the BVD from the 2001 edition of this document, however. The use of the outdated building valuation multiplier for Group R-3 Occupancies results in under recovery of costs of providing SFR permit services.

The International Code Council (ICC), the successor organization to the ICBO, now publishes BVD. This information is updated and published at 6-month intervals. The next update will be published in August of 2008.

Snohomish County's Group R-3 Occupancies building valuation multiplier is currently set at \$65.28 per square foot, based on ICBO's 2001 data. The ICC industry standard is \$95.91 as of February 2008 for the Puget Sound Area. Neighboring counties and cities use building valuation multipliers ranging from \$88 to \$104 per square foot. Because of its low building valuation multiplier, Snohomish County has the lowest new SFR building fees compared to the counties of Skagit, King, Kitsap, Pierce, and Thurston and the cities of Everett, Seattle, and Bellevue. Charts benchmarking Snohomish County's building fees against these other jurisdictions and their respective sources of building valuation data are included as Attachment 6 to this report.

Proposed updates to the building valuation multipliers to reflect current construction costs for Group R-3 Occupancies are projected to increase PDS' Fund 193 2009 revenues by approximately \$1.2 million. PDS is not proposing to change the fee table it uses to calculate building fees from building valuation. PDS currently uses Fee Table 1-A adopted from the 1997 Uniform Building Code (UBC), as many jurisdictions do. Some neighboring jurisdictions have adopted the building fee table from the 2006 International Residential Code, or have modified the UBC fee table to reflect their permitting costs. If the SFR building valuation multiplier is updated, PDS will not require changes to its building fee table to fully recover SFR permitting costs.

Currently, mechanical and plumbing sub-trade fees are assessed by the number of appliances installed. Modifications of permits to add new appliances result in the submittal of multiple permit applications and fees. Re-occurring submittal of applications and fees is time consuming and costly for both applicants and PDS. Simplification of these fees will increase permit efficiency internally and externally.

The Project Team proposes simplifying mechanical and plumbing sub-trade fees for new SFR construction by charging eleven percent (11%) of a building permit fee in lieu of the current fixture-based fee. Fee study calculations indicate that the proposed simplification would be revenue neutral. Fees for stand alone mechanical and plumbing permits are not proposed to be amended. A chart showing the neutral revenue impact is included as Attachment 7 to this report.

A survey of other jurisdictions was conducted, and revealed that in order to ensure reliable funding for technology investments, six other jurisdictions (Thurston County, Kitsap County, and the cities of Redmond, Bellevue, Seattle and Vancouver) maintain

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reserves for technology investment, either through assessment of a surcharge or fee, or through set-asides of fee revenues. Based on proposed technology investments in the 2009-2010 biennial budget, the study established that a three percent technology surcharge fee or \$10.00, whichever is greater, applied to all fee payment transactions (except impact mitigation fees, fees collected on behalf of cities, and general sales of publications and copies), would generate approximately \$500,000 in each year to upgrade and enhance AMANDA. Proposed technology expenditures for the 2009-2010 biennium are included as Attachment 9 to this report.

The Project Team began discussions with stakeholder groups in April. The purpose of these meetings was threefold: (1) to educate stakeholders about fee design and PDS' under recovery of costs; (2) to obtain buy-in on the fee design conceptual framework and fee structures; and (3) to identify major issues and concerns about permit fees and fee restructuring to develop a series of options and/or approaches to be considered. Additional discussions with stakeholder groups were held in May, June, and August. Attachment 10 is summary sheet for stakeholder outreach listing the various meetings and events that have been conducted so far in the study, and a log on stakeholder input that has been received.

Several rounds of internal review by the Project Team, Fee Study Steering Committee, and PDS, and feedback from stakeholders, along with best practices of other jurisdictions, helped guide decisions on the proposed code amendments contained in this draft ordinance.

LISTING OF PROPOSED CODE AMENDMENTS

The amendments adopt new development regulations and amend and repeal existing development regulations in Title 30 SCC, Unified Development Code to adjust fees to relating to the administration of development regulations. The amendments are listed in the following sections of the proposed ordinance:

<u>Section 1.</u>	Incorporates the ""whereas"" recitals of Ordinance No. 08-____ .
<u>Section 2.</u>	Provides findings of fact.
<u>Section 3.</u>	Provides conclusions.
<u>Section 4.</u>	Adds a new SCC 30.86.011 to clarify that fees are due and payable at the time service is requested unless otherwise specified. It provides that the director of PDS can resolve fee disputes upon written request and the director's decision shall be final.
<u>Section 5.</u>	Amends SCC 30.86.015 to clarify, consolidate, and update fee refund provisions. The new provision provides transparency regarding the regulation of fee refunds and the process for obtaining a refund.

<p><u>Section 6.</u></p>	<p>Adds SCC 30.86.030 to adopt a three percent technology surcharge for all fee transactions required by chapter 30.86 SCC, except impact mitigation fees, and fees collected on behalf of cities pursuant to SCC 30.86.530, 30.86.540, 30.86.550 and 30.86.620. Related amendments are made to SCC 13.110.020 in ordinance section 13 to apply the technology surcharge to all Type D construction activity fee transactions administered by PDS pursuant to chapter 13.60 SCC. The technology surcharge will ensure that funding is in place when technology investments are required. In each of fiscal years 2009 and 2010, technology surcharge revenues of \$500,000 would be directed towards upgrading and enhancing AMANDA, PDS' permit tracking and work management system.</p>
<p><u>Section 7.</u></p>	<p>Section 7 amends the building permit fee building valuation multipliers in SCC 30.86.400(1) that apply to new single-family residential (SFR) development (including duplexes) classified as Group R-3 Occupancies (one- and two-family residential uses).</p> <p>The current building valuation is based upon multipliers contained in the building valuation data (BVD) sheet provided in each year's May/June "Building Standards" magazine published by the International Conference of Building Officials (ICBO). The ICBO BVD multipliers in effect on January 1 of each calendar year are applied during that year. The county's use of the 2001 building valuation multiplier is outdated due to inflation and rising construction costs. Its use results in under recovery of the costs of providing permit services. The ICBO is no longer in existence and adjustments to fees on January 1 of each year are not possible without a code amendment. Currently, the International Code Council (ICC), the successor organization to the ICBO, publishes BVD. The ICC updates and prints the BVD information at six-month intervals. The next update will be published in August of 2008.</p> <p>Footnote 2 in SCC 30.86.400(7) is amended in ordinance section 7 to provide use of the ICC's BVD and standard building valuation multipliers related to R-3 occupancies (one-and two-family residential development).</p> <p>Amendments to SCC Table 30.86.400(9), allow the county to capture the current travel costs for special inspections occurring outside of Snohomish County for moving a building to Snohomish County by updating from \$120 plus "\$0.28/mile" to \$120 plus "the County's standard mileage rate/mile."</p> <p>Deletion of the refund provision in SCC Table 30.86.400(11) is made for consistency with the refund provision amendments proposed in SCC 30.86.015 in section 5 of this ordinance.</p>
<p><u>Section 8.</u></p>	<p>The mechanical sub-trade fees for new Group R-3 occupancies are amended in SCC 30.86.410. The current fixed based fee for construction of new Group</p>

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	R-3 occupancies (one- and two-family residential) is replaced with a mechanical and plumbing fee of eleven percent of a building permit fee.
<u>Section 9.</u>	The plumbing sub-trade fees for new Group R-3 occupancies are amended in SCC 30.86.420. The current fixed based fee for construction of new Group R-3 occupancies (one- and two-family residential) is replaced with a mechanical and plumbing fee of eleven percent of a building permit fee.
<u>Section 10.</u>	Deletes SCC 30.86.510 footnotes (6) and (7) to provide consistency with the addition of SCC 30.86.011 relating to the payment
<u>Section 11.</u>	Amends SCC 30.86.520(2) to correct the code citation related to the investigation fee
<u>Section 12.</u>	Amends SCC 30.86.600 to correct a mistake made in the fee table during the transition to the UDC. Type 1 Non-shoreline and Type 2 appeal fees are listed as \$100 in SCC Table 30.86.600. Pursuant to the pre-UDC code (Ordinance No. 03-014) and SCC 30.71.050(4) and SCC 30.72.070, these appeal fees are \$500 and must be corrected in the fee table.
<u>Section 13.</u>	Amends SCC 13.110.020 to provide for PDS' collection of a three percent technology surcharge on Type D construction activities.
<u>Section 14.</u>	Ordinance section 14 provides an effective date of January 1, 2009.
<u>Section 15.</u>	Severability clause.

Attachments:

- Attachment 1: Draft Ordinance
- Attachment 2: Monthly Status Reports to Council
- Attachment 3: One Permit Process
- Attachment 4: PDS Fee Setting Policies
- Attachment 5: Permit Activity Forecasts
- Attachment 6: Building Valuation Benchmarks and Calculation Methodology
- Attachment 7: Revenue Neutral Changes to Sub-trade Fees
- Attachment 8: 2009-2010 Proposed Technology Expenditures
- Attachment 9: Stakeholder Outreach
- Attachment 10: Fee Study Steering Committee and Project Team Meetings

cc: Craig Ladiser, Director



SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED ORDINANCE NO. 08-122

RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF SNOHOMISH
COUNTY CODE (SCC); ADDING NEW
SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
AND SCC 13.110.020

WHEREAS, under RCW 82.02.020, the county may collect reasonable fees from an applicant to cover the cost to the county of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW; and

WHEREAS, chapter 30.86 SCC establishes fees required to be paid by an applicant to cover county costs of administering the Unified Development Code (title 30) SCC and chapter 13.110 SCC establishes fees for Type D permits; which are administered by the Department of Planning and Development Services (PDS); and

WHEREAS, the county must adjust fees to maintain financial self-sufficiency in providing permitting services, to align the fees charged to applicants with the type and level of services provided, and to provide for improved cost recovery and fee equity, predictability, and simplicity; and

WHEREAS, PDS has adopted a fee-setting policy stating that permit fees will only be used to cover the direct and indirect costs of permitting as allowed by state law, and that department overhead costs shall be reasonably and consistently allocated among all programs, regardless of the type of revenue source supporting them; and

WHEREAS, PDS has adopted a fee-setting policy to fund technology improvements from a technology surcharge; and

WHEREAS, the purpose of the technology reserve is to fund permitting-related technology acquisitions and improvements, thereby ensuring that PDS has funding in place when technology investments are required; and

WHEREAS, in a 2008 budget condition, the county council requested PDS to submit to the council, on or before March 1, 2008, an overall work plan for review and analysis of all permit fees collected by PDS (in addition to the land use fees covered in the 2007 fee study); and

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF SNOHOMISH
COUNTY CODE (SCC); ADDING NEW
SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
AND SCC 13.111.020

1
2 WHEREAS, in a 2008 budget note, the county council requested PDS to report
3 to the council Planning and Community Development Committee, at its first committee
4 meeting each month, the status of PDS efforts to complete the fee study and to develop
5 an ordinance to adjust permit fees as appropriate; and
6

7 WHEREAS, under the direction of a steering committee comprised of
8 representatives from county departments, the executive and the county council, PDS
9 initiated a fee study in 2008; and
10

11 WHEREAS, PDS developed a cost of services model to estimate the cost of
12 providing permitting services at the present level of service and the fees necessary to
13 recover permitting costs; and
14

15 WHEREAS, PDS developed permit activity forecasts for Snohomish County to
16 establish the demand for permit services over a five-year timeframe, and using
17 departmental timekeeping data, translated such demand for services to average labor
18 requirements; and
19

20 WHEREAS, the average labor requirements were incorporated into the cost of
21 services model; and
22

23 WHEREAS, indirect and overhead costs were incorporated into the cost of
24 services model and allocated to each service based upon service type, service level,
25 and labor distribution; and
26

27 WHEREAS, the cost of services model provided the analytical framework used to
28 establish an improved cost recovery system; and
29

30 WHEREAS, the cost of services model results indicated that current PDS fees
31 would under recover expenses by \$1.7 million and \$1.9 million in 2009 and 2010,
32 respectively; and
33

34 WHEREAS, as an initial step in cost recovery and fee structure simplification,
35 PDS proposes amendments and additions to chapter 30.86 SCC fee provisions and
36 SCC 13.110.020 to recover the costs of processing applications; and
37

38 WHEREAS, miscellaneous code additions and amendments are required in
39 chapter 30.86 SCC to implement fee policies and to make corrections to previously
40 adopted fee tables; and
41

1 WHEREAS, a new provision is added in SCC 30.86.011 to clarify when fees are
2 due and payable and the process for fee dispute resolution; and

3
4 WHEREAS, code amendments are needed in SCC 30.86.015 and SCC
5 30.86.400(11) to update, consolidate, and clarify existing fee refund provisions; and

6
7 WHEREAS, a new section SCC 30.86.030 and amendments to SCC 13.110.020
8 are required to adopt a three percent technology surcharge to provide a reliable
9 technology funding source; and

10
11 WHEREAS, the technology surcharge would apply to all fee transactions
12 required by chapter 30.86 SCC, except impact mitigation fees and fees collected on
13 behalf of cities pursuant to SCC 30.86.530, SCC 30.86.540, SCC 30.86.550 and SCC
14 30.86.620; and

15
16 WHEREAS, SCC 13.110.020 is amended to incorporate the proposed
17 technology fee for Type D construction activities regulated by chapter 13.60 SCC and
18 administered by PDS pursuant to chapter 13.01 SCC; and

19
20 WHEREAS, the building valuation multipliers for the construction of new Group
21 R-3 occupancy one- and two-family residential buildings and structures contained in
22 SCC 30.86.400(7) have not been comprehensively adjusted since 2001; and

23
24 WHEREAS, amendments are needed to update SCC Table 30.86.400(7) to
25 provide use of the International Code Council's (ICC) current building valuation
26 multipliers for Group R-3 occupancies to provide realistic building valuations on which to
27 base one- and two-family residential permit fees; and

28
29 WHEREAS, correction of the numbering of footnotes related to roofing permits
30 and site review for new buildings or additions in SCC Table 30.86.400(10) is required
31 for proper reference; and

32
33 WHEREAS, simplification of the mechanical and plumbing sub-trade fees in SCC
34 30.86.410 and 30.86.420 for new construction of Group R-3 occupancies to eleven
35 percent of the building permit fee provides revenue neutral permitting efficiencies for
36 PDS and its customers; and

37
38 WHEREAS, increasing the \$100 permit decision appeal fees to \$500 in SCC
39 30.86.600 and correcting language in the associated reference note is needed for
40 consistency with SCC 30.71.050(4) and SCC 30.72.070, and the pre-UDC code
41 (Ordinance No. 03-014) which adopted a \$500 appeal fee; and
42

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF SNOHOMISH
COUNTY CODE (SCC); ADDING NEW
SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
AND SCC 13.111.020

1 WHEREAS, periodic adjustments to fees are necessary to achieve cost recovery
2 and keep pace with inflation; and

3
4 WHEREAS, the county council considered PDS' level of service and the fee
5 increases along with the projected costs of administering development regulations; and

6
7 WHEREAS, the county council held a public hearing on November 5, 2008
8 continued to November 10, 2008, to consider the entire record and to hear public
9 testimony on this Ordinance No. 08-122; and

10
11 WHEREAS, the county council considered the entire hearing record, including
12 written and oral testimony submitted during the hearing before the county council.

13
14 **NOW, THEREFORE, BE IT ORDAINED:**

15
16 Section 1. The foregoing recitals are incorporated herein as findings of fact and
17 conclusions as if set forth in full.

18
19 Section 2. The county council makes the following additional findings of fact:

- 20
21 A. The cost of services model was used to establish the average costs of
22 providing permitting services and related fee requirements. In April 2008, PDS
23 developed permit activity forecasts considering the latest population forecasts
24 for Snohomish County released by the Washington State Office of Financial
25 Management (OFM) in fall of 2007, annual countywide housing unit production,
26 the inventory of available homes for sale, apartment vacancy rates, and slow,
27 expected and rapid annexation scenarios for Snohomish County. The
28 forecasts were reviewed against actual activity in May, June, and July 2008,
29 however, this did not change PDS forecast results or assumptions. The permit
30 activity forecast utilized the expected annexation scenario to establish the
31 demand for permit services over a five-year timeframe.

32
33 Departmental timekeeping data from PDS' new timekeeping system (NTS-
34 2008), its supplemental timekeeping system (STS-2007), AMANDA
35 timekeeping data for inspections, and PDS, DPW, PA, and HE staff input was
36 used to translate the forecasted demand for permit services into average direct
37 labor requirements by number of hours for each job classification for each
38 service provided. These average direct labor requirements were incorporated
39 into the cost of services model.
40

1 Indirect and overhead costs were identified and segregated by program and
2 allocated in the cost of services model to each program and service type based
3 upon average direct labor hours.
4

5 Adequate data supports the proposed amendments and additions to the permit
6 fees and fee structure.
7

8 B. Ordinance section 4 adds a new section SCC 30.86.011 to clarify that fees are
9 due and payable at the time services are requested, unless otherwise specified.
10 It also specifies the process for the director of PDS to resolve fee disputes
11 within 30 days.
12

13 C. Ordinance section 5, amends SCC 30.86.015 to clarify, consolidate, and
14 update fee refund provisions. The new provision provides transparency
15 regarding the regulation of fee refunds and the process for obtaining a refund.
16

17 ✓ D. A new section SCC 30.86.030 is added in ordinance section 6 to adopt a three
18 percent technology surcharge. The fee surcharge would be applied to all fee
19 transactions required by chapter 30.86 SCC, except impact mitigation fees and
20 fees collected on behalf of cities pursuant to SCC 30.86.530, 30.86.540,
21 30.86.550 and 30.86.620. Related amendments are made to SCC 13.110.020
22 in ordinance section 13 to apply the technology surcharge to all Type D
23 construction activity fee transactions administered by PDS pursuant to chapter
24 13.60 SCC.
25

26 E. The technology surcharge will ensure that funding is in place when technology
27 investments are required of PDS. Technology surcharge revenues will be
28 directed towards upgrading and enhancing AMANDA, PDS' permit tracking and
29 work management system.
30

31 F. Section 7 amends the building permit fee building valuation multipliers in SCC
32 30.86.400(1) that apply to new single-family residential (SFR) development
33 (including duplexes) classified as Group R-3 Occupancies (one- and two-family
34 residential uses).
35

36 G. The current building valuation is based upon multipliers contained in the
37 building valuation data (BVD) sheet provided in each year's May/June "Building
38 Standards" magazine published by the International Conference of Building
39 Officials (ICBO). The ICBO BVD multipliers in effect on January 1 of each
40 calendar year are applied during that year. Since 2001, the ICBO is no longer
41 in existence and adjustments to fees on January 1 of each year are not
42 possible without a code amendment. The county's use of the 2001 building

1 valuation multiplier is outdated due to inflation and rising construction costs. Its
2 use results in under recovery of the costs of providing permit services.

3
4 Currently, the International Code Council (ICC), the successor organization to
5 the ICBO, publishes BVD. The ICC updates and prints the BVD information at
6 six-month intervals. The next update will be published in August of 2008.

7
8 H. Footnote 2 in SCC 30.86.400(7) is amended in ordinance section 7 to provide
9 use of the ICC's BVD and standard building valuation multipliers related to R-3
10 occupancies (one-and two-family residential development).

11
12 I. The ICC's BVD provides the average construction cost per square foot for
13 different types of construction and building occupancy groups. The BVD
14 represents multipliers for different types of construction, and reflects the relative
15 value of one construction classification/occupancy group to another, so that
16 more expensive construction is assessed a greater value than less expensive
17 construction.

18
19 J. Neighboring counties' and cities' building valuation multipliers range from \$88
20 to \$104 per square foot. Presently, Snohomish County has the lowest single-
21 family dwelling building permit fees compared to Skagit, King, Kitsap, Pierce,
22 and Thurston counties, and the cities of Everett, Seattle and Bellevue.

23
24 K. Snohomish County's Group R-3 occupancies (one- and two-family residential)
25 building valuation multiplier is currently set at \$65.28 per square foot, based
26 upon ICBO's 2001 data. The ICC industry standard is \$95.91 per square foot
27 as of February 2008 for the Puget Sound Area.

28
29 L. Proposed updates to the building valuation multipliers to reflect current
30 construction costs for Group R-3 occupancies for one- and two-family
31 residential developments are projected to more fully recover the cost of
32 processing permits by increasing 2009 revenues by approximately \$1.2 million.

33
34 M. Amendments to SCC Table 30.86.400(9), allow the county to capture the
35 current travel costs for special inspections occurring outside of Snohomish
36 County for moving a building to Snohomish County by updating from \$120 plus
37 "\$0.28/mile" to \$120 plus "the County's standard mileage rate/mile."

38
39 Pursuant to SCC 3.36.020, the director of the department of budget and finance
40 establishes a standard mileage rate for reimbursement of county employees for
41 use of their personal automobiles for travel for county purposes. The rate is set
42 to conform to the currently published mileage rate for business travel

1 deductions set by the Internal Revenue Service (IRS). The rate is revised
2 periodically as the IRS rate is revised so that the county mileage rate is
3 consistent with the published IRS rate. Use of the county's standard mileage
4 rate would enable PDS to adequately recover the cost of business travel for
5 inspections outside of the county.
6

7 N. Deletion of the refund provision in SCC Table 30.86.400(11) is made for
8 consistency with the refund provision amendments proposed in SCC 30.86.015
9 in section 5 of this ordinance.
10

11 O. Currently, mechanical and plumbing sub-trade fees are assessed by the
12 number of appliances installed. Modifications of permits for new SFR
13 construction to add new appliances results in the submittal of multiple permit
14 applications and fees. Recurring submittal of applications and fees is time
15 consuming and costly for applicants and PDS.
16

17 P. Simplification of the mechanical and plumbing sub-trade fees for new SFR
18 construction is proposed in SCC 30.86.410 and SCC 30.86.420 in ordinance
19 sections 8 and 9. The current fixed based fee for construction of new Group R-
20 3 occupancies (one- and two-family residential) is replaced with a mechanical
21 and plumbing fee of eleven percent of a building permit fee. The 11% fee is
22 related to the reasonable costs of permit processing and review for new SFR
23 construction.
24

25 Q. Fee study calculations indicate that the application of single fees for mechanical
26 and plumbing set at eleven percent of a building permit fee for new SFR
27 construction would result in the same fee revenues generated by the fee-by-
28 appliance method, and is therefore revenue neutral. Simplification of these
29 fees will increase permit efficiency internally and externally. Fees for stand-
30 alone mechanical and plumbing permits are not amended.
31

32 R. In ordinance section 10, SCC 30.86.510 footnotes (6) and (7) are deleted to
33 provide consistency with the addition of SCC 30.86.011 relating to the payment
34 of fees and revisions to fee refund provisions in SCC 30.86.015.
35

36 S. Ordinance section 11 amends SCC 30.86.520(2) to correct the code citation
37 related to the investigation fee.
38

39 T. SCC 30.86.600 is amended in Section 12 of the ordinance to correct a mistake
40 made in the fee table and associated reference note during the transition to the
41 UDC. Type 1 Non-shoreline and Type 2 appeal fees are listed as \$100 in SCC
42 Table 30.86.600. Pursuant to the pre-UDC code (Ordinance No. 03-014) and

1 SCC 30.71.050(4) and SCC 30.72.070, these appeal fees are \$500 and must
2 be corrected in the fee table.
3

4 U. Ordinance section 13 amends SCC 13.110.020 to provide for PDS' collection of
5 a three percent technology surcharge on Type D construction activities.

6 V. Ordinance section 14 provides an effective date of January 1, 2009.

7 W. Stakeholder participation was solicited during the development of the proposed
8 fee structure and fees. Presentations were made at the Developers' Breakfast
9 on April 24, 2008; Unified Development Code (UDC) Public Forums on June 5
10 and August 7, 2008; Developers Builders Issues Committee (DBIC) on April 1
11 and August 4, 2008; DBIC Fee Subcommittee on April 9, May 8, and May 21,
12 2008.

13 X. The county also conducted continuous public participation in the process by
14 including this ordinance with its budget adoption process. Public participation
15 included the county council holding a public hearing on November 5, 2008
16 continued to November 10, 2008.
17

18 Section 3. The county council makes the following conclusions:
19

20 A. The proposed fees set forth in this ordinance are calculated in accordance with
21 RCW 82.02.020.
22

23 B. Reliable funding for technology investments will ensure that continued
24 technological improvements can be made to the administration of development
25 review and to help meet customer expectations.
26

27 C. The adjustment to the building valuation multipliers for new Group R-3
28 occupancies will recover the costs associated with providing these permit
29 processing, review and inspection services by requiring applicants to pay more
30 fully the reasonable costs of services provided to them.
31

32 D. Annual updates of the building valuation multipliers to values published by the
33 ICC will keep pace with inflationary increases in the costs of permitting one-
34 and two-family residential construction.
35

36 E. Simplification of mechanical and plumbing permit fees will provide internal and
37 external permitting efficiencies.
38

- 1 F. Clarification of chapter 30.86 SCC is made through the correction of previous
2 legislative drafting mistakes.
- 3
- 4 G. The county's fee study objectives are met by the proposed amendments and
5 additions to chapter 30.86 SCC which are to provide for improved cost
6 recovery, equity, and fee predictability and simplicity.
- 7
- 8 H. The proposed amendments are in the best interest of the county and promote
9 the general public health, safety, and welfare.
- 10
- 11 I. Pursuant to SCC 30.61.020 and WAC 197-11-800(19), amendments to chapter
12 30.86 SCC and SCC 13.110.020 is categorically exempt from review under the
13 State Environmental Policy Act (SEPA) as being related solely to government
14 procedures containing no substantive standards respecting use or modification
15 of the environment.
- 16
- 17 J. The council concludes that this ordinance is related solely to government
18 procedures, not the Growth Management Act, and therefore, this ordinance
19 does not adopt development regulations under SCC 30.10.080. Pursuant to
20 SCC 30.73.040(2)(b), planning commission review is not required.
- 21

22 Section 4. A new section is added to Chapter 30.86 of the Snohomish County
23 Code to read:

24 **30.86.011 Fee payment and dispute resolution.**

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

32

33 Section 5. Snohomish County Code Section 30.86.015, adopted by Amended
34 Ordinance No. 02-064 on December 9, 2002, is amended to read:

35

36 **30.86.015 Refunds.**

37

38 ~~((The director shall refund all fees collected in error. Other refunds may be allowed as
39 authorized in this chapter.))~~ (1) Fee refund requests shall be submitted in writing to the

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1 department. A request shall reference the applicable project file number, the specific
2 reason for the request and the amount of refund requested.

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

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

8 (4) Fee refunds shall not include the following:

9 (a) Base fees;

10 (b) Fees expended to satisfy public notice requirements;

11 (c) State Building Code Council surcharges.

12 (5) The director may authorize the following refunds:

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

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

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

17 (d) SEPA environmental impact statement (EIS) refunds pursuant to SCC
18 30.86.500(6)(c); and

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

21
22 Section 6. A new section is added to Chapter 30.86 of the Snohomish County
23 Code to read:

24
25 **30.86.030 Technology surcharge.**

26
27 (1) A technology surcharge is required for the cost of developing and implementing
28 technology necessary to efficiently administer development and permit review by the
29 department and to provide service improvements in permitting processes. The
30 technology surcharge shall be paid in addition to any other fees required by law.

31 (2) A technology surcharge of three percent of required fees, is required to be paid by
32 the applicant on all PDS fee transactions required by chapters 13.01 and 30.86 SCC,
33 except impact mitigation fees and fees collected on behalf of cities pursuant to SCC
34 30.86.530, SCC 30.86.540, SCC 30.86.550 and SCC 30.86.620.

1
2 Section 7. Snohomish County Code Section 30.86.400, last amended by
3 Amended Ordinance No. 07-108 on November 19, 2007, is amended to read:
4

5 **30.86.400 Construction Code fees.**

6 (1) **Occupancies defined.** Fees established in SCC 30.86.400 shall be assessed
7 based on whether an occupancy type is commercial or residential. SCC Table
8 30.86.400(3) defines the occupancy groups in these two occupancy types.

9 (2) **Outstanding fees.** Any outstanding fees or portions of fees shall be added to the
10 required fee(s) of any future plan review or permit prior to application acceptance or
11 permit issuance. Any fee shall not relieve the applicant from a duty to obtain permits for
12 moving buildings upon roads and/or highways from the appropriate authorities. The
13 permit fee for construction of a new foundation, enlargement, or remodeling of the
14 move-in building shall be in addition to the pre-move fee. The fee for any factory built
15 structure as approved by the Washington State Department of Labor and Industries is
16 specified in SCC 30.86.440 under mobile homes.

17 (3) **Commercial and residential occupancies defined.**

18 **Table 30.86.400(3) - COMMERCIAL AND RESIDENTIAL OCCUPANCIES DEFINED**

OCCUPANCY TYPES	OCCUPANCY GROUPS
COMMERCIAL	A, I, R, E, H, F, M, S, B, and U
RESIDENTIAL	R-3, U

19
20 (4) **Commercial pre-application review.⁽¹⁾**

21 **Table 30.86.400(4) - COMMERCIAL PRE-APPLICATION REVIEW**

REVIEW FEE ⁽²⁾	\$400
SITE REVIEW (at applicant's request)	\$100
ADDED SERVICES REQUEST	\$60/hour

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REVIEW FEE FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 AND CHAPTER 30.33B SCC	\$0/hour
<p>Reference notes:</p> <p>(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.</p> <p>(2) Includes a conference with only a senior planner in attendance, and does not include review of detailed construction plans and specifications.</p>	

- 1
- 2 (5) **Base permit fees.**⁽¹⁾
- 3 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 ACCORDANCE WITH SCC 30.28.076 AND CHAPTER 30.33B SCC	\$0
<p>Reference notes:</p> <p>(1) Base fees shall compensate the department for preliminary application screening and the establishment and administration of the permit application file.</p>	

- 4
- AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES FOR THE ADMINISTRATION OF SNOHOMISH COUNTY CODE (SCC); ADDING NEW SECTIONS TO AND AMENDING CHAPTER 30.86 SCC AND SCC 13.111.020

1 (6) Plan review fees.⁽¹⁾

2 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 ^(a)	
• 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	\$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.

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Reference notes:

(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.

(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:

(a) Group R occupancies.

(b) Garages, carports, storage buildings, agricultural buildings, and similar structures for private use.

(3) Procedures for approval of basic plans for successive construction shall be established by the director.

(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.

1
2
3 (7) **Building permit fees.**⁽¹⁾

4 **Table 30.86.400(7) BUILDING PERMIT FEES**

TOTAL BUILDING/STRUCTURAL VALUATION ⁽²⁾	PERMIT FEE ⁽³⁾⁽⁴⁾
\$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

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\$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:	
<p>(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.</p> <p>(2) <u>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.</u> ((Building valuation shall be based on the building valuation data sheet contained within each year's</p>	

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May/June "Building Standards magazine On January 1 of each year, Conference of Building Officials to be applied effective January 1 of each subsequent year. (3) Plan review and permit fees are based on 100% of the building valuation with these exceptions:

- Accessory farm buildings & storage utility sheds ————— 80% of valuation
- Additions w/plumbing ————— 110% of the main floor valuation
- Dwellings without plumbing ————— 90% of the main floor valuation
- Foundation (existing structure) ————— 10% of main floor valuation
- Greenhouse (dirt floor, light frame/ plastic cover) ————— 40% of valuation
- Pole and roof only/no sides ————— 40% of valuation))

((4)) (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)

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

2 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

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Reference note:

(1) This fee shall be deducted from the permit fee if a permit is required.

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(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 ((Sno. Co.)) <u>Snohomish County</u>	\$120 plus (((\$0.28/mile)) <u>County's standard mileage rate/mile</u>
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.	

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

4 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 THAN 1000 SQUARE FEET	50% of site review fee
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

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PRE-APPLICATION DESIGN REVIEW	\$2,500
ROOFING PERMIT ((11)) (21)	
11 to 25 squares	\$37
More than 25 squares	\$55
SITE REVIEW FOR NEW BUILDINGS OR ADDITIONS ((11)) (21)	\$100
SUCCESSIVE CONSTRUCTION SET-UP FEE	\$200
<p>Reference notes:</p> <p>(1) These fees are charged in addition to building/structural plan and permit fees.</p> <p>(2) No permit is required for use of 10 squares or less of roofing material.</p> <p>(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.</p>	

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~~(((11)) Fee refunds.~~

~~The director shall refund all fees collected in error. In all other cases, upon request by an applicant within 180 days of fee payment, the director is authorized to refund 80 percent of any fee paid only if no work has commenced under the issued permit or plan review and the issued permit is surrendered with the request.)~~

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2
3 Section 8. Snohomish County Code section 30.86.410, last amended by
4 Amended Ordinance No. 07-084 on September 5, 2007, is amended to read:

5
6 **30.86.410 Mechanical permit fees.**

7 **TABLE 30.86.410 MECHANICAL PERMIT FEES**

<u>MECHANICAL INSPECTION FEES FOR CONSTRUCTION OF NEW GROUP R-3 OCCUPANCIES (ONE-AND TWO-FAMILY RESIDENTIAL).</u>	<u>For new construction of Group R-3 occupancies, 11 percent of the building permit fee shall apply for mechanical and plumbing inspections.</u> <u>See SCC 30.86.400(7).</u>
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-TYPE INCINERATOR install or relocate	\$15
FLOOR FURNACE install or relocate, including exhaust vent, suspended heater, recessed wall heater, or floor-mounted unit heater	\$15

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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 ^(a)	
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.	

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3 Section 9. Snohomish County Code section 30.86.420, last amended by
4 Amended Ordinance No. 07-084 on September 5, 2007, is amended to read:

5
6 **30.86.420 Plumbing permit fees.**

7 **TABLE 30.86.420 PLUMBING FEES**

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

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

1 (~~*Reviser Note: The text shown above in Table 30.86.420 in *italic* font was added by Amended~~
2 ~~Ordinance No. 07-084 but was not indicated with addition marks.))~~
3

4 Section 10. Snohomish County Code section 30.86.510, last amended by
5 Ordinance No. 06-004 on March 15, 2006, is amended to read:
6

7 **30.86.510 Drainage. See also chapter 30.63A SCC.**

8 (1) Purpose. This section establishes the fees required for all drainage reviews,
9 approvals, and inspections conducted by the county in order to compensate the
10 department for the costs of administering this title. These fees apply when a drainage
11 review is a required component of a permit application or is a condition of a land use
12 approval. Such fees are in addition to any other fees required by law.

13 (2) Drainage Fees.

14 Table 30.86.510(2) DRAINAGE FEES

BASE FEE⁽¹⁾	
Small parcel development (residential or other)	\$100
All other applications	\$250
DRAINAGE PLAN REVIEW FEES ^{(1), (2)}	
Targeted drainage plan	\$125

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Full drainage plan for small parcel development (residential or other)	\$60/lot
Small parcel development (residential or other)	\$60
Commercial building permit or redevelopment (based on total impervious area)	\$0.023/square foot
Roads, private roads	\$0.25/lineal foot
Total maximum fee	\$300
Subdivision ⁽⁴⁾	\$375
Plus \$ per lot	60
Short subdivision ⁽⁴⁾	\$250
Plus \$ per lot	60
All other drainage plan reviews	\$375
Plus \$ per acre	60
SUBSEQUENT REVIEW FEES ⁽⁵⁾	
Corrections or minor additions/revisions	50% of drainage plan review fee
Total maximum fee	\$200
Major additions/revisions	50% of drainage plan review fee
WAIVER OR MODIFICATION APPLICATION	\$200
DRAINAGE CONSTRUCTION INSPECTION FEE ⁽⁶⁻⁷⁾	Equal to drainage plan review fee
DRAINAGE REVIEW FEES FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LAND IN ACCORDANCE WITH SCC 30.28.076 AND CHAPTER 30.33B SCC	\$0

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SECURITY ADMINISTRATION FEES	
Performance Security	\$19.50 per subdivision or short subdivision lot or \$0.005 per square foot of impervious area for commercial building permits
Warranty Security	\$26.00 per subdivision or short subdivision lot or \$0.007 per square foot of impervious area for commercial building permits
Maintenance Security	\$15.00 per subdivision or short subdivision lot or \$0.003 per square foot of impervious area for commercial building permits

Reference notes:

(1) These fees are in addition to any other fees provided for by law, and apply when a drainage plan is a required component of a permit application or is a condition of a land-use approval. The fees consist of a plan check fee and a drainage construction permit fee.

(2) To be paid upon submittal of a drainage plan application. Drainage reviews associated with projects administered by Snohomish Soil Conservation District shall not be subject to the plan review and construction permit fee.

(3) Drainage plan check fees are cumulative for all that apply.

(4) When three or more contiguous lots are to be developed with a single townhouse building (zero lot line construction), a plan check fee of \$60.00 per building will be charged and the plan check fee will not be based on the number of lots. For tracts or other types of non-building lots, a plan check fee of \$60.00 per tract or lot shall be charged.

(5) These fees apply whenever an applicant fails to submit 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.

~~((6) To be paid prior to permit issuance.~~

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
 FOR THE ADMINISTRATION OF SNOHOMISH
 COUNTY CODE (SCC); ADDING NEW
 SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
 AND SCC 13.111.020

~~(7) Refund of drainage construction inspection fees. Upon receiving an applicant's written request, the director may give a pro-rated refund of drainage construction inspection fees for documented reductions in grading quantities, square footage of impervious surface area, lineal feet of road, number of lots, or acreage. Such a request must be received within six months of project completion or upon acceptance by the county of drawings for recordation.)~~

Section 11. Snohomish County Code section 30.86.520, last amended by Amended Ordinance No. 06-061 on August 1, 2007, is amended to read:

30.86.520 Grading fees. See also chapter 30.51 SCC.

(1) Purpose. This section establishes the fees required for all grading reviews, approvals and inspections conducted by the county in order to compensate the department for the costs of administering this chapter. Such fees are in addition to any other fees required by law.

(2) Basic grading fees.

Table 30.86.520(2) - GRADING FEES

PRE-APPLICATION SITE REVIEW FEE⁽¹⁾	\$250
SITE REVIEW FEE	\$100
BASE FEE	\$200
PLAN REVIEW AND INSPECTION FEE	\$0.33/cubic yard of total cut or fill amount, whichever is greater, not to exceed \$23,000.
INVESTIGATION FEE ((grading without a permit pursuant to UBC section 107.5-1)) (See SCC 30.52A.210 Work commencing before permit issuance (IBC 103.4))	\$200 plus \$0.33/cubic yard of earth moved
GRADING REVIEW FEES FOR PLAYING FIELDS ON DESIGNATED RECREATIONAL LANDS IN ACCORDANCE WITH SCC 30.28.076 AND CHAPTER 30.33B SCC	\$0
PERMIT RENEWAL FEE	50% of normal permit fee

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES FOR THE ADMINISTRATION OF SNOHOMISH COUNTY CODE (SCC); ADDING NEW SECTIONS TO AND AMENDING CHAPTER 30.86 SCC AND SCC 13.111.020

Reference notes:

(1) \$200 shall be applied towards site review/permit fees at the time of application.

(3) Grading permit applications prepared by the Snohomish Conservation District for commercial agricultural activities shall not be subject to the plan review and inspection fee.

(4) Grading permits for dike or levee construction or reconstruction, when implementing a Snohomish County approved floodplain management plan, shall be subject to a plan review and inspection fee of \$60.00/hour.

Section 12. Snohomish County Code section 30.86.600, adopted by Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.86.600 Permit decision appeal fees.

Table 30.86.600 APPEAL FEES

PERMIT TYPE	APPEAL FEE
TYPE 1-NON-SHORELINE ⁽¹⁾	(\$100) \$500
TYPE 2 ⁽¹⁾	(\$100) \$500

Reference note:

(1) This filing fee shall not be charged to a department of the county (~~or to other than the first appellant~~); 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. (~~The filing fee shall be refunded in any case where an appeal is summarily dismissed pursuant to SCC 30.72.075 because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect.~~)

1
2 Section 13. Snohomish County Code section 13.110.020, last amended by
3 Amended Ordinance No. 00-079 on November 21, 2000, is amended to read:
4
5

13.110.020 Fee schedule

Transaction Type	Description	Application Fee ¹	Permit Fee ¹	Total ¹
B1	Log tolerances	\$5.00	\$ --	\$5.00
B2	Overweight	\$50.00	Costs per SCC 13.110.010	\$50.00 plus permit fee
B3	Oversize	\$50.00	Costs per SCC 13.110.010	\$50.00 plus permit fee
B4	Haul Route	\$50.00	Costs per SCC 13.110.010	\$50.00 plus permit fee
B5	Road closure	\$50.00	\$120.00	\$170.00
C1	Bus stops/shelters/pads loading zones	\$50.00	\$90.00	\$140.00
C2	Construction site Structures	\$50.00	\$90.00	\$140.00
C3	Decorative Landscaping/fences	\$50.00	\$90.00	\$140.00
C4	Recycling—waste Facilities	\$50.00	\$90.00	\$140.00
C5	Newspaper sales, Stands drop boxes	\$50.00	\$90.00	\$140.00
C6	Temporary signs	\$50.00	\$90.00	\$140.00
C7	Temporary sales	\$50.00	\$90.00	\$140.00
C8	Business patrons or customers	\$50.00	\$90.00	\$140.00
C9	Tree cutting	\$50.00	\$90.00	\$140.00
D1	Driveway access/Culvert/curb cut	\$25.00	\$55.00	\$80.00
D2	Subdivision Driveway access	\$25.00	\$--	
D3	Temp. trail access	\$125.00	\$420.00	\$545.00
D4	Trail access	\$125.00	\$540.00	\$665.00

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
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D5	Major construction- Other	\$125.00	\$340.00	Varies
	Add per road front foot:	\$1.00		
D5P	Major construction -Plat	\$125.00	\$540.00	Varies
	Add per road front foot:	\$1.00		
D5C	Major construction commercial	\$125.00	\$540.00	Varies
	Add per road front foot:	\$1.00		
D5S	Major construction short plat	\$125.00	\$540.00	Varies
	Add per road front foot:	\$1.00		
D6	Minor construction- Other	\$35.00	\$60.00	\$95.00
D6P	Minor construction- Plat	\$90.00	\$130.00	\$220.00
D6C	Minor construction- Commercial	\$90.00	\$130.00	\$220.00
D6S	Minor construction- Short Plat	\$90.00	\$130.00	\$220.00
D7	Blanket utility construction per each construction activity	None	\$80.00	\$80.00
D8	Major utility construction:			
	Open trench road, road shoulder cut add per foot:	\$130.00 \$0.35	\$390.00	Varies
	Road asphalt/ concrete cut, add per foot:	\$1.00	\$390.00	Varies
	Plowed cable road add per foot:	\$130.00	\$390.00	Varies
	0' to 2,000'	\$0.15 per foot	\$100.00	Varies
	2,001' to 7,000'	\$0.10 per foot	\$200.00	Varies

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
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	7,001' and more	\$0.05 per foot	\$300.00	Varies
E1	Private leases/ Right-of-way	\$100.00	--	\$100.00
E2	Road establishment	\$500.00	Costs per SCC 13.110.010	\$500.00 plus permit fee
E3C	Franchises--CATV	\$500.00	Costs per SCC 13.110.010	\$500.00 plus permit fee
E3U	Franchises--Utility	\$500.00	Costs per SCC 13.110.010	\$500.00 plus permit fee
E4	Road/right-of-way vacations	\$500.00	Costs per SCC 13.110.010	\$500.00 plus permit fee
E5	Latecomers cost	\$500.00	Costs per	\$500.00 plus
	Recovery		SCC 13.110.010	permit fee
E6	Road improvement district	\$500.00	Costs per SCC 13.110.010	\$500.00 plus permit fee

1 Note: All costs, including in excess of the above, associated with road establishments, right-of-
2 way vacations, utility franchises, CATV franchises, road improvement district formation, or
3 latecomers cost recovery programs will be itemized and presented as part of the associated
4 ordinance for county council approval.

5 (1) Pursuant to SCC 30.86.030, a technology surcharge of three percent of each Type D fee
6 transactions is required in addition to the fees listed in the fee schedule.
7

Add. Overweight/Wide load charge	Actual hourly costs of county crews. labor, and equipment if required to assist the operation. a. 3-hour minimum at \$50.00 per hour	varies
Repair and replacement charge	actual cost of work performed by the county or contractors employed by the county to repair or replace damages	varies

8
9
10
AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF SNOHOMISH
COUNTY CODE (SCC); ADDING NEW
SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
AND SCC 13.111.020

1 Section 14. Effective date.

2
3 This ordinance shall take effect January 1, 2009.
4

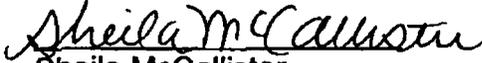
5 Section 15. Severability. If any section, sentence, clause or phrase of this
6 ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction,
7 such invalidity or unconstitutionality shall not affect the validity or constitutionality of any
8 other section, sentence, clause or phrase of this ordinance. Provided, however, that if
9 any section, sentence, clause or phrase of this ordinance is held to be invalid by the
10 court of competent jurisdiction, then the section, sentence, clause or phrase in effect
11 prior to the effective date of this ordinance shall be in full force and effect for that
12 individual section, sentence, clause or phrase as if this ordinance had never been
13 adopted.
14

15
16 PASSED this 10th day of Nov., 2008.
17
18
19
20
21
22

23 SNOHOMISH COUNTY COUNCIL
24 Snohomish County, Washington

25 
26 _____
27 Chairperson
28
29

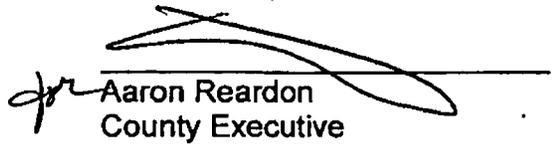
30 ATTEST:

31
32 
33 Sheila McCallister
34 Asst. Clerk of the Council
35

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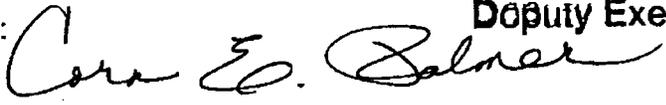
APPROVED
 EMERGENCY
 VETOED

DATE: 11/25/08



Aaron Reardon
County Executive

MARK SOINE
Deputy Executive

ATTEST: 

Approved as to form only:

Deputy Prosecuting Attorney

D.2

AMENDED ORDINANCE NO. 08-122 - RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF SNOHOMISH
COUNTY CODE (SCC); ADDING NEW
SECTIONS TO AND AMENDING CHAPTER 30.86 SCC
AND SCC 13.111.020



SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 10-025

RELATING TO DEVELOPMENT FEES
FOR THE ADMINISTRATION OF TITLE 30 SCC; ADDING SECTIONS TO, AND
REPEALING AND AMENDING SECTIONS OF CHAPTER 30.86 SCC; AND
AMENDING ORDINANCE NO. 10-014

WHEREAS, under Revised Code of Washington (RCW) 82.02.020, the county may collect reasonable fees from an applicant to cover the cost to the county of processing applications, inspecting and reviewing plans, and preparing detailed statements required by chapter 43.21C RCW; and

WHEREAS, chapter 30.86 SCC establishes fees required to be paid by an applicant to cover county costs of administering the Unified Development Code (title 30) SCC, which is administered by the Department of Planning and Development Services (PDS); and

WHEREAS, the county must adjust fees to maintain financial self-sufficiency in providing permitting services, to align the fees charged to applicants with the type and level of services provided, and to provide for improved cost recovery, fee simplification and equity; and

WHEREAS, PDS utilizes a cost of services model to estimate the cost of providing permitting services at the present level of service and the fees necessary to recover permitting costs; and

WHEREAS, as an initial step in cost recovery and fee structure simplification, the county council adopted amendments and additions to chapter 30.86 SCC in Amended Ordinance No. 08-122 on November 10, 2008, to recover the costs of processing applications; and

WHEREAS, the restructuring of the drainage and grading fee tables was postponed until adoption of stormwater management regulations necessary to comply with the requirements of Snohomish County's National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater Permit No. WAR04-4502 (NPDES Permit); and

WHEREAS, other fee updates to chapter 30.86 SCC are necessary to implement new stormwater management regulations; and

1 WHEREAS, SCC 30.86.510 is repealed and restructured to establish fees
2 necessary to administer plan review and inspection of land disturbing activities including
3 clearing and land conversion; and
4

5 WHEREAS, the proposed fee updates in chapter 30.86 SCC support
6 implementation of new stormwater management regulations adopted in compliance with
7 the NPDES Permit; and
8

9 WHEREAS, the county council held a public hearing on June 9, 2010, to
10 consider the entire record and to hear public testimony on this Ordinance No. 10-025;
11 and
12

13 WHEREAS, the county council considered the entire legislative record, including
14 written and oral testimony submitted during the hearing before the county council.
15

16 NOW, THEREFORE, BE IT ORDAINED:
17

18 Section 1. The foregoing recitals are incorporated herein as findings of fact and
19 conclusions as if set forth in full.
20

21 Section 2. The county council makes the following additional findings of fact and
22 conclusions:
23

- 24 A. In 2002, PDS began soliciting recommendations for permit fee
25 adjustments. Based on results of financial analyses in 2002 and 2005,
26 PDS determined that costs were under-recovered for permitting and that
27 permit fee adjustments were necessary.
28
- 29 B. In 2008, the council determined that a comprehensive analysis of
30 permitting fees was necessary for consideration and PDS subsequently
31 established a project team to perform an extensive fee study.
32
- 33 C. The fee study project team developed a methodology (cost of services
34 model) to establish the costs of various development and regulatory
35 services and related fee requirements. The cost of services model also
36 provided the analytical framework to assess the adequacy of current fees
37 to recover permitting costs.
38
- 39 ✓ D. The full cost of services basis for setting development fees was based on
40 four main cost layers: labor (salary and benefits); non-labor expenses;
41 county-wide overhead; and additional costs related to development
42 review. Within the labor cost layer of the cost of services model are three
43 categories (direct, indirect and overhead costs) that are included in the
44 proposed fees.
45

- 1 E. Using the cost of services model, the fee study project team determined
2 that current fees were inadequate to recover costs and that a reduction in
3 the total number of drainage and grading fees and fee variations in SCC
4 Table 30.86.510(2) and SCC Table 30.86.520(2) would make these fees
5 easier to understand and administer.
6
- 7 F. At the same time the fee study project team was developing
8 recommendations, a separate project team was working on updates to the
9 county's stormwater management regulations, which impact the process
10 by which drainage and grading fees are determined.
11
- 12 G. PDS postponed restructuring of the drainage and grading fee tables
13 originally slated to be updated with the 2008 Fee Study to achieve a better
14 understanding of the additional county resources that would be required to
15 implement stormwater management regulations under the NPDES Permit.
16
- 17 H. The NPDES Permit increases the county's responsibility regarding the
18 regulation of drainage and requires the regulation of land disturbing
19 activities, which include clearing, grading, filling and excavation.
20
- 21 I. Regulation of land disturbing activities under the NPDES Permit requires
22 PDS to establish new clearing fees. The proposed ordinance considers
23 incorporation and alignment of new land disturbing activity fees related to
24 reviewing clearing activities.
25
- 26 J. The NPDES Permit also requires increases in reporting and inspections
27 (including preconstruction site inspections), additional analysis regarding
28 discharge to wetlands, detention and retention ponds, and more restrictive
29 exemptions from stormwater management regulations.
30
- 31 K. SCC Table 30.86.500 relating to fees required for environmental review
32 pursuant to the State Environmental Policy Act (SEPA) is amended.
33 Reference note (3) related to fee reductions for single family dwellings
34 (SFR), duplexes, accessory structures, and commercial structures 8,000
35 square feet or less per SCC 30.86.400(9), grading of 500 cubic yards or
36 less per SCC 30.86.520, and short subdivisions per SCC 30.86.110 is
37 deleted. To more accurately reflect the cost of performing SEPA
38 environmental review, threshold determination fees are no longer reduced
39 by the critical area review fee for such actions when critical area review is
40 required. Reference notes are renumbered after the deletion of reference
41 note 3. SCC Table 30.86.500 is also amended to repeal a provision
42 related to fees for playing fields on designated recreational land, which
43 expired on April 4, 2008. SCC Table 30.86.500 is also amended to add
44 withdrawal of determination of nonsignificance (DNS) to fees for issuing a

1 new threshold determination. SCC Table 30.86.500 is further amended to
2 delete reference note 8, which is addressed by existing SCC 2.51.100.

3
4 L. Existing SCC Table 30.86.510(2), relating to fees required for drainage,
5 and existing SCC Table 30.86.520(2), relating to fees required for grading,
6 are repealed. The addition of a new SCC Table 30.86.510(2) establishes
7 fees for both drainage plan review and inspection and land disturbing
8 activities.

9
10 M. In the process of consolidating fees for land disturbing activities into new
11 SCC Table 30.86.510(2), outdated provisions from existing SCC Table
12 30.86.510(2) and SCC Table 30.86.520(2) are deleted.

13
14 N. Consolidating plan review and inspection fees for drainage and land
15 disturbing activities into one table reduces the amount of fee variations
16 (multiple fee payments), prevents overlapping review (for simultaneous
17 drainage and grading review) and results in simplified administration of the
18 fee tables.

19
20 O. The applicable grading fees deleted in the repeal of existing SCC Table
21 30.86.520(2) are updated in new SCC Table 30.86.510(2)(A), which
22 addresses all land disturbing activities.

23
24 P. The proposed drainage and land disturbing activity fees in new SCC Table
25 30.86.510(2)(A) and (B) reflect progressive levels of project complexity,
26 concurrent plan review and inspection requirements. These fees are
27 structured by project threshold levels for single activities and/or multiple
28 activities and are based upon plan review and inspection labor costs for
29 single and multiple activities.

30
31 Q. The drainage fee levels in new SCC Table 30.86.510(2)(A) are based on
32 the quantities of proposed new, replaced, or new plus replaced impervious
33 surface in square feet. The grading fee levels in new SCC Table
34 30.86.510(2)(A) are based on the quantities of proposed cut and/or fill,
35 whichever is greater, in cubic yards.

36
37 R. There are three level 1 categories in the proposed new SCC Table
38 30.86.510(2)(A). These levels include grading only, drainage only, and
39 grading and drainage (combined).

40
41 S. Level 1(a) provides the thresholds that apply to projects involving drainage
42 activity only. Level 1(b) applies to projects involving grading activity only.
43 Level 1(a)+(b) thresholds apply to projects performing both drainage and
44 grading activity. These Level 1 fees include review of the required
45 abbreviated Stormwater Pollution Prevention Plan (SWPPP) and site plan.

- 1
2 T. Level 2 fees for drainage and/or grading activity in new SCC Table
3 30.86.510(2)(A) are established for projects that require review of a
4 targeted stormwater site plan.
5
6 U. Level 3 fees for drainage and/or grading activity in new SCC Table
7 30.86.510(2)(A) are established for projects that require review of a full
8 stormwater site plan.
9
10 V. Level 4, Level 5 and Level 6 fees for drainage and/or grading activity in
11 new SCC Table 30.86.510(2)(A) are established for progressively larger
12 and more complex projects requiring additional stormwater management
13 regulations and higher levels of review. In addition to submitting a full
14 stormwater site plan, project applicants for drainage and/or grading activity
15 at these levels must also submit multiple technical reports.
16
17 W. Fees for Levels 4, 5 and 6 were considered in the cost of services data in
18 Attachment 3 of the accompanying staff report. Fees are based on actual
19 grading volumes for applicants' projects and average real-time labor costs
20 for PDS staff to review, inspect and monitor such projects. Fees
21 associated with the breaks in the threshold quantities for Levels 4, 5 and 6
22 were established to achieve the optimum equity among applicants for
23 these levels of services.
24
25 X. Fee levels 1 through 3 for clearing in new SCC Table 30.86.510(2)(B)
26 apply exclusively to clearing activity. When clearing and other land
27 disturbing activities require review, the applicant must pay for the
28 applicable drainage and/or grading fee in addition to the clearing fee.
29
30 Y. The fee for renewal of a land disturbing activity approval or permit in
31 existing SCC 30.86.520(4) is replaced in new SCC Table 30.86.510(2)(C).
32 The amount of the fee is modified to \$400 plus a percentage of the original
33 permit fee equal to the percentage of permit activity remaining to be
34 completed.
35
36 Z. The pre-application site review fee from repealed SCC Table 30.86.520(2)
37 is merged into new SCC Table 30.86.510(2)(C) and remains \$250. The
38 reference note associated with the pre-application site review fee allowing
39 a credit to be applied towards site review/permit fees at the time of
40 application is deleted in the merge to new SCC Table 30.86.510(2). This
41 allows PDS to recover some of the cost of staffing pre-application
42 meetings.
43

- 1 AA. The fee for dike and levee construction or reconstruction grading plan
2 review and inspection from repealed SCC 30.86.520(4) is merged into
3 new SCC Table 30.86.510(2)(C).
4
- 5 BB. A fee for drainage review of mining operations is established in new SCC
6 Table 30.86.510(2)(C) to more accurately recover the cost of performing
7 drainage review for mining operations. On March 9, 2005, Snohomish
8 County adopted Rule 3600, which establishes provisions for the
9 calculation of title 30 SCC fees on mining sites. The provisions from Rule
10 3600 are now contained in reference note 5 to provide clarity on the
11 proposed fee. The fee for drainage review of mining operations has been
12 recalculated from \$60 per acre to \$156 per acre based on data from the
13 cost of services model. Rule 3600 will no longer be needed after it is
14 incorporated into new SCC Table 30.86.510(2)(C) and will be repealed.
15
- 16 CC. In the process of evaluating drainage review fees for mining operations,
17 PDS revealed that fees were not established for monitoring associated
18 with mining operations. A new fee for ongoing monitoring associated with
19 mining operations is established in new SCC Table 30.86.510(2)(C) based
20 on the cost of services model.
21
- 22 DD. New fees are established in new SCC Table 30.86.510(2)(C) for
23 consultation with PDS pursuant to proposed SCC 30.63B.030(2) and
24 30.63B.100(2). The new fees are structured according to the level of
25 consultation with PDS required by applicants' projects.
26
- 27 EE. A new section SCC Table 30.86.515 is added to establish stormwater
28 modification, waiver and reconsideration fees necessary to implement new
29 stormwater regulations. Fees for stormwater modifications, waivers and
30 reconsiderations are based on the cost of services model.
31
- 32 FF. SCC 30.86.710 is amended to reduce the EDDS deviation fee from
33 \$1,500 to \$1,350 to more accurately reflect estimated review costs based
34 on PDS's real timekeeping data. The proposed EDDS deviation fee is
35 made consistent with the proposed fees for stormwater modifications in
36 new SCC Table 30.86.515.
37
- 38 GG. The council considered the PDS staff report and finds that the process by
39 which the proposed fees were determined, as explained in the staff report
40 and supported by additional documentation, is accurate and fair. The
41 resulting development fees are reasonable and were calculated in
42 accordance with RCW 82.02.020.
43
- 44 HH. The council concludes that this ordinance is related solely to government
45 procedures, not the Growth Management Act, and therefore, does not

1 adopt development regulations under SCC 30.10.080. Pursuant to SCC
2 30.73.040(2)(b), planning commission review is not required.

3
4 II. Amendments to chapter 30.86 SCC, pertaining to fees, are categorically
5 exempt from SEPA under Washington Administrative Code (WAC) 197-
6 11-800(19).

7
8 JJ. The council concludes that this ordinance is in the best interest of
9 Snohomish County citizens and will promote the health, safety and welfare
10 of the citizens of Snohomish County.

11
12 Section 3. Snohomish County Code Section 30.86.500, last amended by
13 Amended Ordinance No. 07-108 on November 19, 2007, is amended to read:

14
15 **30.86.500 SEPA (environmental review) fees. ((See also chapter 30.61 SCC.))**

16 **Table 30.86.500 - SEPA FEES ⁽¹⁾**

17

CHECKLIST REVIEW/THRESHOLD DETERMINATION (TD) ^{(1), ((#)) ((#))}	
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
((Environmental review fees for playing fields on designated recreational land in accordance with SCC 30.28.076 and chapter 30.33B SCC.))	(((\$0))
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 submitted to supplement the environmental checklist	\$72/Hour
MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS) ((4))X23, ((F7)) 50	

RELATING TO DEVELOPMENT FEES FOR THE ADMINISTRATION OF TITLE 30 SCC; ADDING SECTIONS TO, AND REPEALING AND AMENDING SECTIONS OF CHAPTER 30.86 SCC; AND AMENDING ORDINANCE NO. 10-014 - 8

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 ((See Footnote 6))^{(1),(10)}	
WITHDRAWAL OF DETERMINATION OF NONSIGNIFICANCE (DNS) OR DETERMINATION OF SIGNIFICANCE (DS) AND NEW TD ^{(10),(11),(12)} (1)	Fee equal to original fee for environmental checklist review
<p>REFERENCE NOTES:</p> <p>(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.</p> <p>(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.</p> <p>((3) Threshold determination fees required for these actions shall be reduced by the amount of the critical area review fee for such actions when critical area review is required: SFR dwellings, duplexes, accessory structures, and commercial structures 8,000 square feet or less per SCC 30.86.400(9); grading of 500 cubic yards or less per SCC 30.86.520; and short subdivisions per SCC 30.86.110.))</p> <p>((4)) (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.</p> <p>((5)) (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.</p> <p>((6)) (5)(a) The following EIS preparation and distribution costs shall be borne by the applicant or proponent:</p> <p>(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;</p> <p>(ii) Additional costs, if any, for experts not employed by the county, texts, printing, advertising,</p>	

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 cash, surety bond, or other sufficient and acceptable bond in the minimum amount of \$1,800 in accordance with chapter 30.84 SCC regarding bonding security administration.

(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.

~~((7))~~ (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.

~~((8) The county may charge any person for copies of any document prepared under this title, and for mailing the document in the manner provided by chapter 42.17 RCW.)~~

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Section 4. Snohomish County Code Section 30.86.510, last amended by Amended Ordinance No. 08-122 on November 10, 2008, is repealed.

Section 5. A new section is added to Chapter 30.86 of the Snohomish County Code to read:

30.86.510 Drainage and land disturbing activity fees.

(1) This section establishes fees for plan review and inspection conducted by the county to compensate the department for the costs of administering this title and issuing land disturbing activity permits and approvals. These fees 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.

(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

1 of the same project, the applicant shall only pay one fee; the applicable fee shall be the
 2 one associated with the proposed activity that meets the highest threshold level in SCC
 3 Table 30.86.510(2)(A) and (B).

4 (3) Drainage and land disturbing activity fees shall be paid at the time of application.

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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/or 1 – 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 pursuant to SCC 30.52A.210			\$ 350 plus \$ 0.33 per cubic yard of earth moved
Renewal of a land disturbing activity approval or permit ⁽⁵⁾			\$400 plus a percentage of the

	original 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 (b) Engineering (a)+(b) Land Use and Engineering Combination	(a) \$ 850 (b) \$ 975 (a)+(b) \$ 1,655
(D) SECURITY-ADMINISTRATION FEES:	
Performance Security	\$ 19.50 per subdivision or short subdivision lot or \$0.005 per square foot of impervious area for commercial building permits
Warranty Security	\$ 26.00 per subdivision or short subdivision lot or \$0.007 per square foot of impervious area for commercial building permits
Maintenance Security	\$ 15.00 per subdivision or short subdivision lot or \$0.003 per square foot of impervious area for commercial building permits
REFERENCE NOTES:	
<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(4) These fees apply whenever an applicant proposes changes, additions, or revisions to previously approved plans, drawings, or other required submittal documents.</p> <p>(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.</p> <p>(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,</p>	

RELATING TO DEVELOPMENT FEES FOR THE ADMINISTRATION OF TITLE 30 SCC; ADDING SECTIONS TO, AND REPEALING AND AMENDING SECTIONS OF CHAPTER 30.86 SCC; AND AMENDING ORDINANCE NO. 10-014 - 12

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2 Section 8. Snohomish County Code Section 30.86.710, adopted by Amended
3 Ordinance No. 07-108 on November 19, 2007, is amended to read:

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5 **30.86.710 Engineering, Design and Development Standards (EDDS) deviations.**

6
7 Table 30.86.710 –

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9 **ENGINEERING, DESIGN AND DEVELOPMENT STANDARDS (EDDS) DEVIATION FEES**

Activity	Fee
Application for deviation from Engineering, Design and Development Standards (EDDS) ¹	((\$1,500)) <u>\$ 1,350</u>
<u>(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.</u>	

10
11 Section 9. Section 3 of Ordinance No. 10-014, adopted on April 7, 2010, is
12 amended to read:

13
14 Sections 5, 7, 9, 11, 13, 15(~~(7)~~) and 17 (~~(and 19)~~) of this ordinance shall take effect
15 consistent with Snohomish County Charter Section 2.110, and shall be repealed on
16 April 29, 2011 (twelve months later).

17
18 Section 10. Section 4 of Ordinance No. 10-014, adopted on April 7, 2010, is
19 amended to read:

20
21 Sections 6, 8, 10, 12, 14, 16(~~(7)~~) and 18 (~~(and 20)~~) of this ordinance shall take effect on
22 April 29, 2011 (immediately upon the repeal of Sections 5, 7, 9, 11, 13, 15(~~(,)~~) and 17
23 (~~(and 19)~~) of this Ordinance).

24
25 Section 11. Sections 19 and 20 of Ordinance No. 10-014, adopted on April 7,
26 2010, are repealed.

27
28 Section 12. Effective date. The effective date of this ordinance will be
29 September 30, 2010.

30
31 Section 13. Severability. If any section, sentence, clause or phrase of this
32 ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction,
33 such invalidity or unconstitutionality shall not affect the validity or constitutionality of any
34 other section, sentence, clause or phrase of this ordinance. Provided, however, that if
35 any section, sentence, clause or phrase of this ordinance is held to be invalid by the
36 court of competent jurisdiction, then the section, sentence, clause or phrase in effect

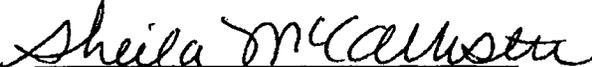
1 prior to the effective date of this ordinance shall be in full force and effect for that
2 individual section, sentence, clause or phrase as if this ordinance had never been
3 adopted.

4
5
6 PASSED this 9th day of June, 2010.

7
8 SNOHOMISH COUNTY COUNCIL
9 Snohomish County, Washington

10
11 
12 _____
13 Chairperson

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16 ATTEST:

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18 _____
19 Asst. Clerk of the Council

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23 APPROVED
24 EMERGENCY
25 VETOED

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28 _____
29 County Executive
30 Date 6/21/10

AARON REARDON
County Executive

31 ATTEST:

32 
33 _____

34 Approved as to form:

35 _____
36 Deputy Prosecuting Attorney

D-15

APPENDIX D

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

30.70.140 Expiration and extension of application.

- (1) An application shall expire one year after the last date that additional information is requested if the applicant has failed to provide the information, except that
- (a) The department may grant one or more extensions pursuant to SCC 30.70.140(2) and (3) below;
 - (b) The department may set an expiration date of less than one year when the permit application is the result of a code enforcement action; and
 - (c) No application shall expire when under review by the department following submittal of a complete application or timely resubmittal of an application when all required information has been provided.
- (2) The applicant may request an extension to a date certain prior to expiration of the application. The department may grant an extension request if the criteria of SCC 30.70.140(3) are met. If granted, the department shall set a reasonable expiration date that may be different from the date requested by the applicant.
- (3) An applicant's extension request may only be granted when the following criteria are met:
- (a) A written request for extension is submitted at least 14 days prior to the expiration date;
 - (b) The applicant demonstrates that circumstances beyond the control of the applicant prevent timely submittal of the requested information; and
 - (c) The applicant provides a reasonable schedule for submittal of the requested information.
- (4) The department may extend an expiration date for an application with no written request from an applicant when additional time for county processing or scheduling of appointments is required, when the department needs information or responses from other agencies, or under other similar circumstances.
- (5) A permit application approved for issuance pursuant to subtitle 30.5 SCC but not paid for and issued shall expire six months after the date it is approved for issuance.

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

30.70.150 Reapplication after denial of project permit application.

The department shall not accept an application for substantially the same matter within one year from the date of the final county action denying the prior application, unless the denial was without prejudice.

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

Chapter 30.71 TYPE 1 PERMITS AND DECISIONS - ADMINISTRATIVE

30.71.010 Purpose and applicability.

This chapter describes decision-making and appeal procedures and applies to all Type 1 permits and decisions.

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

30.71.020 Type 1 permits and decisions.

The following are processed as Type 1 administrative decisions:

- (1) Administrative conditional use permit;
- (2) Binding site plan approval;
- (3) Boundary line adjustment, except as provided in 30.41E.020 SCC;
- (4) Building and land disturbing activity permits subject to SEPA review pursuant to chapter 30.61 SCC, or subject to conditions imposed pursuant to chapter 30.32D;

- (5) Free standing signs in the FS and RFS zones;
- (6) Code interpretations;
- (7) Flood hazard permit, except as provided in SCC 30.43C.020;
- (8) Flood hazard variance;
- (9) Freeway service zone official site plan (existing FS zone);
- (10) Shoreline substantial development permit, shoreline conditional use, and shoreline variance, except when processed as a Type 2 decision pursuant to SCC 30.44.240;
- (11) Short subdivision approval with no dedication of a new public road right-of-way;
- (12) Variance;
- (13) Single family detached units applications pursuant to chapter 30.41F SCC; and
- (14) Administrative site plan pursuant to SCC 30.23A.100.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 07-005, February 21, 2007, Eff date March 4, 2007; Amended Ord. 07-022, April 23, 2007, Eff date June 4, 2007, Amended by Ord. 08-136, Oct. 29, 2008, Eff date Nov. 24, 2008; Amended by Amended Ord. 08-101, Jan. 21, 2009, Eff date April 21, 2009; Amended by Ord. 09-079, May 12, 2010, Eff date May 29, 2010; Amended by Amended Ord. 10-023, June 9, 2010, Eff date Sept. 30, 2010)

30.71.025 Other decisions subject to Type 1 decision notice and appeal provisions.

Certain decisions not listed in SCC 30.71.020 and not otherwise subject to the provisions of this chapter may be subject to either the Type 1 notice or appeal provisions, or both, when specifically required by other provisions of this title.

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

30.71.026 Vacation of permits and variances.

(1) Requests to vacate a permit or variance shall be made in writing to the department of planning and development services.

(2) The director shall determine if the conditions in 30.43A.108 or 30.43B.128 are present prior to authorizing the vacation.

(3) Vacation of any permit or variance shall be documented by the filing of a notice of land use permit or variance vacation with the county auditor on a form provided by the department of planning and development services.

(Added Amended Ord. 05-022, May 11, 2005, Eff date May 28, 2005)

30.71.027 Review or revocation of certain permits or approvals.

(1) If the director determines that a permit or approval is in material violation of this title, the director may initiate proceedings before the hearing examiner to review or revoke the permit or approval, in whole or in part.

(2) The hearing examiner shall hold a hearing in accordance with SCC 30.71.100. The director shall provide notice in accordance with SCC 30.70.050.

(3) The hearing examiner, upon good cause shown, may direct the department issue a stop work order to temporarily stay the force and effect of all or any part of an issued permit or approval until the final decision of the hearing examiner is issued.

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

30.71.030 Type 1 process overview.

A Type 1 permit or decision is administratively made by the department. When a complete application is filed, the department provides notice of application, accepts written comments, and then issues a decision approving, approving with modifications or conditions, or denying the application. The department's decision is appealable to the hearing examiner, or, for a shoreline substantial development permit, shoreline conditional use permit, and shoreline variance, to the state shorelines hearings board. The hearing examiner's decision on appeal of a Type 1 application is the final county decision. Further appeal may be taken pursuant to a land use petition filed in superior court. For shoreline appeals, the state shorelines hearings board acts in place of the county hearing examiner.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Emergency Ord. 05-030, April 18, 2005, Eff date April 18, 2005)

30.71.040 Type 1 notice of decision.

(1) Written notice of a department decision on a Type 1 application shall be mailed to the applicant and all parties of record in the manner prescribed in SCC 30.70.045. The notice may include a written staff report if one has been prepared.

(2) The notice shall specify the appeal process and time period for filing an appeal.

(3) The county may provide additional public notice of a decision by notifying the news media and community organizations, placing notices in appropriate regional, neighborhood, ethnic, or trade journals or neighborhood/community newspapers, or by publishing notice in agency newsletters or on the county or department web page.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 03-068, July 9, 2003, Eff date July 28, 2003)

30.71.045 Effect of Type 1 decision.

The decision of the department shall be a final decision, but shall not authorize action until the expiration of the appeal period set forth in SCC 30.71.050, or if appealed, until the administrative appeal to the hearing examiner or state shorelines hearings board is final.

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

30.71.050 Appeal of Type 1 decision.

(1) Who may appeal. Any aggrieved party of record may file an appeal of a Type 1 decision.

(2) Time and place to appeal. Appeals of a Type 1 decision, except as provided in SCC 30.71.050(3), shall be addressed to the hearing examiner and filed in writing with the department within 14 calendar days of the notice of the decision, except that appeals of a Type 1 decision issued concurrently with a SEPA threshold determination shall be filed within 21 days of the notice of the decision, if the SEPA decision is a determination of nonsignificance that is required to have a public comment period pursuant to WAC 197-11-340.

(3) Shoreline appeals. Appeals of a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall be filed with the state shorelines hearings board pursuant to RCW 90.58.180.

(4) Fees. Each appeal filed on a non-shoreline Type 1 decision shall be accompanied by a filing fee in the amount of \$500.00; provided that the filing fee shall not be charged to a department of the county; and provided further 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.

(5) Form of appeal. A person appealing a Type 1 decision must file a written statement setting forth:

(a) Facts demonstrating that the person is aggrieved by the decision;

(b) A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria. An appeal of a SEPA environmental document shall describe any alleged inadequacy in the threshold determination or environmental impact statement with respect to evaluation of a specific environmental element;

(c) The specific relief requested; and

(d) Any other information reasonably necessary to make a decision on appeal.

(6) Limitation on new appeal issues. No new substantive appeal issues may be raised or submitted after the close of the time period for filing of the original appeal. The hearing examiner, if procedural limitations allow, may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal.

(7) Matters within the jurisdiction of the building code board of appeals. Matters within the jurisdiction of the building code board of appeals pursuant to SCC 30.50.020 shall not be subject to appeal pursuant to chapter 30.71 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-014, March 19, 2003, Eff date April 14, 2003)

30.71.055 Effect of appeal of Type 1 decision.

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 hearing examiner or the state shorelines hearings board or withdrawn. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county code.

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

30.71.060 Dismissal of appeal of Type 1 decision.

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

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

30.71.070 Notice of appeal of Type 1 decision.

(1) The department shall forward the appeal to the hearing examiner within three working days of its filing.

(2) The hearing examiner, within two working days of receipt of the appeal, shall send written notice of the appeal to the county department whose decision has been appealed; provided that such notice is not required when the department is the respondent.

(3) The hearing examiner, 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 applicant, unless the applicant is the appellant.

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

30.71.080 Notice of Type 1 open record appeal hearing.

(1) Notice of open record appeal hearings conducted pursuant to this chapter shall be provided at least 14 calendar days prior to the hearing and shall contain a description of the proposal and list of permits requested, the county file number and contact person, the date, time, and place for the hearing, and any other information determined appropriate by the department.

(2) Except where notice has already been given pursuant to the combined notice provisions of SCC 30.70.080(2), and except where notice has been provided by the department pursuant to subsections (3) and (4) below, the hearing examiner's office shall give notice of all open record appeal hearings by first class mail (unless otherwise required herein) to:

- (a) The appellant;
- (b) The appellant's agent/representative, if any;
- (c) The department whose decision is being appealed (by interoffice mail);
- (d) The applicant;
- (e) Applicant's agent/representative, if any; and
- (f) All parties of record.

(3) The department shall give notice of an open record appeal hearing for a decision made pursuant to chapter 30.41B SCC:

- (a) In the same manner as required by SCC 30.72.030; and
- (b) By first class mail to parties of record.

(4) The department shall give notice of an open record appeal hearing for a SEPA determination made pursuant to chapter 30.61 SCC by first class mail to:

- (a) Parties of record;
- (b) Agencies with jurisdiction as disclosed by documents in the appeal file; and
- (c) All taxpayers of record and known site addresses within 500 feet of any boundaries of the property subject to the appeal; provided that the mailing radius shall be increased if necessary to correspond with any larger radius required for the notice of any discretionary permit or action associated with the determination under appeal.

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

30.71.090 Report of department on appeal of Type 1 decision.

(1) The applicable department shall coordinate and assemble any available comments of other county departments and governmental agencies having an interest in the appeal, and shall prepare a report summarizing the Type 1 decision and responding to the issues raised in the appeal.

(2) At least seven calendar days prior to the scheduled open record appeal hearing, the applicable department shall transmit all development permit files on the action being appealed and the department's report to the hearing examiner, mail copies to the appellant, and make copies available for public inspection. Copies shall be provided to interested persons upon payment of reproduction costs as permitted by law.

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

30.71.100 Type 1 appeal hearing procedure.

(1) The hearing examiner shall conduct one open record hearing before a final decision is issued unless the appeal is dismissed or withdrawn. If necessary, the hearing may be continued beyond one day.

(2) The hearing examiner shall consolidate multiple appeals of the same action.

(3) The open record appeal hearing and hearing examiner consideration of the appeal shall be limited solely to the issues identified by the appellant in the written appeal submitted pursuant to SCC 30.71.050(4).

- (4) The appellant(s), the applicant, and the department whose decision is being appealed shall be parties to the appeal.
- (5) At the open record appeal hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence, except in the case of appeals under SCC 30.61.300.
- (6) Each party to the appeal may participate in the appeal hearing and shall have the following rights, as limited by the hearing examiner rules of procedure:
 - (a) To call, examine, and cross-examine witnesses on any issue relevant to the appeal;
 - (b) To introduce documentary or physical evidence; and
 - (c) To present rebuttal evidence.
- (7) Except in combined proceedings involving a Type 2 decision, interested persons, groups, associations, or others who have not appealed may participate only if called by one of the parties to the appeal to present relevant testimony.
- (8) All testimony shall be taken under oath.
- (9) An electronic transcript shall be made of the hearing.

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

30.71.110 Hearing examiner's decision on Type 1 appeal.

- (1) A final decision on appeal shall be issued within 15 calendar days of the conclusion of a hearing, but not later than 90 calendar days after the filing of a complete appeal, 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 except for purposes of applicable time limitations contained in SCC 30.71.110. The hearing examiner's decision shall specify procedures for responding to the order. If a new decision is issued by the department, a new appeal period shall commence in accordance with SCC 30.71.050.
- (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 Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.71.115 Notice of the hearing examiner's decision on Type 1 appeal.

Notice of the hearing examiner's decision on a Type 1 appeal, which may be the decision itself, shall be provided by regular mail or inter-office mail, as appropriate, to parties of record.

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

30.71.120 Reconsideration of hearing examiner decision on Type 1 appeal.

- (1) Any party to the 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;
 - (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
 - (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.
- (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 or changes proposed.
- (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 30.71.115. 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 30.71.110 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 30.71.110 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, proposed changes in the application, 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 30.71.110.
- (5) A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration; provided that a decision which has been revised on reconsideration from any form of denial to any form of approval with preconditions and/or conditions shall 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.

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

30.71.130 Appeal of hearing examiner's decision on Type 1 appeal.

- (1) The hearing examiner's decision on a Type 1 appeal is the final decision of the county and may be appealed to superior court within 21 days of issuance of the decision in accordance with chapter 36.70C RCW.
- (2) The cost of transcribing the record of proceeding, of copying photographs, video tapes and any oversized

documents, and of staff time spent in copying and assembling the record and preparing the record for filing with the court shall be borne by the party filing the petition. If more than one party appeals the decision, the costs of preparing the record shall be borne equally among the appellants.

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

Chapter 30.72

TYPE 2 PERMITS AND DECISIONS - HEARING EXAMINER

30.72.010 Purpose and applicability.

This chapter describes decision-making and appeal procedures and applies to all Type 2 permits and decisions.

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

30.72.020 Type 2 permits and decisions.

The following are processed as Type 2 permits and decisions:

- (1) Conditional use permit and major revisions;
- (2) Rezones (site-specific);
- (3) Official site plan or preliminary plan approval when combined with a rezone request in FS, IP, BP, PCB, T, RB, RFS, and RI zones;
- (4) Flood hazard area variance, if combined with a Type 2 application;
- (5) Preliminary subdivision approval and major revisions;
- (6) Planned residential developments;
- (7) Short subdivision with dedication of a new public road;
- (8) Shoreline substantial development, conditional use, or variance permit if forwarded pursuant to SCC 30.44.240
- (9) Shoreline substantial development permit rescission;
- (10) Boundary line adjustments as provided in SCC 30.41E.020; and.
- (11) Urban center developments as provided in SCC 30.34A.180(2).

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended by Amended Ord. 09-079, May 12, 2010, Eff date May 29, 2010)

30.72.025 Type 2 process overview.

Type 2 decisions are made by the hearing examiner based on a report from the department and information received at an open record hearing. The hearing examiner's decision on a Type 2 application is a final decision subject to appeal to the county council, except for shoreline permits issued under chapter 30.44 SCC. Appeals of shoreline substantial development permits, shoreline conditional use permits, and shoreline variances are made directly to the state shorelines hearings board.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Emergency Ordinance No. 05-030, April 18, 2005, Eff date April 18, 2005)

30.72.030 Notice and timing of open record hearing.