

2009 HEARING EXAMINER ANNUAL REPORT

JANUARY 1, 2009 - DECEMBER 31, 2009



SNOHOMISH COUNTY

**Barbara Dykes
Hearing Examiner
December 31, 2009**

PREFACE

The Snohomish County Hearing Examiner is required by county ordinance to:

report in writing to and meet with the Snohomish County Council and the Planning Commission at least annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the Examiner's decisions since the last report.

[Snohomish County Code (SCC) Section 2.02.200]. This report covers the period from January 1, 2009 through December 31, 2009. Statistical compilations are based on cases brought to hearing during the year and decided on or before the report date unless specifically noted otherwise.

OFFICE OF THE HEARING EXAMINER

Barbara Dykes, Hearing Examiner

Vacant, Deputy Hearing Examiner

Mary Kurke, Administrative Services Assistant

Kris Davis, Clerk of the Hearing Examiner

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INTRODUCTION

This report covers hearing activity for Snohomish County Hearing Examiner Barbara Dykes and Pro Tem Hearing Examiner Millie Judge from January 1, 2009 to December 31, 2009. Support Staff consists of Mary Kurke, Administrative Services Assistant and Kris Davis, Clerk to the Hearing Examiner.

MISSION OF THE HEARING EXAMINER'S OFFICE

The mission of the Hearing Examiner's office is to interpret, review and implement land use regulations in reviewing land use projects and proposals as provided by ordinance; to ensure procedural due process and appearance of fairness in regulatory hearings; to provide an efficient and effective hearing process for quasi-judicial matters; and comply with state and local laws regarding quasi-judicial hearings. (SCC 2.02.010 and .020)

QUASI-JUDICIAL HEARING ACTIVITY

1. *Land Use Permits and Appeals*

The year 2009 continued the trend begun in 2008 of the rapid decline in permit activity. In the first half of the year the Examiner wrapped up three large land use appeals (Seabrook Heights, Lake Goodwin, and Highbridge Estates) that still remained from the bulge of cases that had come through the 2007-08 load of cases. The caseload quickly trickled down to a slower pace for the remainder of the year, once all the reconsideration motions were addressed on those larger cases. In terms of the types of development that came in, there were proportionately more rural cluster developments than urban plats, although the sheer number of lots created in the urban area was higher. Presumably, thanks to some of the federal stimulus money and to bond issues, there were several new schools built and several modernizations/expansions to other schools and to a fire station. There were eleven rezones, most of which were in the urban area. Only one new appeal was filed under the State Environmental Policy Act (SEPA), and it was dismissed without hearing on procedural grounds.

2. *Appeals from the Auditor's Office Animal Control Services Division*

The number of appeals from the Auditor's Office Animal Services Control Division increased by one case from 2008 from 17 to 18 cases appealed. These cases typically include appeals of a Declaration of Potentially Dangerous Dog or Dangerous Dog, and can also include leash law violations, animal running at large violations, vicious dog violations, or kennel license suspensions. Usually, there are a number of violations combined in any one case.

3. *Code Enforcement Cases*

a. *The New Code*

The code enforcement caseload is declining as a result of the new code (although there are still quite a few cases remaining under the old code). In that respect, it has proven successful. However, the Examiner has very limited discretion to deal with extraordinary circumstances. In the case of either a contested citation or an appealed notice of violation, the Examiner's only function is to reverse or affirm, and to impose penalties in accordance with a chart in the code. The Examiner can provide more time to comply in a notice of violation. While there is less discretion, there is less in the way of penalties.

b. Trends

On an anecdotal level, recessionary times are not easy times for the Code Enforcement Division, or for the Hearing Examiner having to preside over these cases, whether under the new or the old code. So many of these files tell the story of this economy: there is someone who has faithfully tried to comply but just can't afford to go through the entire process. I can't tell you how many cases I have seen this year involving grading without a permit, where the violator has applied for a permit, has hired a biologist, gone through first review, needs some changes to complete the permit, but now just doesn't have the money to go through the rest of the process. People who have been working with Code Enforcement to remedy their violation just give up because they can't afford to come into compliance. It is a very difficult environment, when the only tool the Examiner has is to impose penalties. Some of these problems may be attributable to the consultants who have not done a good job for the violator, and have to go through a substantial resubmittal to get the permit approved. The Examiner notes that the Land Use Working Group has identified this as an issue. At this end of the spectrum, these people can least afford consultants to do work on permits, and need to count on the professionalism of those they do hire. For that reason, the Examiner recommends that the Council investigate this recommendation.

LAND USE WORKING GROUP

The Hearing Examiner has participated in the Land Use Working Group, a 14-member group composed of staff and stakeholders in the community chartered by Council in a 2009 budget note to work out some of the difficulties and issues in the land use process causing delays and conflicts. The group has met regularly since June 30, 2009. Though it has been a somewhat contentious process, the group has managed to agree on some meaningful recommendations that it plans to present to Council later in 2010.

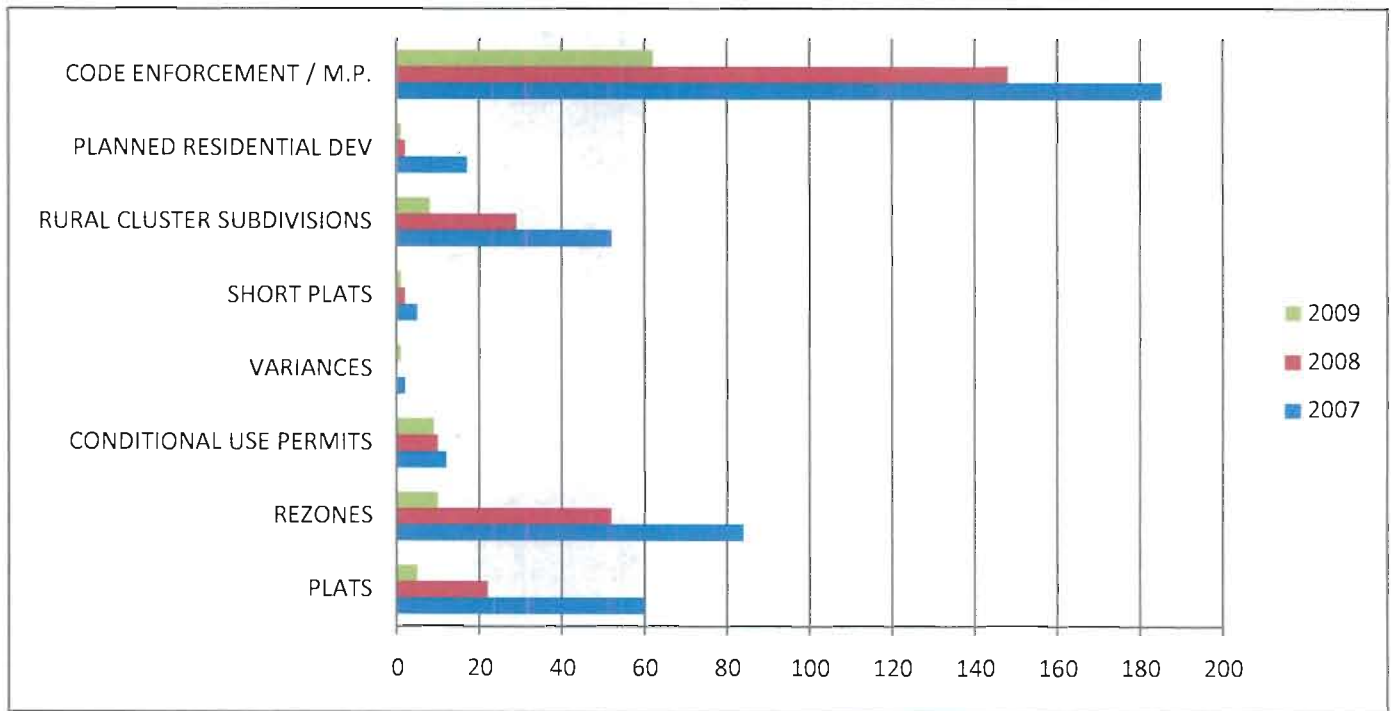
HEARING EXAMINER RULES OF PROCEDURE

Toward the end of last year, the Hearing Examiner undertook a project to update the Hearing Examiner Rules, with the aid of Pro Tem Examiner Millie Judge. The project extends into 2010. As a part of the project we have had preliminary interviews with stakeholders. Once the amendments are in a working draft form, we will issue them for review by all stakeholders, and request comments. We will bring them to the Council at the Planning Committee for review. At the end of the review period, we will issue a final draft, and allow another comment period. At the end of the comment period, we will issue the final product. Under SCC 2.02.090, once the Examiner has adopted the Rules, she must within five days transmit a copy of the Rules to the Clerk of the Council for Council review. The rules shall remain in effect unless rejected or modified by the Council. If the Council does modify or reject a rule, the Examiner shall incorporate the action within ten days of adoption of the motion.

CHART 1

HISTORICAL COMPARISONS

	<u>2007</u>	<u>2008</u>	<u>2009</u>
CODE ENFORCEMENT / M.P.	185	148	62
PLANNED RESIDENTIAL DEV	17	2	1
RURAL CLUSTER SUBDIVISIONS	52	29	8
SHORT PLATS	5	2	1
VARIANCES	2	0	1
CONDITIONAL USE PERMITS	12	10	9
REZONES	84	52	10
PLATS	60	22	5



Plats Approved in 2009

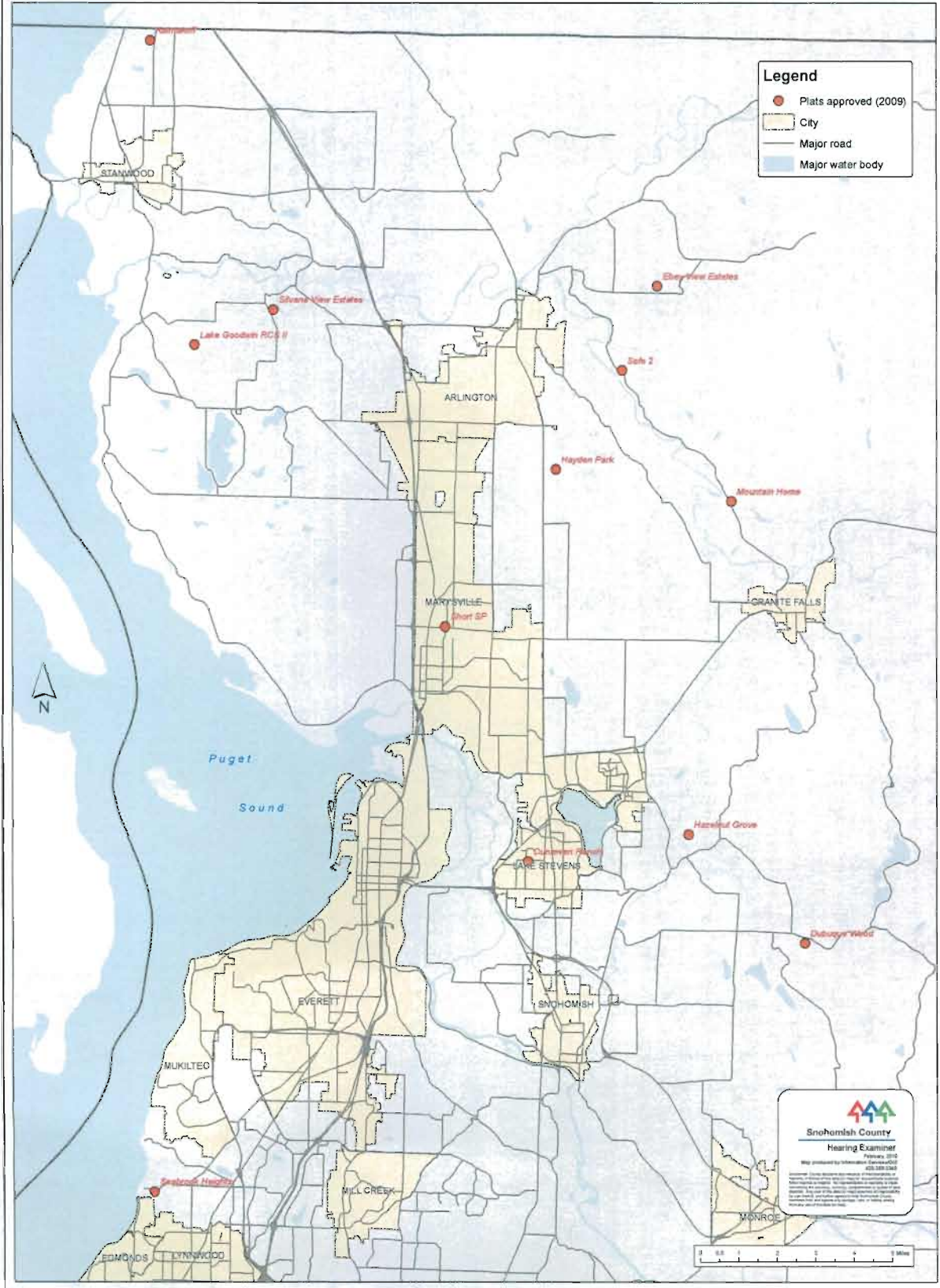


CHART 2

2009 APPROVED LAND USE APPLICATIONS

<u>File Number</u>	<u>Project Name</u>	<u>Address</u>	<u>Case Type</u>	<u>Acres</u>	<u>Lots</u>
08 106879	Alexan North Creek	1225 183rd St SE, Bothell	R/OSP	20.6	
07 102067	Apple Grove	8823 47th Dr NE, Marysville	SP	1.02	5
07 102236	Arbor Mist	5617 143rd St SW, Edmonds	OSP, PRD, R & V	0.99	7
08 107274	Camwest Shelby Rd	3812 Shelby Rd, Lynnwood	R	0.5	
07 114135	Cherba	12809 25th Ave SE, Everett	R	0.95	
07 101930	Delap Bev-Ed	13429 Beverly Park Rd, Lynnwood	R	0.46	
08 104140	Dubuque Wood Crk Estates	20022 Dubuque Rd, Snohomish	RCS	10.4	5
06 133489	Dunroven Ranch	8332 8th St SE, Everett	P	4.33	12
08 101749	Ebey View Estates	23030 135th Ave NE, Arlington	RCS	20	9
08 109084	Fernwood Elementary	3933 Jewell Rd, Bothell	CU/R & L/M	12.38	
06 128534	Hayden Park	9218 156th ST NE, Arlington	RCS	63.63	19
08 108940	Hazelnut Grove	323 Russell Rd, Snohomish	RCS	10.55	5
07 110973	Kalmakoff	32706 76th Ave NW, Stanwood	RCS	18.92	5
06 128373	Kate Kim	3315 Lincoln Way, Lynnwood	R	0.38	
09 104128	Kelly Heath	18905 24th Ave W, Lynnwood	R	1.4	
07 113020	LDS Church	14415 369th Ave SE, Sultan	CU/R	5.56	
08 109669	Loren West	7215 187th Dr SE, Snohomish	CU	5	
09 100229	Machias Elementary	231 147th Ave SE, Snohomish	CU	9.75	
06 135593	Madison Park	14709 Madison Way, Lynnwood	P/OSP	1	11
06 103231	Mountain Home	14011 Jordan Rd, Arlington	RCS	57.5	18
09 101171	Outlook Vista	1215 Seattle Hill Rd, Snohomish	REV/P	12.81	38
08 107724	Paca Pride Guest Ranch	28311 Mt. Loop Hwy, Granite Falls	R & CU & L/M	14.96	
09 101940	Pilchuck Vet Clinic	11308 92nd St SE, Snohomish	CU/R	18.89	
07 114929	Rainier Real Estate Venture	16921 6th Ave W, Lynnwood	R	1.03	
08 104455	Randy & Rick Wilson	26 Meadow Pl SE, Everett	R	0.89	
09 100227	Riverview Elementary	7322 64th St SE, Snohomish	CU	9.6	
07 101231	SAFE 2	19521 Jordan Rd, Arlington	RCS	35.97	16
08 102405	Silvana View Estates	2532 219th St NW, Stanwood	RCS	19.74	9
09 103884	Station 94	2720 212th St NW, Stanwood	CU/R	9.08	
07 102437	Vine Maple	Lake Stevens	P	3.4	15
06 130307	Willow Tree Grove	2129 Maltby Rd, Bothell	PCB	14.43	

Legend

P = Plat
 SP = Short Plat
 R = Rezone
 V = Variance
 OSP = Official Site Plan
 RCS = Rural Cluster Subdivision

REV/P = Revised Plat
 PRD = Planned Residential Development
 CU = Conditional Use
 CU/R = Conditional Use Revised
 L/M = Landscape Modification
 PCB = Planned Community Business

CHART 3

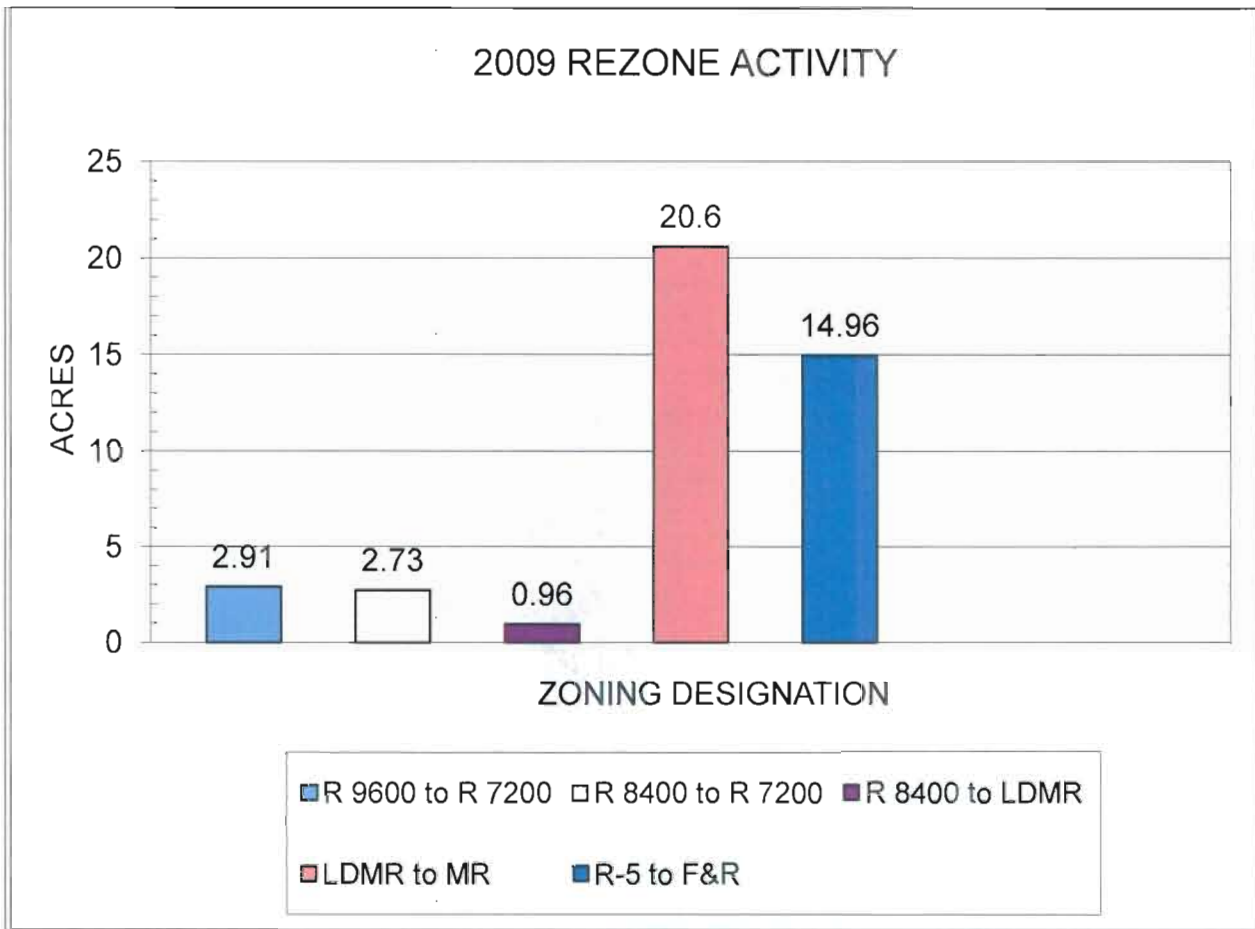


CHART 4

2009 CASE ACTIVITY

NUMBER OF HEARING DAYS	43
LAND DEVELOPMENT DECISIONS ISSUED	35
APPEALS / MONETARY PENALTY CASES FILED:	
SEPA Appeals	1
Notice of Violation Appeals	15
Potentially Dangerous Dog and Dangerous Dog Appeals	18
Notice and Order Alarm Appeals	0
Monetary Penalties	17
Other Administrative Appeals	2
TOTAL	53
PREHEARING/STATUS CONFERENCES:	
SEPA Appeals	1
Alarm Appeals	0
Potentially Dangerous Dog and Dangerous Dog Appeals	1
Other Administrative Appeals	1
TOTAL	3
APPEALS OF HEARING EXAMINER DECISIONS:	
Cases Appealed to Council	TOTAL 4
05 122348 Highbridge Estates	Denied
08 104140 Dubuque Wood Creek Estates	Granted
06 125856 Lake Goodwin RCS II	Denied
05 121365 Seabrook	Denied
Appealed to Superior Court	TOTAL 4
05 119515 Lake Armstrong	Remains open
07 104292 Dubuque Ridge 1 & 2	Remains open
06 127496 Degrazia	LUPA Dismissed
07 113862 Winter / DeJong	LUPA Dismissed
06 125856 Lake Goodwin RCS II	Settled

**RECONSIDERATION ACTIVITY
and
ADMINISTRATIVE APPEALS PROCESSED**

2009

In 2009, 13 parties filed reconsideration petitions on 13 of the 54 decisions issued. Of the 13 petitions filed, 3.5 were denied without further proceedings, 1.5 were granted without further proceedings, 4 were granted after further written or oral proceedings, and 4 were denied after further written or oral proceedings.

In 2009, there were four appeals (consolidated) to Council (down from 2008 when there were 12 appeals to Council). There were four appeals to Superior Court.

CHART 5

2009 RECONSIDERATION ACTIVITY

	Examiner	Deputy	Pro-Tem	Total
Number of Decisions in which Reconsideration was requested	9	0	4	13
Total number of Reconsideration requests filed	9	0	4	13
Of the total number of Reconsideration requests filed:		0		
Number Denied without further proceedings	3.5	0	0	3.5
Number Granted without further proceedings	1.5	0	0	1.5
Number for which written responses were requested	4	0	4	8
Of those, number ultimately Denied	2.5	0	1.5	4
Of those, number ultimately Granted	1.5	0	2.5	4
Number in which the hearing was reopened	0	0	0	0
Of those, number ultimately Denied	0	0	0	0
Of those, number ultimately Granted	0	0	0	0
Number withdrawn	0	0	0	0

CODE ENFORCEMENT AND LICENSING ACTIVITIES

1. Code Enforcement Cases.

A large part of the Hearing Examiner's work is hearing code enforcement cases under Chapter 30.85 SCC. The Examiner hears Notice of Violation appeals, Contested Citation appeals and some older Monetary Penalty cases (prior to code changes of cases where a Notice and Order had not been appealed, and The Department of Planning and Development Services (PDS) requests the Examiner to impose penalties for non-compliance). Penalties accrue under the (former) code at \$100/day for a noncommercial violation, and \$250 per day for a commercial violation.

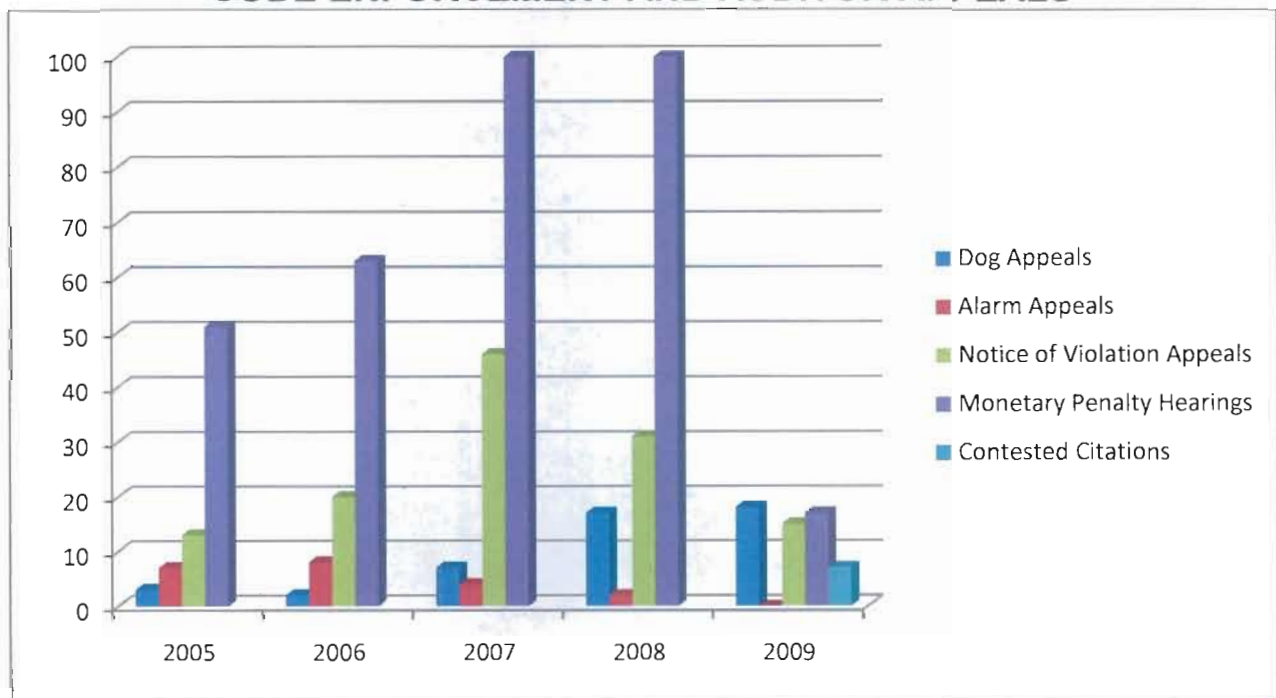
2. Appeals From the Auditor's Office/Licensing Division.

The Hearing Examiner can get many different types of appeals from the Licensing Division. In recent years we have received False Alarm appeals and Animal Control appeals. In 2009, we received no False Alarm appeals. Animal Control appeals include Notice of Violations (tickets), Notice of Potentially Dangerous Dog, Notice of Dangerous Dog, and Kennel License Suspensions.

Below are charts that compare the numbers for code enforcement and auditor appeals:

CHART 6

CODE ENFORCEMENT AND AUDITOR APPEALS



	2005	2006	2007	2008	2009
Dog Appeals	3	2	7	17	18
Alarm Appeals	7	8	4	2	0
Notice of Violation Appeals	13	20	46	31	15
Monetary Penalty Cases	51	61	100	100	17
Contested Citation Appeals	n/a	n/a	n/a	n/a	7
TOTAL	74	91	157	150	57

2009 Code Enforcement / Appeal Cases

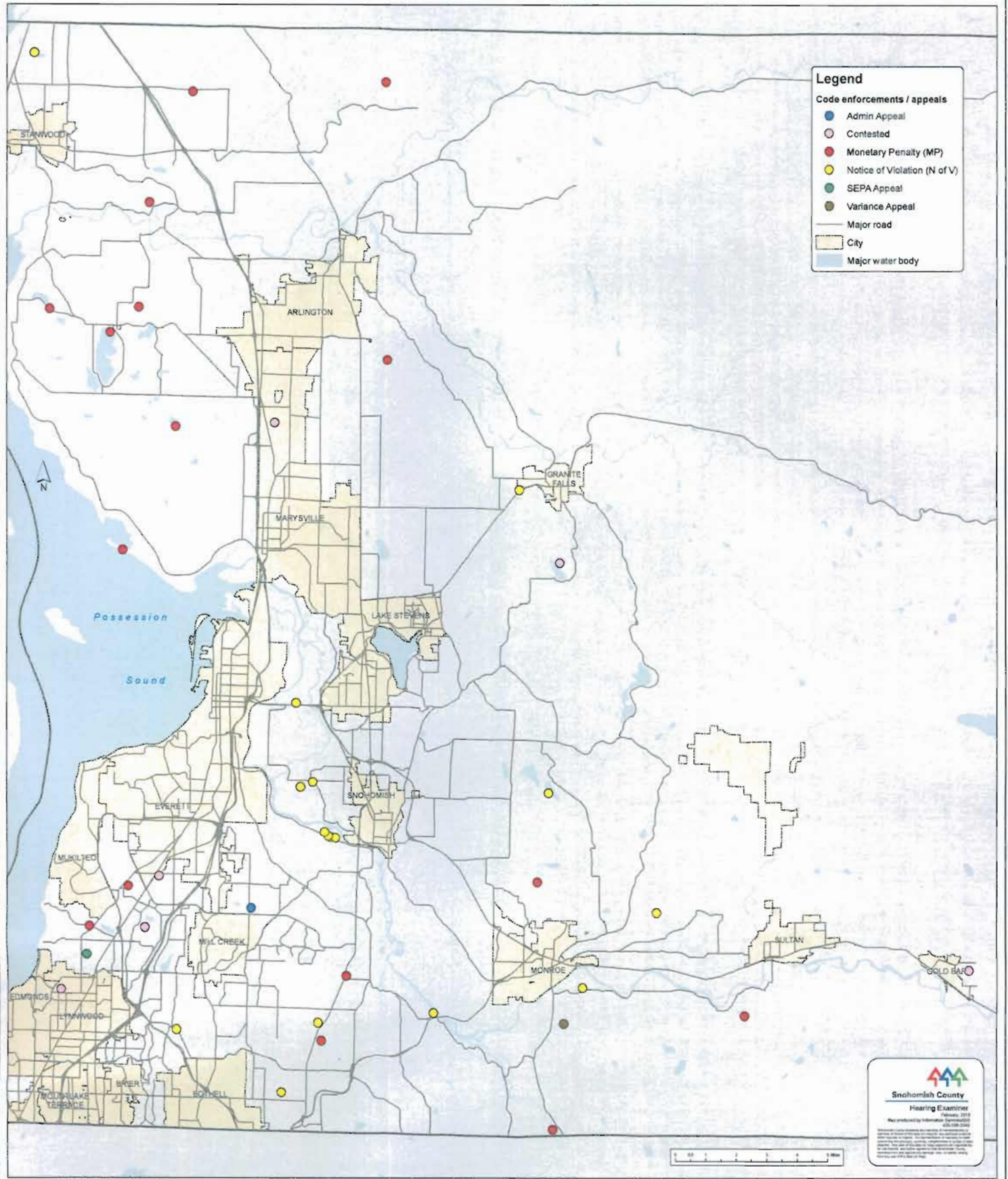
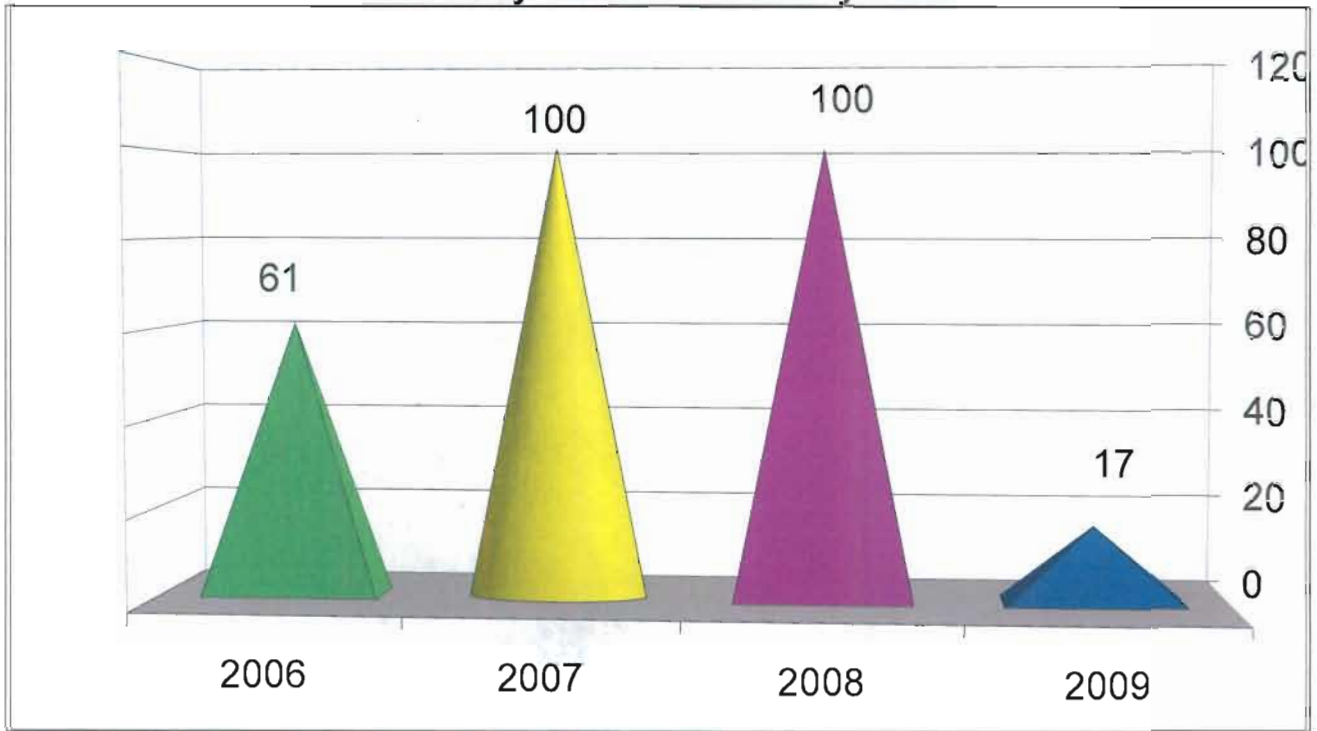


CHART 8

Monetary Penalties Filed by Year



Finally, the chart below gives you an idea of how many dollars in monetary penalties were imposed by the Examiners in 2009.

2009

Penalty Information for Monetary Penalty Cases

4 CASES COMPLIED PRIOR TO A HEARING

AFTER A HEARING:

- 1 CASE - PENALTIES WERE IMPOSED *without time to comply* for a total amount of **\$9,900.00**
- 4 CASES - PENALTIES WERE IMPOSED *with time to comply* for a total amount of **\$16,500.00**

Penalty Information for Contested Citations

AFTER A HEARING:

- 3 CASES - PENALTIES WERE IMPOSED at \$150.00 each for a total amount of **\$450.00**

2009 POLICY/ORDINANCE REVISIONS

The Growth Management Act (GMA) specifies that growth planning decisions shall not be made during individual project review, but that if during project review a county planning under the GMA identifies deficiencies in plans or regulations, those identified deficiencies shall be docketed for future plan or development regulation amendments. RCW 36.70A.470.¹ RCW 36.70A.470(2) specifically mentions that the hearing examiner shall be included in this procedure to suggest development regulation amendments. It has long been the practice to place policy and ordinance revision suggestions in the Hearing Examiner's Annual Report.

1. **Definition of "Shooting Range" SCC 30.91S.180.** The breadth of the applicability of this definition (and therefore its limitations in the zoning code) is vague. Applicability needs to be clarified—does it apply to only commercial shooting ranges? Or "public" shooting ranges? Or "private" shooting ranges? This came up in a recent code enforcement case. Shooting ranges are obviously a matter of public health, safety and welfare. They also involve issues like parking and hazardous waste (bullet retrieval). PDS has (of necessity) interpreted this definition to only apply to commercial ranges, but it is not a clear definition at all, and there are obvious safety and health issues any time a shooting range comes into existence.
2. **Use of the Forestry & Recreation (F&R) Zone as a Floating Zone.** The F&R zone has been in the code and the comprehensive plan since pre-GMA days (as I learned during a recent hearing), and has always been treated as a "floating" zone, or a zone that can cross into many different types of designations, depending on the specific area's compatibility with the uses allowed, which include camping and other types of forest recreation, as well as use of forest land for production of forest products. In a recent case, I was faced with a rezone of R-5 zoned land to F&R. PDS staff chronicled to me a very long history of treating F&R as a "floating" zone, which could cross virtually any designation as long as site circumstances were deemed appropriate. Given that history of application, I granted the rezone. However, the actual definition of the zone would limit its application only to a Forestry designation. (See SCC

¹ RCW 36.70A.470 Project review—amendment suggestion procedure—Definitions.

(1) Project review, which shall be conducted pursuant to the provisions of chapter 36.70B RCW, shall be used to make individual project decisions, not land use planning decisions. If, during project review, a county or city planning under RCW 36.70A.040 identifies deficiencies in plans or regulations:

- (a) The permitting process shall not be used as a comprehensive planning process;
- (b) Project review shall continue; and
- (c) The identified deficiencies shall be docketed for possible future plan or development regulation amendments.

(2) Each county and city planning under RCW 36.70A.040 shall include in its development regulations a procedure for any interested person, including applicants, citizens, hearing examiners, and staff of other agencies, to suggest plan or development regulation amendments. The suggested amendments shall be docketed and considered on at least an annual basis, consistent with the provisions of RCW 36.70A.130.

(3) For purposes of this section, a deficiency in a comprehensive plan or development regulation refers to the absence of required or potentially desirable contents of a comprehensive plan or development regulation. It does not refer to whether a development regulation addresses a project's probable specific adverse environmental impacts which the permitting agency could mitigate in the normal project review process.

(4) For purposes of this section, docketing refers to compiling and maintaining a list of suggested changes to the comprehensive plan or development regulations in a manner that will ensure such suggested changes will be considered by the county or city and will be available for review by the public.

30.21.025(3)(b)). It states that the "intent and function of the forestry and recreation zone is to provide for the development and use of **forest land . . .**" Under SCC 30.91F.460, "Forest land" means any land "designated commercial or local forest land . . . by the comprehensive plan." As you can see, the PDS longstanding interpretation is totally inconsistent with the current code. Because the particular project had the strong support of everyone involved, and even the mayor of the nearby town testified on behalf of the project, I approved it. However, a policy decision needs to be made regarding whether this zone should only be applied in the Forestry zone, or whether the definition should be revised to allow it to be used in other designations, as it has been historically used by PDS.

3. **Regulation of Assisted Living Facilities.** I recently considered a conditional use permit in the Southwest UGA for an assisted living facility and found the regulations to be somewhat generic. An assisted living facility is classified as a Health and Social Services Facility Level II, which is defined as:

Level II Health and Social Service Facility (Level II HSSF). A Level II HSSF means a use which is licensed or regulated by the state to provide emergency medical treatment on a 24-hour per day basis or which houses persons in an institutional setting that provides chronic care or medical service on regular recurring basis to its residents and which includes, but are not limited to a:

- (a) Hospital (including acute alcoholism/drug, psychiatric and state mental hospitals);
- (b) Nursing home;
- (c) Private adult treatment home;
- (d) Mental health facility, adult and child residential,
- (e) Soldiers' home and veterans' home;
- (f) **Large institutional boarding home for the care of senior citizens and the disabled sometimes known as assisted living facilities or continuous care retirement communities with emphasis on assisted living that may also include independent living and congregate care;**
- (g) State residential school for hearing and visually impaired
- (h) Alcoholism and drug residential treatment facility;
- (i) Child birthing center/facility; and
- (j) Hospice.

(Emphasis added). The regulations refer to a "large" facility when referring to assisted living facilities. They are also grouped with other large, institutional uses such as hospitals. While assisted living facilities are sometimes large institutional uses, that is not always the case. In the recent case I heard, the facility was 60 beds and similar in character to a multi-family apartment complex.

HSSF II facilities require a 30-foot setback under the code. In the case I had, the applicant requested and received a variance to reduce that setback on two sides of the building. That may not be desirable in all cases, but for some small assisted living facilities, a 30-foot setback on all sides may be excessive and even inconsistent with the GMA's goal of creating dense urban infill. It may be difficult in all cases for such applicants to meet variance criteria, even though large setbacks do not serve a useful purpose.

The Examiner has seen several of these facilities come to hearing in the last year. With a shift in demographics and larger older population, it might be worthwhile considering putting some quality design standards together for these facilities. For instance, there are no parking standards in the code for these facilities, so we accept the industry standard. In addition, these facilities have a high number of aide calls, and there has to be assurance that there is plenty of

clearance for fire and aid vehicles. With commercial deliveries, there is concern that there is not excessive noise from commercial vehicles backing up in a residential neighborhood. Finally, things like HVAC systems can create noise in a neighborhood. Building design standards are also a concern. The county may also want to create some minimum outdoor recreational space requirements for the residents. Some of this can be done ad hoc through the conditional use process, but it would be much better if planners could create good quality design standards to fit these facilities in a manner well thought out before the applicant comes through the door.

2007 – 2008 POLICY/ORDINANCE REVISIONS (*Never acted upon*)

1. **Update of Chapter 2.02 SCC.** Chapter 2.02 SCC, the Hearing Examiner's enabling ordinance, is badly out of date. Although there is a provision that says that it does not apply to anything in Title 30 SCC, it contains extensive provisions dealing with land use appeals that are conflicting with Title 30 SCC, but that are sometimes used for other types of appeals. It needs to be updated as quickly as possible. **2009 Update: The Examiner, in conjunction with the Prosecuting Attorney's Office is working on bringing forward a draft.**
2. **Development of a Water Code.** A water code for rural area development is badly needed. As the Council is likely aware, individual wells are often proposed for each of the lots in a proposed subdivision. RCW 90.44.050 governs groundwater withdrawals, and generally requires a water rights permit to withdraw "public groundwaters of the state" from the Department of Ecology (DOE). There is an exception for single or group domestic uses in an amount not exceeding 5000 gallons per day, an exemption more commonly known as the "exempt well" provision. The difficult issues with local enforcement include: 1) What is a group use? (Question from Highlands Ranch South case) Do developments that meet this provision at preliminary plat make adequate provision for potable water supply? 2) How many gallons per day/per house is adequate? The Health District and Department of Health require 400 gallons per day. The DOE suggests 350 gallons per day but in the past has required 800 gallons per day. What about fire flow? 3) Should ground water studies be required in certain situations where there has been issues with wells going dry in the surrounding area?

Chapter 173-505 WAC, entitled "Stillaguamish River Basin Water Resources Inventory Area (WRIA) 5", is in effect in the entire northern part of the county. This chapter, better known as the Instream Flow Rule for the Stillaguamish River established by the DOE provides a new set of requirements that must be met for any development wishing to use exempt wells within Water Resource Inventory Area (WRIA) 5. (see WAC 173-505-010(2))

Craig Ladiser, Director of PDS, in a letter dated November 17, 2005, assured the DOE the following:

In partnership with Snohomish Health District, Snohomish County confirms that any legally required determinations of adequate potable water for subdivision approvals and for building permits for new dwellings will be consistent with the applicable provisions of Chapter 173-505 WAC.

Unfortunately, June 4, 2008 was the first time the Examiner was presented with this letter (by an applicant). The rules come with some significant restrictions on water usage.

WAC 173-505-020 sets forth the purpose of the chapter which has set instream flows for the Stillaguamish Basin to protect wildlife, fish, recreation, water quality, potable water supply, stock watering, and other needs. It also sets forth the DOE's policies to guide protection, utilization,

and management of the river, including closures, and sets forth a program of future water allocation.

Important to the county development is the fact that WAC 173-05-090 has allocated a total amount of water not to exceed 5 cubic feet per second (cfs) to provide adequate and safe supplies of water for year-round domestic uses. It is further defined for the North and South Fork of the Stillaguamish at 2 cfs and 1.5 cfs respectively, as indicated on Table 8 at WAC 173-05-090(1). Use is only available under the following conditions specified at WAC 173-505-090(2):

- (a) The reserved water shall be for ground water uses exempt from a water right permit application. This reservation is for either single or small group domestic uses, as defined in WAC 173-505-030(5).
- (b) This reservation of ground water shall not exceed 3.23 million gallons of water per day (5 cfs).
- (c) **Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.**
- (d) **This reservation shall be applicable only when the appropriate city(ies) or counties submit a written acknowledgment to the department that confirms that any legally required determinations of adequate potable water for building permits and subdivision approvals will be consistent with applicable provisions of this chapter.**

Once this chapter is adopted and written acknowledgment is received, the department will promptly notify those city(ies) or counties, the tribes, water well contractors and the public that the reserve is in effect in those jurisdictions where acknowledgments exist.

- (e) It shall be the responsibility of an applicant for a building permit or subdivision approval proposing a water use under the reservation to comply with the conditions in (a), (c), (e), (f), (g) and (h) of this subsection and all other conditions of this chapter.
- (f) **A new ground water withdrawal under this reservation is not allowed in areas where a municipal water supply has been established and a connection can be provided by the municipal supplier. If an applicant for a building permit or subdivision approval cannot obtain water through a municipal supplier, the applicant must obtain a letter from a municipal supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.**
- (g) **Outdoor water use is limited to the watering of an outdoor area not to exceed a total of 1/12th of an acre for all outdoor uses under each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.**
- (h) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for

management of the reservation and water resources in the area of the reservation. **All other ground water users under the permit-exemption shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department.**

WAC 173-505-090 (emphasis added).

This section also emphasizes that the rule provides a single, one-time amount of water. Once the reserved water is fully allocated, it is no longer available. Finally, WAC 173-505-090(6)(a) addresses amount of water usage per residence. It states:

A record of all ground water withdrawals from the reservation shall be maintained by the department. The department will account for water use under the reservation based on the best available information reflecting actual water uses contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents. **When other sources of information are not readily available, the department may account for water use at a rate of three hundred fifty gallons per day (gpd) per residence or business. This figure may be adjusted down to one hundred seventy-five gpd if the residence or business is served by an on-site septic system.**

Emphasis added.

These rules have been the subject of interpretation of several of my decisions. It would be helpful if the Council would consider enacting local legislation addressing the outdoor watering provision in the context of a "group use" and the metering provision.

3. **The Subdivision Code, SCC Chapter 30.41A.** The subdivision code has never really been updated to become a full-fledged development regulation. Over the years, its provisions have been replaced in a piecemeal fashion with a number of specialized codes dealing with the various general sections that used to govern the development of subdivisions. While this may be appropriate, it has led to some inconsistencies that are confusing at best, and may be outright conflicts in other places. There is also the remaining question of what role the Hearing Examiner and the public may have when the codes that govern the substantive issues provide that the administrative director in charge has the authority to make the decision. The Examiner does not know what the answer to the question is, but urges that the Council consider the subdivision code as a whole and the balance between departmental expertise and public participation.

One major issue that dovetails with the above issue that the Council should consider is: how much information should be disclosed during the public hearing portion of the project? The trend appears to be less and less. I often hear from applicants or PDS that the preliminary plat design is virtually meaningless; that everything is subject to change during the construction/final plat stage. Very little information is currently given on required grading and drainage during the preliminary plat stage. The preliminary plat stage is often characterized by staff as little more than a sign-off on a certain number of lots.

4. **Urban rezone criteria.** The Council's motions, along with a number of my decisions interpreting them, have developed some criteria to make the rezone process more predictable. The criteria are based on policies in the comprehensive plan. The Council should consider codification of these criteria to further make this process easier and more predictable in areas where infill is desired.

5. **Code Enforcement—Providing options to those who cannot clean up property for themselves.** The Examiners often run across code enforcement cases where we are faced with imposing fines against people who are unable to clean up junkyard conditions on their properties for one reason or another—they are sick, destitute, mentally ill, or just marginally keeping their lives together. Sometimes someone else deposited the junk at the property (a son or daughter) and the person is elderly and/or financially unable to hire people to take it away. Unfortunately, the code does not often allow for creative solutions to these real world problems. Levying large fines on these people and their property does nothing to create compliance.

The Examiner suggests the Council might consider a community service program of some type that would provide for help in these situations. Perhaps there could be a reduced tipping fee for junk haulers who donate a certain number of hours providing this service.

6. **Code Enforcement—help with the permit process.** Many of the people I have seen in grading cases have come back unable to get a permit, because they are intimidated by the two-page form they have to fill out at the PDS customer service counter. I realize in these tight budget times it may be unrealistic, but some of the code enforcement issues we see regarding failure to get a permit is the difficulty of the process itself, and the fact that some people are not skilled at filling out paperwork. It would be very helpful to have an ombudsman to help customers through the grading process in particular.
7. **Generic code provision for pre-conditions on plats.** I often place “pre-conditions” on plats that are helpful to allow a plat to be finished with the public hearing process, but not actually approved until they meet a condition that is lacking. A pre-condition I often use is water availability. Typically, for a rural cluster subdivision we will thoroughly discuss the options for water provision in the hearing, but the applicant will not have worked out exactly how he/she can provide water to all the lots in the plat. I place a pre-condition such as the following:

Applicant shall submit to PDS evidence of appropriate provision of potable water supply consistent with the decision for preliminary plat approval. Applicant has up to one year to submit such evidence, which shall also be copied to the Hearing Examiner. The Applicant may request an extension pursuant to Part 900 of the Hearing Examiner Rules of Procedure.

Pre-conditions are allowed by Part 900 of the Hearing Examiner Rules of Procedure and the limitations are specified in detail in that part of the Rules. Although this system has worked well over the years, I believe it would be a good idea to codify this practice. If amendments to the subdivision code are forthcoming, that would be the ideal place to put this provision. **2009 Update: The Land Use Working Group is also recommending codification of preconditions as well as other practices that allow for flexibility in the Hearing Examiner’s process.**

8. **Notice**—As Hearing Examiner I do not pass judgment on the quality of notice one way or the other if it complies with the code; I will only pass on to you that I have heard a great deal of complaints from citizens about the quality of the notice provided. The complaints are two-fold: 1) 1000 feet of the boundary of the subject property is not large enough in the rural area; and 2) postcard notices are too small and get lost in all the junk mail.
9. ~~²Forest Practices Act:—The County needs legislation on the lift of the six-year moratorium. See RCW 76.09.460.~~

² Omitted – Statute changed
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10. ³~~Rural Cluster Subdivision Code~~ Mechanisms to make sure design criteria are followed. Under the current rural cluster subdivision code criteria, we have criteria to require site plans to be developed in a certain way—for example, to site the lots to the interior if possible, and to put the lots with treed areas on ridge lines to minimize development, etc. As far as I can tell, very little is done to enforce these requirements. I am often told at hearings by applicants and staff alike that the configuration of the lots is subject to change at final plat anyway.

~~It is quite difficult to fix a site plan that does not comply with the code at the Hearing Examiner stage. One issue would be to provide express authority to condition plats to require applicants to retain trees in forested areas where lots are sited, if the intention is to have forested lots obscure houses. I suggest that if the Council wishes to retain design authority over rural cluster subdivisions, that there be some study of how the criteria are presently implemented and ways to make sure it could be better implemented.~~

11. **Code Enforcement and Development Applications.** SCC 30.41C.210(4), the rural cluster subdivision code, has a provision stating that at the time of application, the site shall not be subject to any pending enforcement actions. Other codes do not have such provisions. On many of my site visits I have noticed code violations at development sites. During my one experience regarding SCC 30.41C.210(4), I discovered the policy of PDS is simply to close the enforcement action upon application and provide for mitigation in the Critical Area Regulations (CAR) mitigation plan, if necessary. There may be some utility to dealing with the code violation this way, but in my view, it violates the code. In cases such as urban rezones, there can be big Snohomish County hearing signs in front of sites with junk cars and debris. I bring this to your attention simply because it seems like a significant policy issue on which you might desire some consistency. In the case of rural clusters, I determined in my decision on the matter that PDS was not following the intent of the code and that the applicant needed to address the code violation before anything happened in the permit process according to the language in the code. It seems like as a policy matter you might want to be consistent in policy about whether code violations need to be addressed by permit applicants before going through the permit process or not. You may want to change the language of SCC 30.41C.210(4), or conversely, you may want to add language to other codes requiring applicants to clean sites up prior to applying for permits.

³ Omitted – Code updated
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