

# **SNOHOMISH COUNTY HEARING EXAMINER'S 2006** **ANNUAL REPORT**

## **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 calendar year 2006.

### **OFFICE OF THE HEARING EXAMINER**

Robert J. Backstein, Hearing Examiner

Edward L. Good, Deputy Hearing Examiner

Mary Kurke, Administrative Services Assistant

Kris Davis, Clerk of the Hearing Examiner

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## **INTRODUCTION**

This report covers the hearing activity for Snohomish County Hearing Examiner, Robert J. Backstein, and Deputy Hearing Examiner, Edward L. Good, from January 1 to December 31, 2006.<sup>1</sup> Support staff consists of Mary Kurke, Administrative Services Assistant and Kris Davis, Clerk of the Hearing Examiner

This report also contains various tables. Tables 1 and 2 have accompanying bar charts that show, at a glance, the comparisons in activity from the two previous years.

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<sup>1</sup> Chief Hearing Examiner Robert Backstein retired on October 20, 2006. Mr. Gordon F. Crandall was hired by the County Council as a Hearing Examiner Pro Tem until the position could be filled permanently.

## **GOALS**

The Office of the Hearing Examiner strives to:

1. Perform quasi-judicial tasks on behalf of the County Council as directed by that Council.
2. Conduct full and fair hearings and issue decisions in accordance with the law and based upon the facts.
3. Make every effort to avoid delay and to issue each decision within 15 days of the close of the record, unless special circumstances arise.

## **PRODUCTIVITY**

In 2006, the Examiners heard 272 cases in (coincidentally) 272 work days: which averages one case per day.

In addition, the Examiners held 119 pre-hearing conferences: an average of a conference approximately every second work day.

The 391 combined hearings and conferences in 272 work days averaged approximately 1.5 hearings/conferences daily. Further, each hearing or conference required a written document by the Examiner: either a final decision or an order. Hearings/conferences conducted and decisions/orders written totaled 782 work products in 272 days: three a day.

Further, the Examiners responded to 22 petitions for reconsideration during 2006<sup>2</sup>. With 272 decisions issued and reconsideration requested on 30 (11%) of those, 89% of the decisions issued had no request for reconsideration filed.

The Examiners accomplished that output in large part because of the two administrative staffers (Mary Kurke and Kris Davis) who professionally performed multiple tasks essential to administering a quasi-judicial department.

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<sup>2</sup> Some decisions had more than one person file a petition for reconsideration

## **A CLOSER LOOK**

**(See Tables 1 and 1A)**

Of the 272 decisions rendered, 221 of them (81%) were land development cases, SEPA appeals or other administrative appeals to the Examiner. The remaining 51 cases (19%) were appeals from code enforcement notice and orders, appeals from potentially dangerous dog determinations, fire alarm appeals, and monetary penalty cases.

Of the 272 Examiner decisions issued by the Examiners, only 14 (5%) were appealed to the County Council. Otherwise stated, 95% of the Examiners' decisions were not appealed. Four Examiner decisions were appealed to Superior Court.

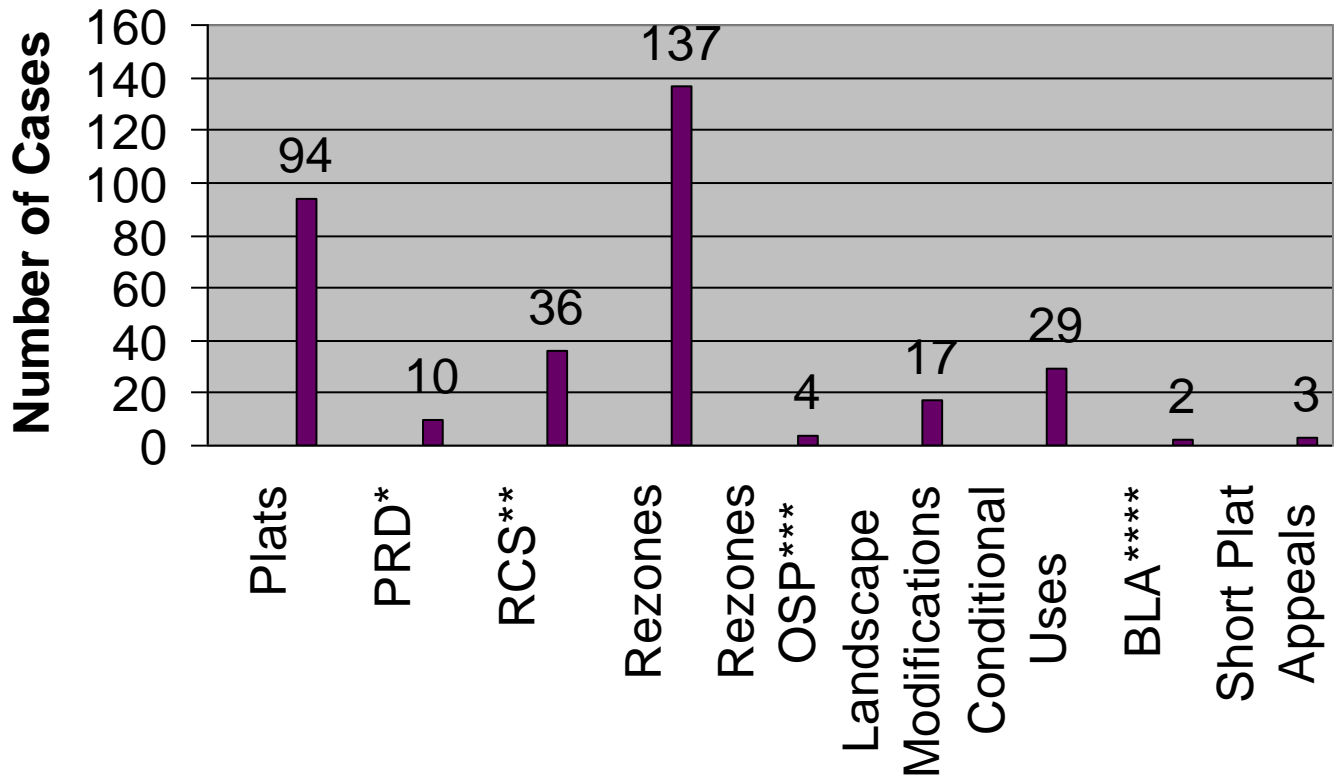
**TABLE 1**  
**CASE ACTIVITY**  
**2006**

	Hearing Examiner*	Deputy Examiner	Total
<b>NUMBER OF HEARING DAYS</b>	<b>44</b>	<b>55</b>	<b>99</b>
<b>TYPE OF CASE:</b>			
Land Development	103	118	221
SEPA Appeals	5	6	11
Notice & Order Appeals (Code Enforcement)	8	12	20
Potentially Dangerous Dog Appeals	2	1	3
Notice and Order Appeals – Fire Alarms	2	6	8
Monetary Penalty Cases	31	32	63
Other Administrative Appeals	4	5	9
<b>TOTALS</b>	<b>155</b>	<b>180</b>	<b>335</b>
<b>PREHEARING/STATUS CONFERENCES:</b>			
SEPA Appeals	5	6	11
Notice and Order Appeals (Code Enforcement)	12	11	23
Monetary Penalty Cases	32	37	69
Fire Alarm Appeals	2	5	7
Potentially Dangerous Dog Appeals	2	1	3
Other Administrative Appeals	3	3	6
<b>TOTALS</b>	<b>56</b>	<b>63</b>	<b>119</b>
<b>APPEALS TO THE COUNTY COUNCIL:</b>			
Cases Appealed to Council	4	10	14
Appeals Summarily Dismissed	0	1	1
Appeals Remanded	2	3	5
Appeals Affirmed, Affirmed with Revisions	1	3	4
Appeals Reversed, Reversed in Part/Affirmed in Part	1	2	3
<b>APPEALS TO SUPERIOR COURT**</b>	<b>0</b>	<b>4</b>	<b>4</b>
<b>TOTALS</b>	<b>8</b>	<b>23</b>	<b>31</b>

\* Includes Hearing Examiner Pro Tem cases

\*\* Outcomes unknown at this time

# TABLE 1A - LAND USE ACTIVITY 2006



- \* Planned Residential Development
- \*\* Rural Cluster Subdivision
- \*\*\* Rezones with Official Site Plans
- \*\*\*\* Boundary Line Adjustments

## TRENDS

### Workload

In the five years from 2001 through 2006, the number of applications and appeals per year more than tripled from 135 to 433. The biggest increase was in the following three types of applications. (See Tables 1A, 2 and 2A)

	2001	2006
Plats	30	140
Rezones	55	141
Administrative appeals and code enforcement	<u>4</u>	<u>119</u>
Totals:	89	400

The function of the Office of the Hearing Examiner as an administrative appellate tribunal had already surged from four appeals in 2001 to 118 appeals by 2004 as a result of adoption in December 2002 of the new Title 30 of the Snohomish County Code. In contrast, plat applications had been at 74 to 75 in 2004 and 2005, but doubled in 2006 to 140. Rezones, which had averaged near 100 applications in 2004 and 2005, increased less dramatically but substantially to 141 in 2006.

Plats, rezones, administrative appeals, and code enforcement cases for 2006 were 92% of the Examiners' workload for the year.

Tables 1A, 2 and 2A provides a breakdown of plats, planned residential developments, rural cluster subdivisions, appeals, and other land use activity.

Table 3 shows that of 629 acres rezoned in 2006, 400.6 acres (64%) were from R-9600 to R-7200 to increase density consistent with the GMA Comprehensive Plan.<sup>3</sup>

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<sup>3</sup> Past reports provided a table entitled "Plats by Planning Area" (i.e. Table 3 of the 2005 Report). That table provided information regarding the number of plats approved per the various planning areas of the County. The Department of Planning and Development Services no longer provides that information as part of their land use staff reports. Therefore, that table has been eliminated from this report.



## **NEW ENFORCEMENT CASE MANAGEMENT**

As the year ended, staff of the Hearing Examiner's Office had already begun an effort to improve our processing of code enforcement matters. We were aware of the 2006 increased caseload in such matters and perceived that the hiring of several new Enforcement Officers would soon increase that workload even more with no commensurate increase in Hearing Examiner staff. In a joint effort with Jon Schmidt, Code Enforcement Supervisor and his staff, we replaced the status conferences with early written notice via a departmental report to the Examiner sent to all parties. We also agreed to test the use of proposed decisions in enforcement matters as done by the City of Everett. The two staffs will continue to fine-tune the process but success is already dramatic: the Examiner's office is now able to absorb the additional workload in enforcement matters and related appeals and the enforcement staff seem, in most respects, pleased with the system.

In summary, we withdraw the recommendation in the 2005 Annual Report that a contract pro-tem and clerk be hired and dedicated to enforcement matters.

## **RECOMMENDATIONS**

In the past three consecutive Annual Reports (2003, 2004, 2005) the Examiner has recommended that Snohomish County Code 30.61 be amended to eliminate the mandatory settlement conference for an appeal from a SEPA threshold determination.

Specifically, SCC 30.61.307 requires:

“The hearing examiner shall schedule a settlement conference including the applicable director, the appellant and the applicant (if not the appellant) within seven days of receipt of an appeal.”

Those prior Annual Reports noted that there has been very little interest in such settlement discussions being facilitated by the Examiner's Office and refer to the above-quoted Section 307 as “...mostly a useless gesture.”

There is no other mandatory settlement conference required by the Snohomish County Code. Instead, SCC 2.02.100 (Powers) provides the Examiner authority to:

“(7) At the examiner's discretion, hold conferences for the settlement or simplification of issues and/or for establishment of special hearing procedures.”

Consistent with that authority, the Examiner's Rules of Procedure at Part 200 allow a settlement conference, at the Examiner's discretion, in any type of case.

Rule 401 allows use of prehearing conferences in administrative appeal cases in order to “Discuss possible resolution of part or all of the issues between the parties.” Part 600 of the Rules at Rule 613 provides for status conferences in administrative appeal cases, notes that such conferences are procedural only, and lists the procedural purposes of the status conference, one of which purposes is “...to explore interest in a settlement conference...” (Rule 613(c))

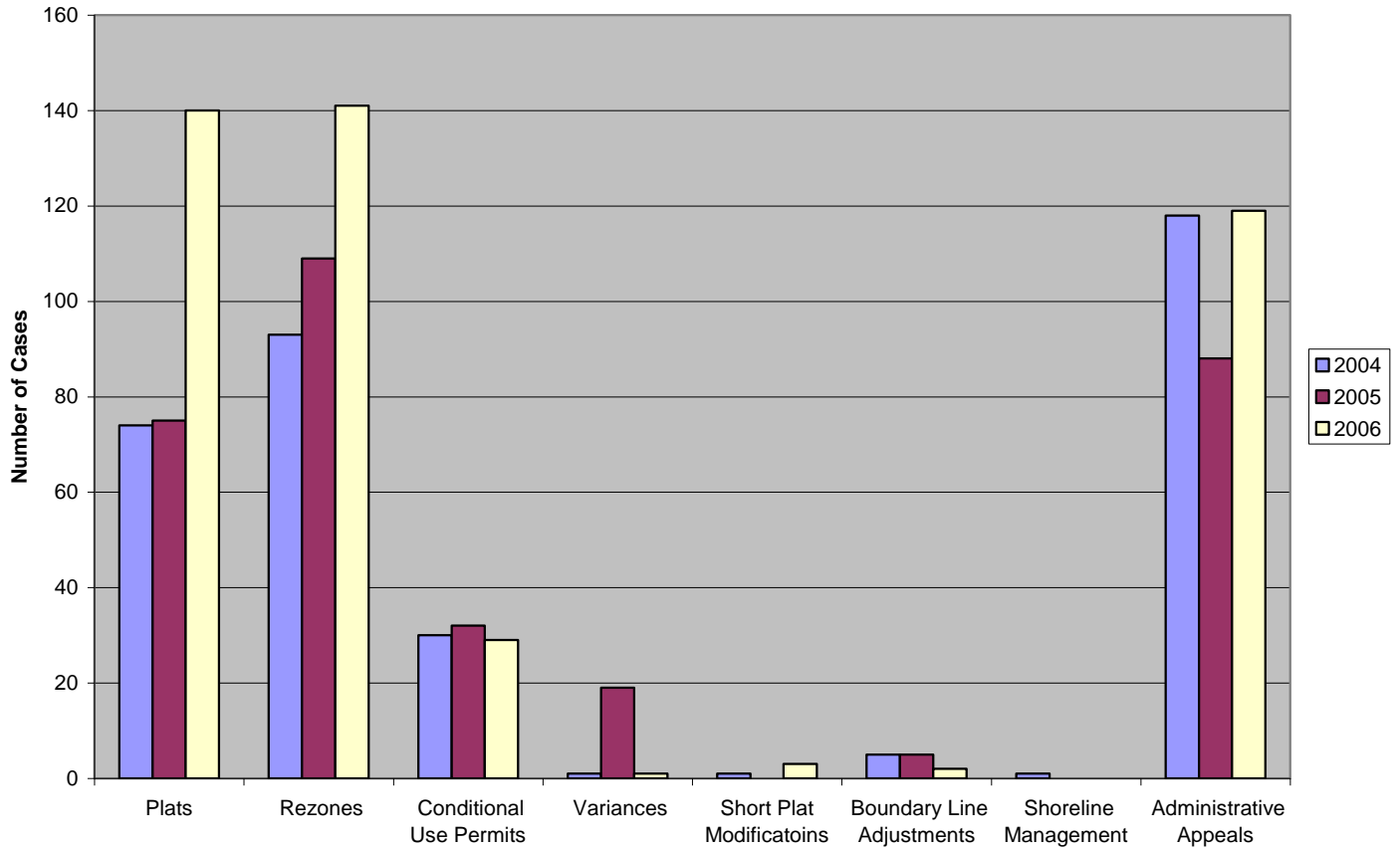
In summary, the legislative scheme in Snohomish County is to encourage settlement of land use regulatory matters and code enforcement matters but not to allow the perversion of a settlement opportunity into a weapon to be swung against opposing parties.

That regulatory stance needs to be strengthened to make dispute resolution, including formal mediation and other dispute resolution methods, available in Washington State’s land use regulatory arena. The catalyst for doing so is creation of Puget Sound Partnership: the new agency created to link businesses, environmental entities and governments as partners to create a comprehensive plan to restore Puget Sound by the year 2020. Bill Ruckelshaus will lead the effort through the Ruckelshaus Foundation at the University of Washington. The estimated \$9 billion cost of the task highlights the scope of the challenge, marked by the recent listing on May 7, 2007 of Puget Sound Steelhead as “threatened” under the Endangered Species Act. The largest numbers of steelhead are found in the Skagit and Snohomish Rivers.

Fittingly, the Snohomish County Council adopted Ordinance No. 07-030 effective May 17, 2007 pertaining to water pollution control. Although the Office of the Hearing Examiner is not involved as an appellate body under that Ordinance, review of plats and subdivisions, planned residential developments, conditional uses and SEPA appeals will involve the quasi-judicial process in water pollution control.

For all of the above reasons, it is the recommendation of the Office of the Hearing Examiner that Snohomish County enter into discussions with the Dispute Resolution Center of Snohomish County immediately in order to assess whether the alternative dispute resolution services of that Center can be brought to bear on regulatory negotiations in the interest of water quality and related matters. For example, there is much discretion as to what conditions are to be imposed on a given development in order to protect water quality. A mediated agreement as to such conditions could be presented to the Hearing Examiner in the review of the development so that the Examiner could ratify or modify the agreement rather than attempt to fashion conditions from often-conflicting expert testimony during adversarial proceedings. Parties would have a greater sense of “ownership” in the solution and, thus, a greater likelihood of compliance with the terms of the solution. Of course, the alternative dispute resolution process would be voluntary. Multi-party dispute resolution offers a valuable adjunct to the regulatory process.

**TABLE 2 - HISTORICAL COMPARISONS**



**TABLE 2A**

**HISTORICAL COMPARISON OF HEARING ACTIVITY**

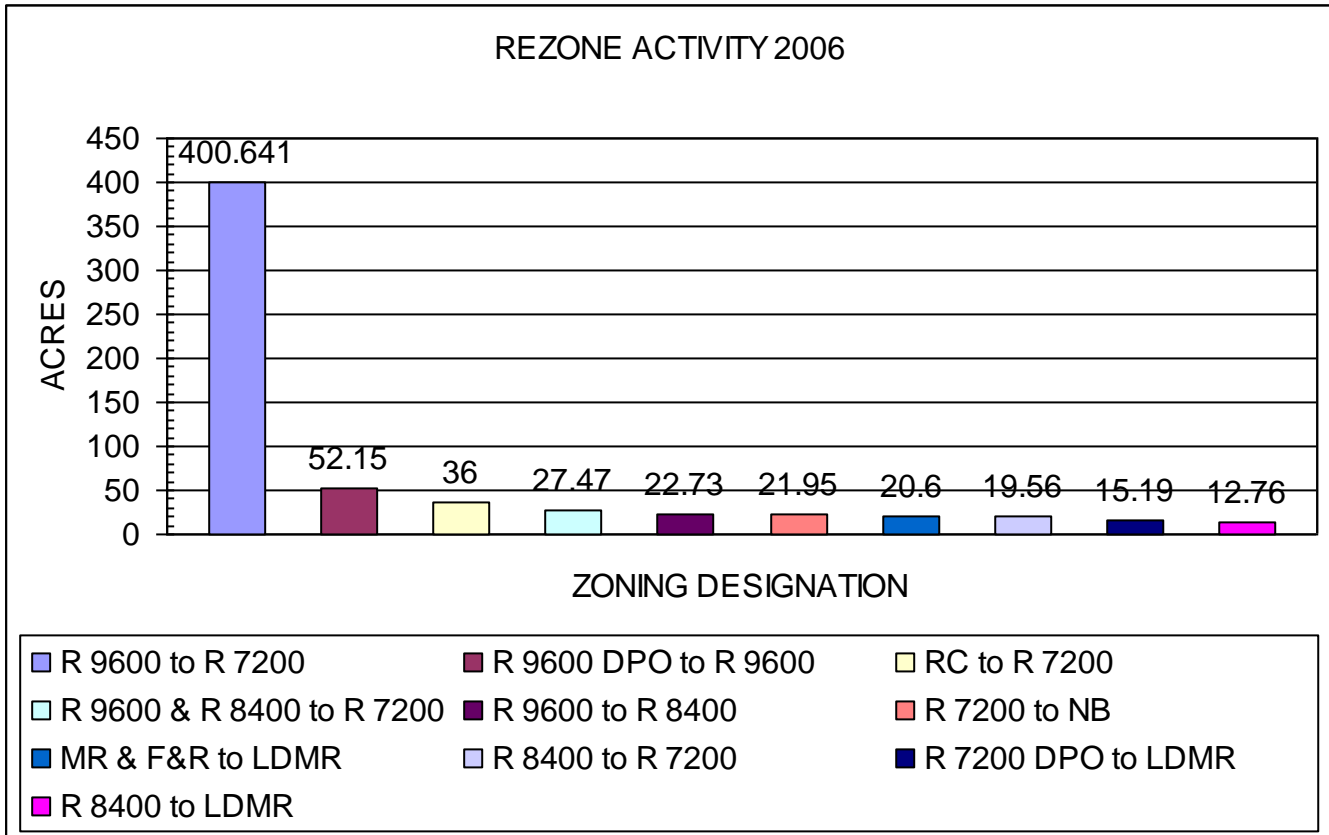
TYPE OF CASE	REPORTING YEAR										CUMULATIVE TOTALS
	1978-1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	
Plat <sup>4</sup>	1167	68	49	58	30	75	65	74	75	140	1801
Rezone <sup>5</sup>	1323	73	70	79	55	73	53	93	109	141	2069
Conditional Use	758	48	31	30	31	45	24	30	32	29	1058
Variance	613	27	12	15	8	19	9	1	10	1	715
SP Modification	536	6	1	0	0	0	0	2	1	0	908
Shoreline Management	168	3	2	3	3	3	3	5	1	0	191
Administrative Appeal <sup>6</sup>	435	28	17	18	12	4	4	65	118	88	789
<b>YEARLY TOTALS</b>		270	236	184	201	135	223	227	323	319	6,974

<sup>4</sup> Includes Rural Cluster Subdivisions, Planned Residential Developments and Modifications/Alterations

<sup>5</sup> Includes Revisions and Rezones with Official Site Plans

<sup>6</sup> Includes SEPA appeals, Monetary Penalties, Administrative Appeals, Notice & Orders, Potentially Dangerous Dogs and Fire Alarm cases

**TABLE 3**



**TABLE 4**  
**RECONSIDERATION ACTIVITY**  
**2006**

	Examiner	Deputy	Pro-tem	Total
Number of Decisions in which Reconsideration was requested	4	16	2	22
Total number of Reconsideration requests filed	4	24	2	30
Of the total number of Reconsideration requests filed:				
Number Denied	3	12	2	17
Number Granted	1	4	0	5