

**2007-2008 HEARING EXAMINER ANNUAL REPORT**

**JANUARY 1, 2007 - DECEMBER 31, 2008**



**SNOHOMISH COUNTY**

**Barbara Dykes  
Hearing Examiner  
December 31, 2008**

## **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, 2007 through December 11, 2008. 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, Snohomish County Deputy Hearing Examiner Ed Good, Pro Tem Hearing Examiners Gordon Crandall, Jim Densley, and Millie Judge from January 1, 2007 to December 11, 2008. 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.

### **2007-2008: VERY BUSY TRANSITION YEARS**

The past two years have been years of tremendous change in the Hearing Examiner's Office. Mr. Bob Backstein retired on October 20, 2006, during one of the busiest building booms the County has ever seen. Deputy Examiner Good soldiered on, with the help of Examiners Pro Tem Gordon Crandall and Jim Densley. The years Mr. Backstein was in office, out of some necessity, focused to a large degree on getting as many hearings done in a day as possible. Plat hearings would last as little as five minutes. The Examiners did not often question the analysis in the staff report. The Examiners were doing 15-20 public hearings per week and trying to keep up writing the decisions for those hearings. It was a very difficult task.

I was hired in June of 2007 because of my deep background in county land use, particularly my knowledge of the UDC. In my years as a deputy prosecutor, I had helped the Planning Director and Principal Planners re-format the UDC into a final product to be adopted. I had also worked on many code adoption projects, so I have a fairly good understanding of how the code works and what it means. In my approach to cases, however, I could not keep the same type of pace that Hearing Examiner Backstein kept with his cases. Because of the more in-depth approach I take, I calendared fewer cases, more in the neighborhood of 10-15 per hearing week. Fortunately, the number of cases had decreased from its peak in 2006 and we were able to manage the calendar with less cases per week.

Mr. Good started to fall seriously behind in his caseload in early 2008. By the time he ended his appointment in mid-March 2008, he was at least 20 cases behind, dating back to early December. He had also left two very large cases in mid-hearing process, which I had to incorporate into my hearing schedule (CAAM Partnership, Soundview Properties/Warm Beach). It was from then on that I developed a back log that did not completely clear out until early November 2008. Other unfinished decisions, which Mr. Good had held a hearing, had to be reheard. One example of that was the Highlands Ranch North and Highlands Ranch South rural cluster subdivisions. Those cases involved significant issues of first impression involving the Forest Practices Act and the Stillaguamish Instream Flow Rule. They were two of a whole series of cases I heard testing out the parameters of the Instream Flow Rule and water rights.

As a result of Mr. Good's departure and my calendaring of these extra cases, during the entire spring and early summer I was hearing cases almost continuously, instead of doing the normal pattern of one

week of hearings with two weeks to deliberate. I did this to accommodate my cases, Examiner Good's cases, and some of my cases that had come back from remand and had to go back to hearing (some of which had longstanding hearing dates). While I was able to write decisions in some of the smaller cases in between hearings, it was not possible to invest the amount of time necessary to make decisions in the large cases. Once I ceased hearing cases in late July, I was able to tackle the big decisions (Warm Beach, CAAM Partnership, North Sound Christian Schools, Lake Armstrong, five Heritage Hagen cases, and Highbridge Estates).

I have been told by staff who have worked here for many years that the type and complexity of cases the office has experienced in the last year or so is unrivaled in 30 years of history of the office. Usually, the office receives only one or two cases per year of the size and complexity of the six listed above. The difficulty of the big cases has been compounded by the need for the Department of Planning and Development Services (PDS) and the Department of Public Works (DPW) staff to adjust to me as an Examiner and vice versa. The staff was used to working with the previous examiners in ways that are not acceptable from my perspective. I generally require the Applicant and/or staff to demonstrate how the project meets the requirements of the code. Sometimes that rationale is not provided, or I have to spend a lot of time with the file or questioning the witnesses when only a conclusory explanation is provided. Sometimes when an administrative approval is made without the underlying rationale, it is impossible to find that the project meets basic public health, safety and welfare criteria. These issues are extremely problematic and time consuming in the hearing process. Although I have made some progress with Executive staff, I look forward to further working with them as a part of the process directed by the Council's budget note to resolve these issues. It is my hope that in this time when permits have slowed down, the Examiner's Office can work with PDS and DPW to come to a common understanding of the quality of staff work required at hearing and in the record to ensure that developments meet code requirements and that our county decisions protect the public health, safety and welfare and are not a basis for later finding liability on the part of the county at some later date.

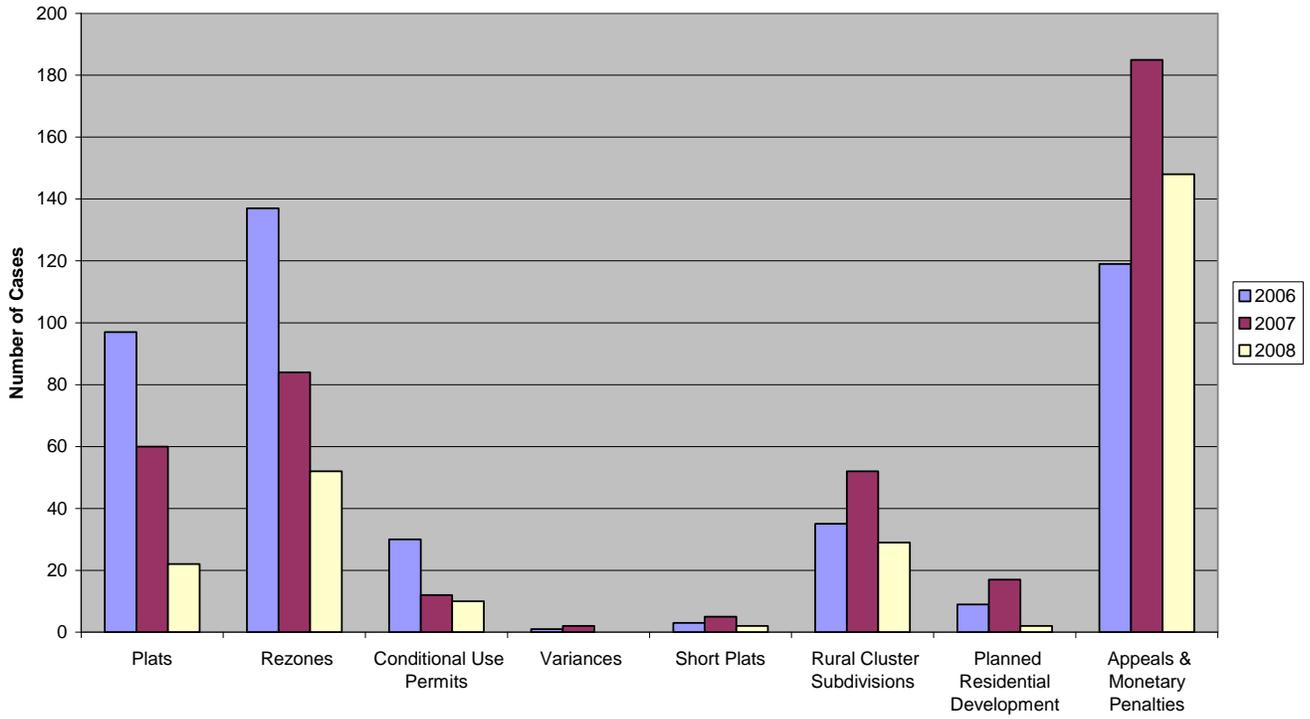
## **DEVELOPMENT ACTIVITY**

Historical comparisons (Chart 1) indicate the development application types and numbers that went to hearing in 2006, 2007, and 2008. Twenty-six percent fewer land use cases were brought to hearing in 2007 than in 2006 (312 v. 232). Fifty percent fewer land use cases were brought to hearing in 2008 than in 2007 (232 v. 117). The caseload remained steadily busy at the same pace as in 2007 through the first part of 2008 and then dropped off precipitously starting in August 2008.

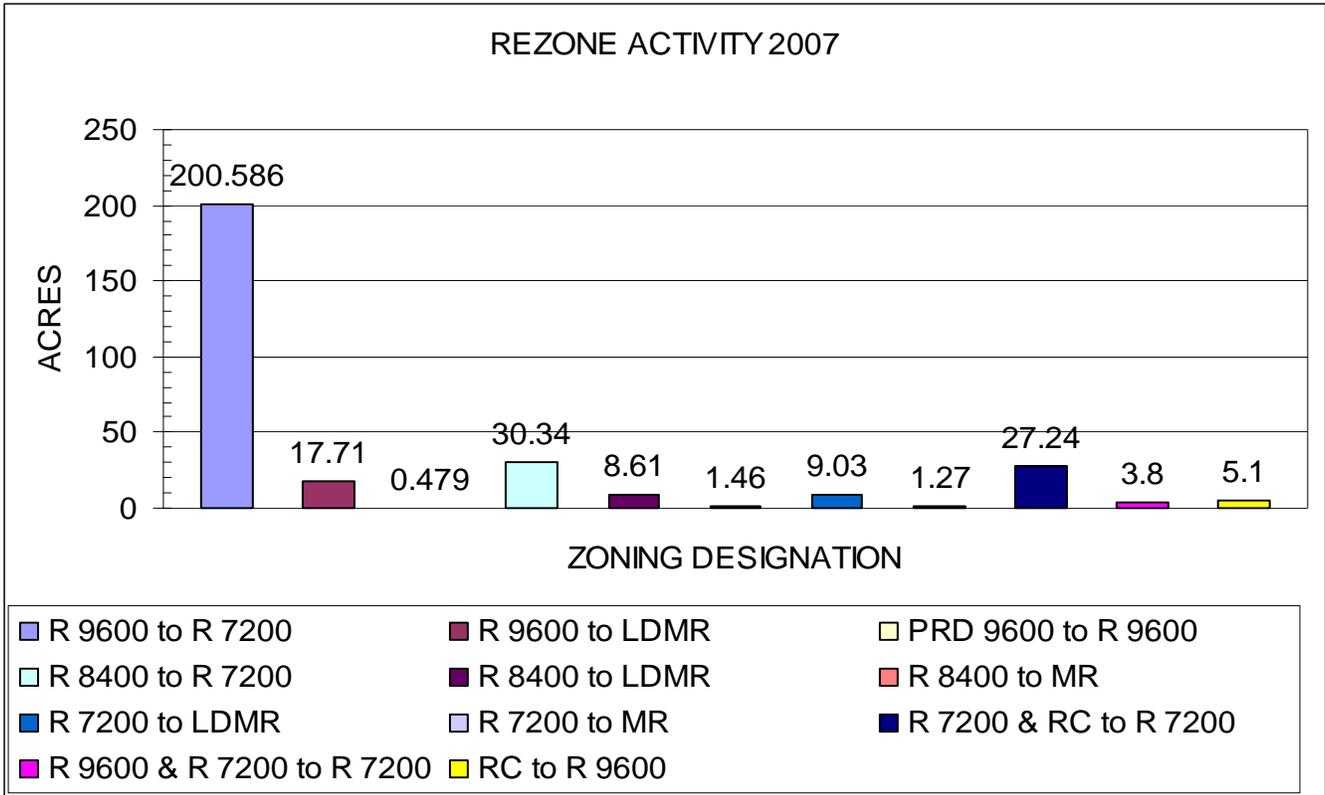
In 2007 and 2008, the percentage of rural cluster subdivision applications in the number of all applications hovered around the 30% mark (31% in 2007 and 29% in 2008). Those numbers are up dramatically from 2006, where rural clusters accounted for only 16% of the development applications.

Chart 2, 2007 Rezone Activity, and Chart 3, 2008 Rezone Activity (p. 3), indicate that urban rezones continue to occur to create more opportunities for denser infill in the urban growth areas. The numbers are way down from a historic high number of applications in 2006 (141) to 75 in 2007, and 50 in 2008. The acreage amounts are also getting smaller and smaller. Well over 691.6 acres were upzoned in 2006; that number decreased in 2007 to approximately 316 acres; in 2008, the number was down to 114.5 acres.

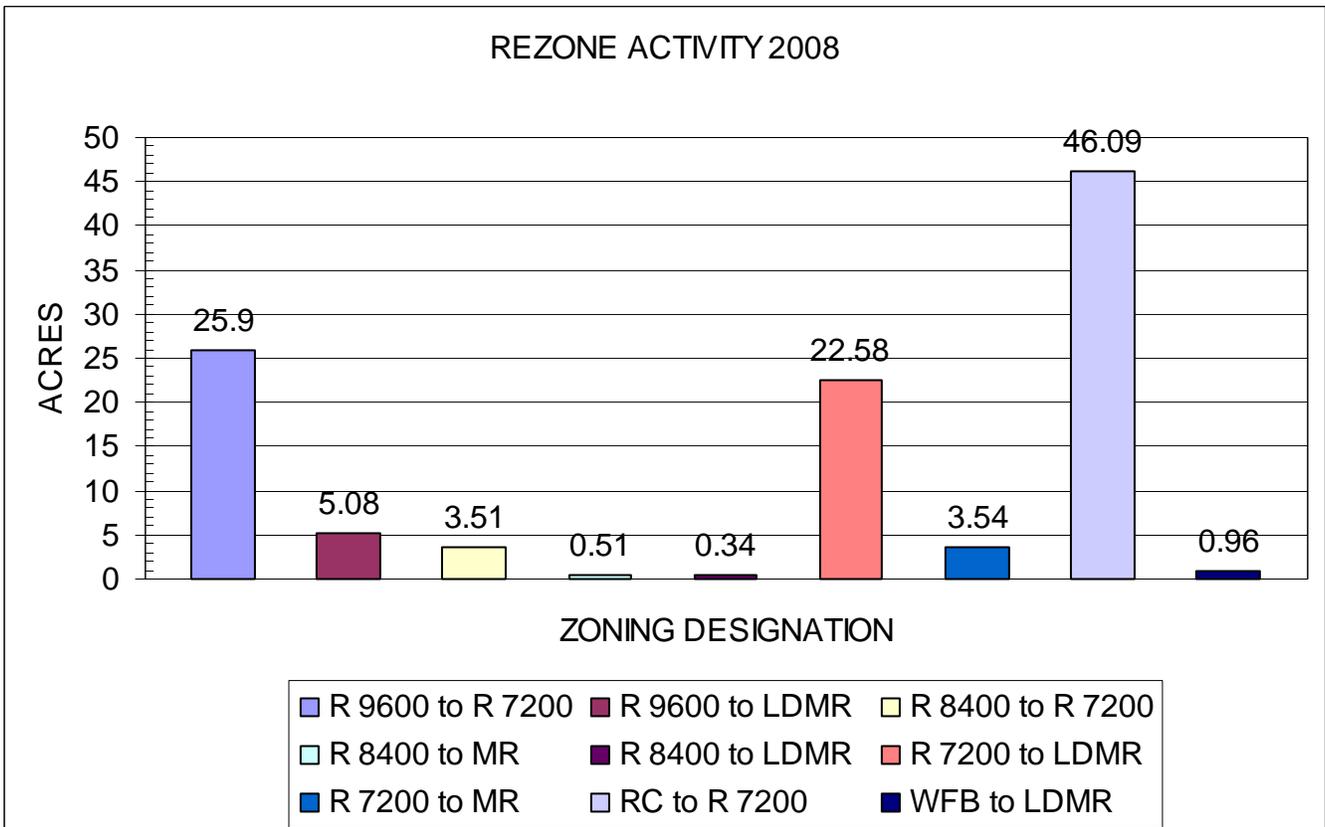
**CHART 1  
HISTORICAL COMPARISONS**



**CHART 2**



**CHART 3**



**CHART 4**  
**CASE ACTIVITY**  
**2007 and 2008**

	<b>2007</b>	<b>2008</b>
<b>NUMBER OF HEARING DAYS</b>	<b>94</b>	<b>88</b>
<b>LAND DEVELOPMENT DECISIONS ISSUED</b>	<b>198</b>	<b>105</b>
<b>APPEALS / MONETARY PENALTY CASES FILED:</b>		
SEPA Appeals	17	1
Notice and Order Appeals	46	30
Potentially Dangerous Dog and Dangerous Dog Appeals	7	17
Notice and Order Alarm Appeals	4	1
Monetary Penalties	100	98
Other Administrative Appeals	11	7
<b>TOTALS</b>	<b>383</b>	<b>259</b>
<b>PREHEARING/STATUS CONFERENCES:</b>		
SEPA Appeals	17	1
Alarm Appeals	3	0
Potentially Dangerous Dog and Dangerous Dog Appeals	6	17
Other Administrative Appeals	2	3
<b>TOTALS</b>	<b>28</b>	<b>21</b>
<b>APPEALS OF HEARING EXAMINER DECISIONS:</b>		
Cases Appealed to Council	<b>11</b>	<b>12</b>
Appealed to Superior Court	<b>7</b>	<b>6</b>

**RECONSIDERATION ACTIVITY  
and  
ADMINISTRATIVE APPEALS PROCESSED**

**2007**

In 2007, reconsideration petitions were filed by 38 parties in 35 of the 116 decisions issued. Of the 38 petitions filed, 19 were denied without further proceedings, 4 were granted without further proceedings, 4 were granted after further written or oral proceedings, and 8 were denied after further written or oral proceedings, and one was withdrawn. Two were set for hearing in 2008. (Chart 5, p. 7)

In 2007, there were 11 appeals (consolidated) to Council (down substantially from 2006 when there were 24 appeals to Council). There were seven appeals to Superior Court.

**2008**

In 2008, reconsideration petitions were filed by 41 parties in 32 of the 105 decisions issued. Of the 41 petitions filed, 16.5 were denied without further proceedings, 5.5 were granted without further proceedings, two were granted after further written or oral proceedings, and 17 were denied after further written or oral proceedings. (Chart 6, p. 7)

In 2008, there were 12 appeals (consolidated) to Council. There have been six appeals to Superior Court so far this year.

**CHART 5**  
**RECONSIDERATION ACTIVITY**  
**2007**

	Examiner	Deputy	Pro-Tems	Total
Number of Decisions in which Reconsideration was requested	1	24	10	<b>35</b>
Total number of Reconsideration requests filed	1	27	10	<b>38</b>
Of the total number of Reconsideration requests filed:				
Number Denied without further proceedings	1	13	5	<b>19</b>
Number Granted without further proceedings	0	1	3	<b>4</b>
Number for which written responses were requested				
Of those, number ultimately Denied	0	6	0	<b>6</b>
Of those, number ultimately Granted	0	0	0	<b>0</b>
Number in which the hearing was reopened				
Of those, number ultimately Denied	0	2	0	<b>2</b>
Of those, number ultimately Granted	0	3	1	<b>4</b>
Number withdrawn	0	0	1	<b>1</b>
Number set for hearings in 2008	0	2	0	<b>2</b>

**CHART 6**  
**RECONSIDERATION ACTIVITY**  
**2008**

	Examiner	Deputy	Pro-Tems	Total
Number of Decisions in which Reconsideration was requested	13	3	16	<b>32</b>
Total number of Reconsideration requests filed	15	3	23	<b>41</b>
Of the total number of Reconsideration requests filed:				
Number Denied without further proceedings	10.5	2	4	<b>16.5</b>
Number Granted without further proceedings	3.5	1	1	<b>5.5</b>
Number for which written responses were requested				
Of those, number ultimately Denied	0.5	0	11	<b>11.5</b>
Of those, number ultimately Granted	0.5	0	1	<b>1.5</b>
Number in which the hearing was reopened				
Of those, number ultimately Denied	0	0	5.5	<b>5.5</b>
Of those, number ultimately Granted	0	0	0.5	<b>0.5</b>

## CODE ENFORCEMENT AND LICENSING ACTIVITIES

### 1. Code Enforcement Cases.

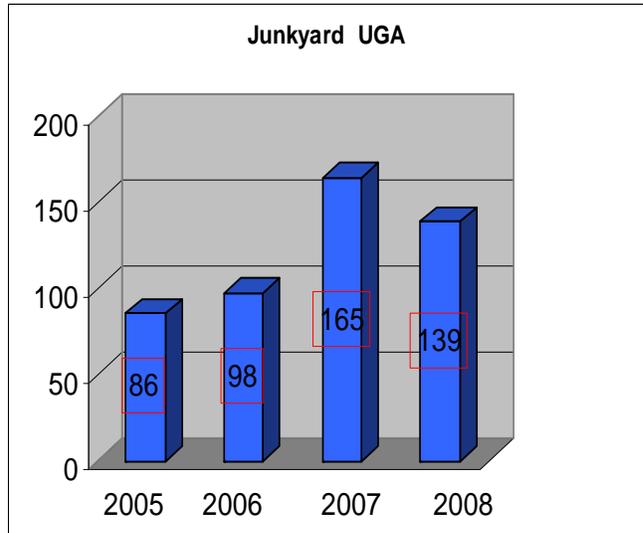
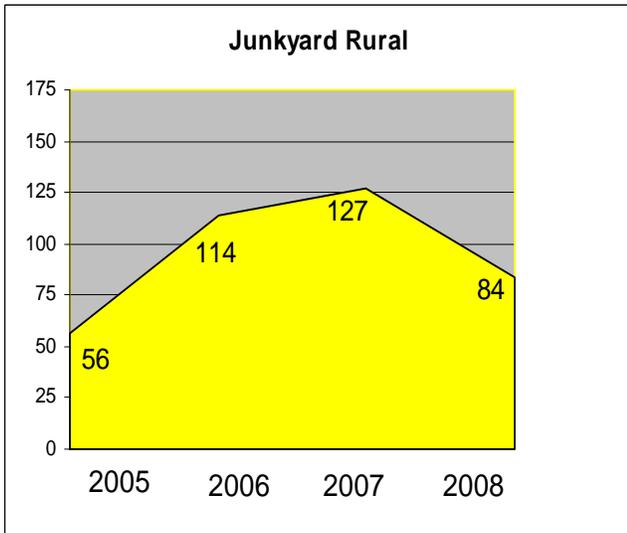
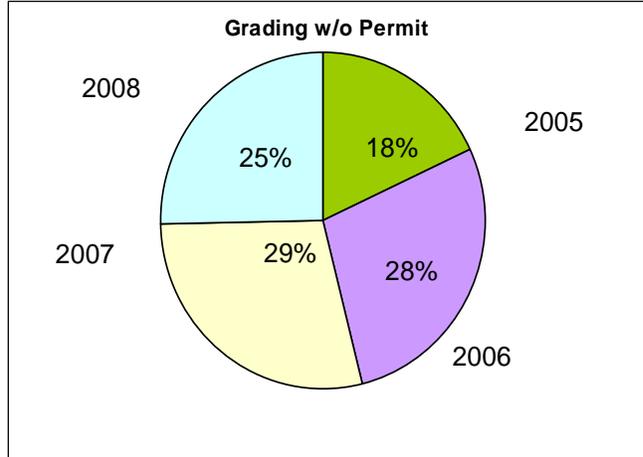
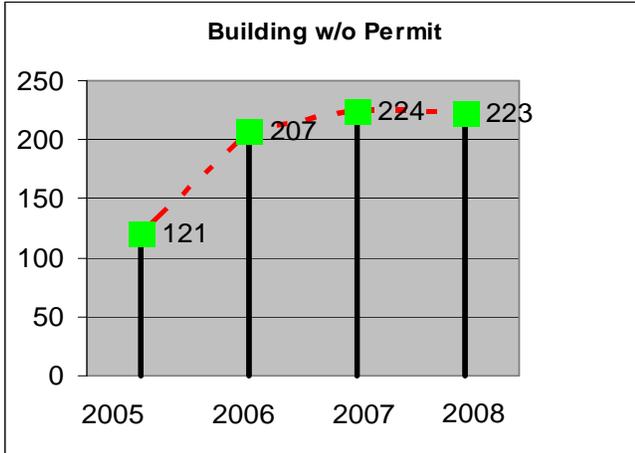
A large part of the Hearing Examiner's work is hearing code enforcement cases under Chapter 30.85 SCC. The Examiner hears appeals of Notice and Order Violations, and hears what are called "Monetary Penalty" cases (cases where the Notice and Order has not been appealed, and PDS requests the Examiner to impose penalties). Penalties accrue under the (former) code at \$100/day for a noncommercial violation, and \$250 per day for a commercial violation.

The Hearing Examiner's Office would like to thank PDS for assistance in providing the following charts, and would note that these charts represent the work of Code Enforcement, as well as this Office.

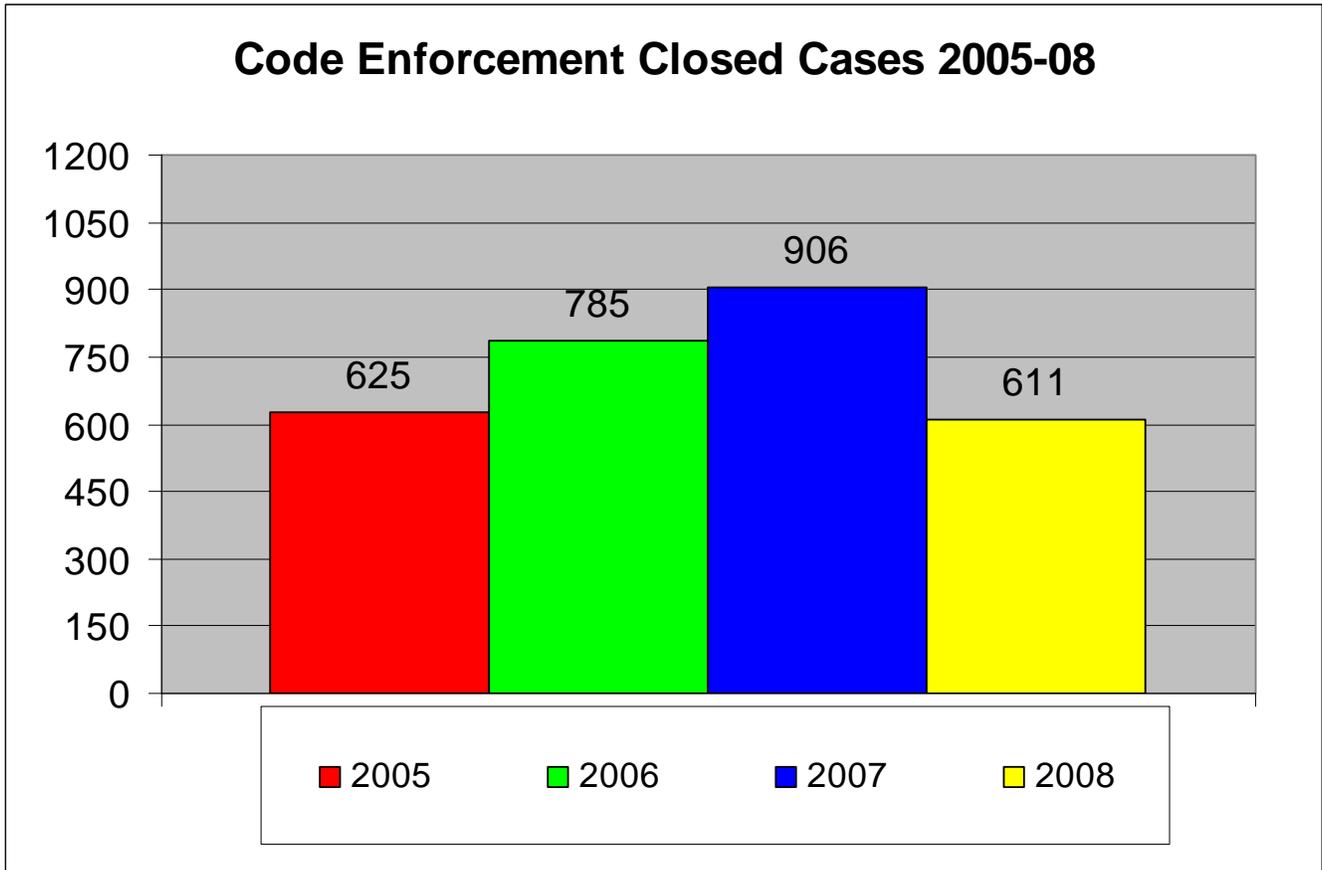
**CHART 7**  
**Code Enforcement Violations**

Violations	2005	2006	2007	2008
Building w/o permit	121	207	224	223
Certificate of Occupancy	2		11	13
Change of Use	8	2	5	6
Equipment Storage	5	9	13	13
CU Violation	5	2	12	3
Dangerous Building	5	6	29	36
Drainage	31	2	1	
Dual Use	49	69	17	13
Grading w/o Permit	165	257	262	232
Illegal Business	82	96	134	86
Illegal Occupancy	2		23	33
Junkyard Rural	56	114	127	84
Junkyard UGA	86	98	165	139
Miscellaneous	22	28	135	76
NGPA	19		35	33
Noise	7	12	32	16
No violation	56	55	14	5
NPDES	2	2	5	1
Setback	36	16	29	23
Shoreline			6	11
Signs	6			
Swimming Pool	2	1	4	1
Travel Trailer	78	49	94	39
<b>TOTALS</b>	<b>845</b>	<b>1025</b>	<b>1377</b>	<b>1086</b>

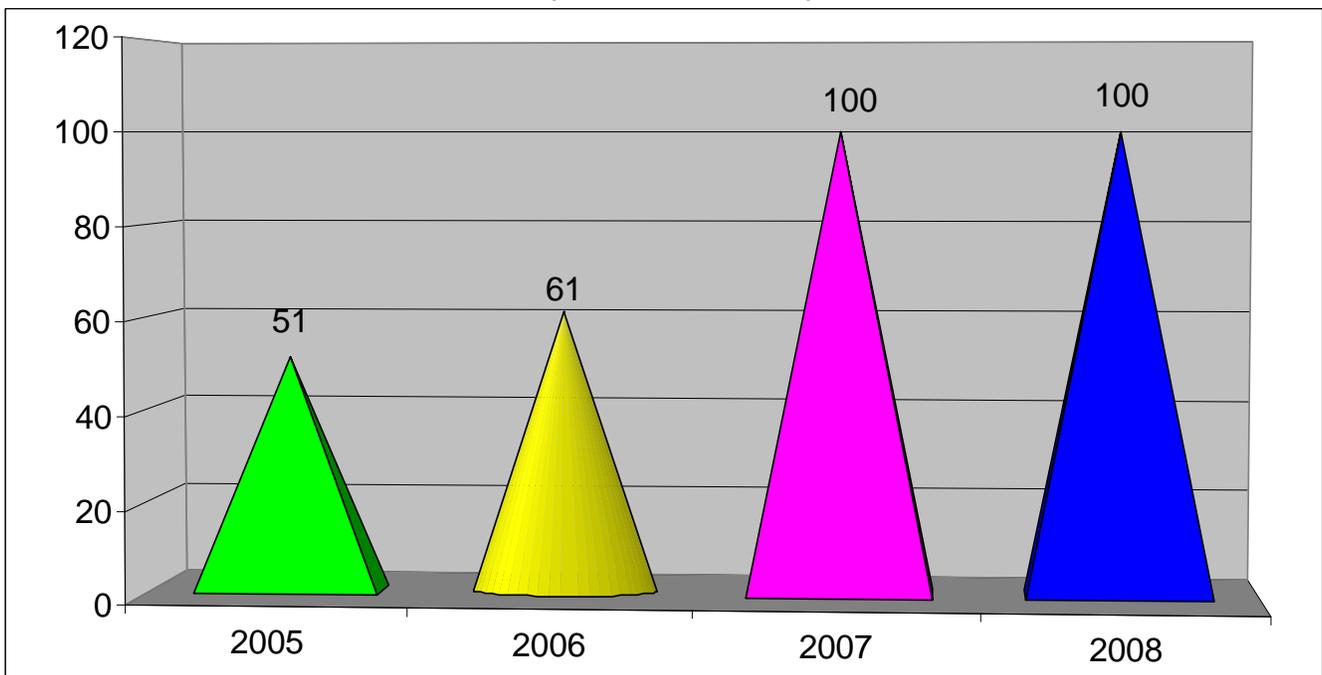
**CHART 8**  
**Graphs to go with Chart 7 – Code Enforcement Violations**



**CHART 9**  
**Code Enforcement Cases 2005-2008**



**CHART 10**  
**Monetary Penalties Filed by Year**



Finally, the charts below give you an idea of how many dollars in monetary penalties were imposed by the Examiners in 2007 and 2008.

### CHART 11

2007

## Penalty Information for Monetary Penalty Cases

### **31 CASES COMPLIED PRIOR TO A HEARING**

#### **AFTER A HEARING:**

11 CASES - PENALTIES WERE IMPOSED *without time to comply*  
for a total amount of **\$130,450.00**

33 CASES - PENALTIES WERE IMPOSED *with time to comply*  
for a total amount of **\$523,700.00**

### CHART 12

2008

## Penalty Information for Monetary Penalty Cases

### **23 CASES COMPLIED PRIOR TO A HEARING**

#### **AFTER A HEARING:**

11 CASES - PENALTIES WERE IMPOSED *without time to comply*  
for a total amount of **\$90,640.00**

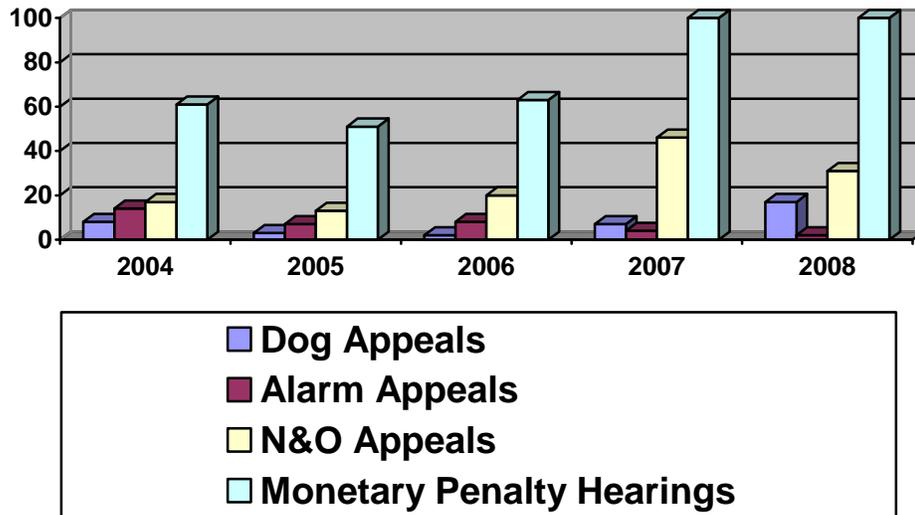
20 CASES - PENALTIES WERE IMPOSED *with time to comply*  
for a total amount of **\$159,850.00**

**2. Appeals From the Auditor’s Office/Licensing Division.**

The Hearing Examiner can get many different types of appeals from the Licensing Division; at present we receive False Alarm appeals and Animal Control appeals. Animal Control appeals have risen dramatically this year. Types of appeals include Notice of Violations (tickets), Notice of Potentially Dangerous Dog, and Notice of Dangerous Dog.

Below are charts that compare the numbers for all types of enforcement appeals

**CHART 13  
ALL ENFORCEMENT APPEALS**



**CHART 14**

	2004	2005	2006	2007	2008 to date
Dog Appeals	8	3	2	7	17
Alarm Appeals	14	7	8	4	2
Notice & Order Appeals	17	13	20	46	31
Monetary Penalty Cases	61	51	61	100	100
<b>TOTAL</b>	<b>100</b>	<b>74</b>	<b>91</b>	<b>157</b>	<b>150</b>

## POLICY/ORDINANCE REVISIONS

The Growth Management Act 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.<sup>1</sup> 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. **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.
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 Department of Ecology 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?

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### <sup>1</sup> 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.

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 Department of Ecology 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 Planning and Development Services, in a letter dated November 17, 2005, assured the Department of Ecology 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 been 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.

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. **Forest Practices Act**—The County needs legislation on the lift of the six-year moratorium. See RCW 76.09.460.
10. **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**—One code, 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. SCC 30.41C.210(4). 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 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.