

## EXHIBIT LIST FOR HEARINGS EXAMINER ORDINANCE AMENDMENTS

Planning Commission Staff Memo Exhibit List September 8, 2014 Public Hearing			
		DATED	
<b>PCM 1</b> Includes:	PCM 1.1	Staff Memo	August 28, 2014
	PCM 1.2	BCC 3.04- An ordinance relating to the building code	
	PCM 1.3	BCC 3.22 - An ordinance relating to Manufactured Home/Factory Assembled Structure (FAS) Parks	
	PCM 1.4	BCC 3.24 - An ordinance relating to swimming pools	
	PCM 1.5	BCC 3.26 - An ordinance relating to flood damage prevention	
	PCM 1.6	BCC 6.35 - An ordinance relating to environmental policy	
	PCM 1.7	BCC 9.04 - An ordinance relating to short plat subdivisions	
	PCM 1.8	BCC 11.04 - An ordinance relating to zoning definitions	
	PCM 1.9	BCC 11.10 - An ordinance relating to the Community Center Residential District (CCR)	
	PCM 1.10	BCC 11.13 - An ordinance relating to Urban Growth Area Residential District (UGAR)	
	PCM 1.11	BCC 11.14 - An ordinance relating to zoning and Rural Lands One Acre District (RL1)	
	PCM 1.12	BCC 11.16A - An ordinance relating to zoning and Rural Lands Five Acre District (RL5)	
	PCM 1.13	BCC 11.16B - An ordinance relating to zoning and Rural Lands Twenty Acre District (RL20)	
	PCM 1.14	BCC 11.18 - An ordinance relating to GMA Agricultural	
	PCM 1.15	BCC 11.22 relating to zoning and the General Commercial District (GC)	
	PCM 1.16	BCC 11.25 - An ordinance relating to zoning and the Community Commercial District (CC)	
	PCM 1.17	BCC 11.27 - An ordinance relating to zoning and the Interchange Commercial District (IC)	
	PCM 1.18	BCC 11.30 - An ordinance relating to zoning and the Light Industrial District (LI)	
	PCM 1.19	BCC 11.34 - An ordinance relating to zoning and the Heavy Industrial District (HI)	
	PCM 1.20	BCC 11.46 - An ordinance relating to zoning and the Park District (P)	
	PCM 1.21	BCC 11.48 - An ordinance relating to zoning & the Unclassified District (U)	
	PCM 1.22	BCC 11.52 - An ordinance relating to the general provisions of the zoning code	
	PCM 1.23	BCC 11.65 - An ordinance relating to zoning and Communication Facility Criteria	
	PCM 1.24	BCC 17.10 - An ordinance relating to the permit review process	

**EXHIBIT LIST FOR HEARINGS EXAMINER ORDINANCE AMENDMENTS**

	PCM 1.25	An ordinance relating to the creation of the office of Benton County Hearings Examiner; setting standards and procedures; and adding a new chapter to Title 17 of the Benton County Code.	
	PCM 1.26	Determination of Non Significance	August 11, 2014
	PCM 1.27	Environmental Checklist	July 28, 2014
	PCM 1.28	Email from Department of Commerce Expedited Review	August 26, 2014
	PCM 1.29	Letter from Sunnyside Valley Irrigation District	August 12, 2014
<b>Planning Commission Continued Hearing Staff Memo Exhibit List for September 30, 2014</b>			
<b>PCM 2</b> Includes:	PCM 2.1	Planning Commission Memo	September 22, 2014
	PCM 2.2	Memo from Steve Donovan to Michael Shuttleworth	September 16, 2014
	PCM 2.3	Sample RFP Okanogan County	
	PCM 2.4	Douglas County 2011 Annual Hearings Examiner Report	December 15, 2011
	PCM 2.5	Douglas County 2012 Annual Hearings Examiner Report	December 21, 2012
<b>Planning Commission Continued Hearing-Hearing Exhibit List for September 30, 2014</b>			
<b>PCH</b>  Includes:	PCH 2.1		
	PCH 2.2		
	PCH 2.3		
	PCH 2.4		
<b>Board of County Commissioners Staff Memo Exhibit List-</b>			
<b>BCCM 1</b> includes:	BCCM 1.1		
	BCCM 1.2		
	BCCM 1.3		
	BCCM 1.4		
	BCCM 1.5		
<b>Board of County Commissioners Hearing Exhibit List-</b>			
<b>BCCH 1</b> includes:	BCCH 1.1		
	BCCH 1.2		
	BCCH 1.3		

**The Exhibit Numbers are found in the Top Right Hand Corner of each document.**

**PCR = Planning Commission Record Exhibits**

**PCM = Planning Commission Memo Exhibits**

**PCH = Planning Commission Exhibits submitted during Hearing**

**BCCM = Board of County Commissioners Memo Exhibits**

**BCCH = Board of County Commissioners Hearing Exhibits submitted during Hearing**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

**DATE:** SEPTEMBER 22, 2014

## PCM 2.1

**TO:** BENTON COUNTY PLANNING COMMISSION

**FROM:** BENTON COUNTY PLANNING DEPARTMENT

**RE:** ADDITIONAL INFORMATION FOR DRAFT ORDINANCES AMENDING BENTON COUNTY CODE CHAPTERS TO CREATE A HEARINGS EXAMINER SYSTEM AND ADDING A NEW CHAPTER TO TITLE 17.

### SUMMARY:

The Benton County Planning Commission conducted an open record hearing on draft ordinances dealing with creation of a hearings examiner system in Benton County. During the open record hearing, Commissioners had several questions they asked staff to prepare a response for. The following is the additional information requested by the Planning Commission.

1. Planning Staff looked at the surrounding counties and found most of them use the hearings examiner system. Attached to this memo is a brief overview with attachments.
2. Several of the Counties and Cities use the same Hearings Examiner, however, each jurisdiction contracts separately with the hearings examiner.
3. It appears that the cost for hearing examiners range from \$400.00 to \$600.00 per application. Below is a proposed draft fee schedule that would use \$400.00 as the base for the hearing examiner.

Type of permit	Cost of Notice	Hearing Examiner Fee	Suggested Fee	Benton Fee Now
Appeal of EIS Adequacy	\$160.00	\$400.00	\$560.00	250.00 + legal publication fee
Appeal of Director's Decision	\$180.00	\$400.00	\$580.00	100.00 + legal publication fee
Shoreline Conditional use permit	\$340.00	\$400.00	\$740.00	\$250.00
Shoreline Variance	\$340.00	\$400.00	\$740.00	\$250.00
Short Plat Appeal	\$180.00	\$400.00	\$580.00	100.00 + legal publication fee
Special Use Permit	\$180.00	\$400.00	\$580.00	\$250.00
Conditional Use Permit	\$180.00	\$400.00	\$580.00	\$250.00
SEPA Determination Appeal	\$180.00	\$600.00	\$780.00	100.00 + legal publication fee
Variance	\$180.00	\$400.00	\$580.00	\$250.00
Flood Plain Ordinance/Variance	\$180.00	\$400.00	\$580.00	\$150.00

4. The Benton County Risk Manager is looking into the impacts of appeals of land use actions and that information will be presented at the September 30<sup>th</sup> meeting.

### RECOMMENDATION:

The Benton County Planning Department recommends that the planning commissions review the proposed ordinances, conduct the public hearing and make recommendations to the Board of County Commissioners.

## PCM 2.2

Date: September 16, 2014

To: Mike Shuttleworth, Planning Manager

From: Steve Donovan, Senior Planner

RE: Eastern Washington Counties Hearing Examiner Information

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**Grant County** – The county has a contract with the examiner and is charged time and expenses. The charge for each permit is \$400-\$500. The amount spent each year is determined by the number of permits reviewed by the hearing examiner. The examiner is an attorney.

**Okanogan County** – The County is charged an hourly rate that is roughly \$150 and hour. The county has two hearing dates a month. Roughly \$12,000/year is spent on the hearing examiner services. The hearing examiner is an experienced land use professional, not an attorney. See attachments 1-2 for additional information.

**Chelan County** – The examiner is scheduled to meet two times a month. They average \$2,500-\$3,500 a month for two hearings a month. They average 3-4 items per meeting agenda and budget \$40,000 a year for hearing examiner services. The examiner is an attorney.

**Douglas County** – The following is a breakdown of the number of permits and amount spent for each of the years: 2011: 19 permits, cost \$8,034; 2012: 13 permits, cost \$ 7,943; 2014: 18 permits, cost \$ 7,319. See attachments 3-5 for additional information.

**Yakima County** – The Yakima County Hearing Examiner is an attorney. The County is charged an hourly rate of \$140 for hearing examiner services. Attachment 6 is a copy of the contract between Yakima County and its hearing examiner.

**Walla Walla County** – Walla Walla County's hearing examiner is a Land Use Attorney. The hearing examiner convenes once a month to conduct hearings. The County has established a variable retainer rate in addition to an hourly rate of \$120/hour. See Attachment 7, which is the most recent agreement between Walla Walla County and its hearing examiner.

### **Attachments**

1. Okanogan County RFQ Draft
2. Okanogan County Draft Professional Services Agreement
3. 2011 Annual Report of the Douglas County Land Use Hearing Examiner
4. 2012 Annual Report of the Douglas County Land Use Hearing Examiner
5. 2013 Annual Report of the Douglas County Land Use Hearing Examiner
6. Professional Services Contract for Yakima County Hearing Examiner
7. Amended Professional Services Agreement (Walla Walla County)

## PCM 2.3

### REQUEST FOR QUALIFICATIONS

Notice is hereby given that consultant qualifications will be received by the Okanogan County, Washington for:

### HEARING EXAMINER

by filing with the Clerk of the Board, 123 Fifth Avenue North, Room 150, Okanogan WA, 98840 until:

Date:

Time:

Qualifications submitted after the due date will not be considered. Consultants accept all risks of late delivery of mailed submittals regardless of fault.

A detailed Request for Qualifications (RFQ) information packet including general information, requested services, submittal requirements, and evaluation process is available on the County's website at [hyperlink for page].

Okanogan County reserves the right to reject any and all submittals and to waive irregularities and informalities in the submittal and evaluation process. This RFQ does not obligate the County to pay any costs incurred by respondents in the preparation and submission of their statement of qualifications. Furthermore, the RFQ does not obligate the County to accept or contract for any expressed or implied services.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2013.

Lalena Johns (or Perry?)  
Clerk of the Board, Okanogan County

Published:



The Consultant with whom the County contracts shall perform the duties of the Hearing Examiner as set forth in Okanogan County Code Chapter 2.65 as now or hereafter amended, together with such other Hearing Examiner services as may be provided by the Okanogan County Code and/or may be assigned from time to time by the County Commissioners or Director of Planning and Development.

- **SCOPE OF SERVICES:** The Hearing Examiner shall perform the duties of the Hearing Examiner set forth in Okanogan County Code Chapter 2.65, as now or hereafter amended, together with such other Hearing Examiner services as may be provided by the Okanogan County Code and/or assigned from time to time by the County Commissioners or Director of Planning and Development, in accordance with the Rules/Procedures and Performance Guidelines set forth below. The County shall pay the Hearing Examiner for such services at a rate to be negotiated.

Okanogan County will reimburse the Hearing Examiner for actual out of pocket expenses incurred in the conduct of the Examiner's duties (**including mileage, long distance telephone charges, facsimile transmission charges, and copying charges????**). All invoices shall set forth the basis of the charge and the matter or proceeding for which it was incurred.

The County shall provide administrative and other support services for the Examiner through the Office of the Hearing Examiner as staffed by personnel from the Department of Planning and Development. The Examiner is not authorized to incur secretarial or other support service expense without the express prior written approval of the (**BOCC or Perry?**).

## **RULES & PROCEDURES:**

### **1. Roles and Relationships:**

a. **Hearing Examiner.** The Hearing Examiner is the hearing officer for the County. As such, the Examiner conducts hearings on such matters as are assigned by the Director of Planning and Development, as the County Commissioner's representative, through the Office of the Hearing Examiner. The Examiner is responsible for all aspects of each matter assigned from the time of assignment through its conclusion, and issues reports thereon in the form of a decision or recommendation, with findings of fact and conclusions supporting the decision/recommendation, as provided in Okanogan County Code Chapter 2.65 and the Hearing Examiner's Rules of Procedure (**I think we'll need to develop something more extensive than OCC 2.65.080**) as adopted by the County Commissioners.

b. **County Prosecuting Attorney.** The County's Civil Deputy Prosecuting Attorney provides legal advice and assistance as requested by the Hearing Examiner. The Civil Deputy also provides representation and advice to departments/employees that appear before the Examiner and advises the County Commissioners in regard to decisions/recommendations of the Examiner. Should the Civil Deputy or any represented party believe that an apparent or real conflict of interest has arisen during the course of a matter referred to the Hearing Examiner, the Prosecuting Attorney shall either assign another deputy or secure a special deputy to represent the Hearing Examiner.

c. **Office of Planning and Development.** The Director of Planning and Development supervises the Office of the Hearing Examiner, assignments made to the Examiner, and through the Office of the Hearing Examiner, the scheduling of the Examiners' hearings

and of all proceedings. The Director is responsible for managing the contract(s) with the Hearing Examiner and reviewing the performance of the Examiner.

d. **County Commissioners.** The County Commissioners are responsible for the appointment of the Hearing Examiner, who serves at their pleasure.

**2. Hearing Examiner Meetings:**

The Hearing Examiner will meet periodically with the Director of Planning and Development to discuss procedures, rules, problems, and any matters that may be of concern to the Examiner, the Commissioners, the Director, and/or staff.

**3. Attendance at (BOCC/Planning Commission...?) Meetings:**

The Hearing Examiner will attend and participate when requested at ??????? meetings when the Examiner's report and recommendation/decision are being considered by the ???????. (**Need to pin down how broad his scope of services will be**).

**4. Rules of Procedure:**

The Hearing Examiner will from time to time review and make suggestions to the Director of Planning and Development for modifications to the Hearing Examiner Rules of Procedure as the Examiner feels necessary.

**5. Performance Guidelines:**

The following are the performance expectations for the Hearing Examiner should the County Commissioners decide to continue with the Hearing Examiner system after review of the one year trial period.

The performance of the Examiner will be evaluated at the conclusion of the one year trial period in accordance with the following guidelines and measures of effectiveness:

1. The logic of findings and conclusions and the reasoning of recommendations and decisions.
2. The decorum, demeanor and effectiveness of the Examiner in the management and conduct of the proceedings assigned.
3. The efficiency, effectiveness and service demonstrated, including cost effectiveness, timeliness, and responsiveness.
4. Preparation of reports, including format, clarity, comprehensibility, timeliness, thoroughness, completeness, grasp of and responsiveness to the issues presented, and familiarity with and application of applicable and relevant criteria, policies, regulations, and/or law.

- **SUBMITTAL REQUIREMENTS:** Responses to this RFQ must include the following information:

Respondents considered must provide the specific information requested below in their submittal.

To facilitate the evaluation process, please submit three (3) bound, and one (1) electronic copy (CD) of your submittal; submittals should be no longer than eight (8) double-sided pages, excluding sample reports, and should be organized according to the following subjects:

- Attorney or Professional Status: State name of school, year of graduation from law school, and in case of qualifications being submitted by a firm, provide the information for all attorneys anticipated to provide services to the County, OR, (**need some good criteria language for a non-attorney applicant**).

- Hearing Examiner Experience: List, chronologically, your Hearing Examiner experience.
- Land Use Law.
- Environmental Law, including\_\_ your experience with SEPA, NEPA, or similar environmental laws.
- Shoreline Laws, including\_your experience with the Shoreline Management Act, or similar federal and state laws.
- Land Use Code and Other County Regulations relating to land use or development for Okanogan County and/or other political subdivisions or municipal entities.
- Civil violation proceedings and Code enforcement.
- Other Hearing Examiner or administrative law judge experience.\_i.e., tax appeals, local improvement districts, etc.) Please list any other experience you have had as a Hearing Examiner or administrative law judge. Non-legal experience may be listed. Please list jurisdictions, types of experience, and approximate dates of service.

For each area of experience, please list jurisdictions, types of cases, approximate numbers of cases, hearings conducted, and approximate dates/timeframes in which services were provided. Non-legal experience may be listed.

- a. A statement describing your view of the roles and duties of a Hearing Examiner in a municipal setting and your approach to conducting public hearings.
- b. Up to three Hearing Examiner’s reports (recommendations or decisions) for hearings you have conducted, or other similar written report demonstrating similar experience.

Submittals shall be delivered in an envelope clearly marked with: **RFQ Hearing Examiner**, by the deadline listed above.

- **EVALUATION CRITERIA:** Evaluations of submittal packets will be based on the criteria listed below. All proposals will be evaluated using these criteria:

**General qualifications:**

- **Legal education and background**
- **Background, training and experience in:**
  - **Land Use, Environmental and Shorelines Law**
  - **LID, Street, and other Assessment Law**
  - **Tax Law**
  - **Code Enforcement Law**
- **Background, training, and experience as Hearing Examiner**
- **Experience working in public sector**

**Conduct of public hearings:**

- **View of the role and duties of Hearing Examiner**
- **Approach to conducting public hearings**
- **View of the principles that lead to good public hearings**
- **Approach to participants in public hearings**
- **Definition of a "good result" in a contested matter coming before the Hearing Examiner**

**Decision making**

- **Thoroughness of decisions**
- **Clarity of decisions**
- **Ability to identify issues, facts and relevant rules**
- **Application of the rules and law to the facts**

*The County may select a limited number of consultants for in-person interviews before the selection committee.*

- **RFQ SCHEDULE:**

<b>Event</b>	<b>Date</b>
RFQ Release	
Vendor Questions (if any) Due	
Responses to Vendor Questions posted on internet	
Submittals Due	

- **PROPRIETARY PROPOSAL MATERIAL:** Any proprietary information revealed in the proposal should, therefore, be clearly identified as such.

- **SIGNATURES:** RFQ's shall be signed by one of the legally authorized officers of said corporation.

If awarded the contract, the contract shall also be so executed.

- **QUESTIONS:** Questions regarding this project may be directed **in writing** to the RFQ coordinator **via e-mail** at [phustor@co.okanogan.wa.us](mailto:phustor@co.okanogan.wa.us). Unauthorized contact regarding this RFQ with other County employees or officials may result in disqualification. Any oral communications will be considered unofficial and non-binding on the County. Any questions will be answered in writing and posted on the County's website at (**HYPERLINK**). It is the responsibility of individual firms to check the website for any amendments or Q & A's to this RFQ. See the deadline chart above for specific deadlines.

- **REJECTION OF SUBMITTALS:** The County reserves the right to reject any and all submittals and to waive irregularities and informalities in the submittal and evaluation process. This RFQ does not obligate the County to pay any costs incurred by respondents in the preparation and submission of their qualifications. Furthermore, the RFQ does not obligate the County to accept or contract for any expressed or implied services.

- **CONTRACT AWARD:** The County reserves the right to make an award without further discussion of the submittals. The firm/individual selected as the apparently successful firm/individual will be expected to enter into a contract with the County. A sample County contract is provided on the County's (**website or with the Clerk/Perry**).

Please review this contract prior to submitting a statement of qualifications. The foregoing should not be interpreted to prohibit either party from proposing additional contract terms and conditions during the negotiations of the final contract. If the selected firm/individual fails to sign the contract within ten (10) business days of delivery of the final contract, the County may elect to negotiate a contract with the next-highest ranked firm/individual. The County shall not be bound, or in any way obligated, until both parties have executed a contract. No party may incur any chargeable costs prior to the execution of the final contract.

- **CONTRACT NEGOTIATION:** The County reserves the right to negotiate all elements of the submittals, proposals, terms and conditions, and/or scope of work as part of the contract negotiation process prior to any formal authorization of the contract by the County.
- **TITLE VI:** It is the Okanogan County's policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities.
- **NON-ENDORSEMENT:** As a result of the selection of a firm/individual to supply products and/or services to the County, firm/individual agrees to make no reference to the County in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the County.
- **NON-COLLUSION:** Submittal and signature of a statement of qualifications swears that the document is genuine and not a sham or collusive, and not made in the interest of any person not named, and that the firm/individual has not induced or solicited others to submit a sham offer, or to refrain from proposing.
- **COMPLIANCE WITH LAWS AND REGULATIONS:** In addition to nondiscrimination and affirmative action compliance requirements previously listed, the firm/individual ultimately awarded a contract shall comply with federal, state and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, protection of public and employee safety and health; environmental protection; waste reduction and recycling; the protection of natural resources; permits; fees; taxes; and similar subjects.
- **PUBLIC RECORDS:** Under Washington state law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) submitted in response to this RFQ (the "documents") become a public record upon submission to the County, subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law. If the County receives a request for inspection or copying of any such documents it will promptly notify the person submitting the documents to the County (by U.S. mail and by fax if the person has provided a fax number) and upon the written request of such person, received by the County within five (5) days of the mailing of such notice, will postpone disclosure of the documents for a reasonable period of time as permitted by law to enable such person to seek a court order prohibiting or conditioning the release of the documents. The County assumes no contractual obligation to enforce any exemption.

**ATTACH PSA**

PROFESSIONAL SERVICES AGREEMENT  
HEARINGS EXAMINER

The Parties make and enter into this Agreement in consideration of the mutual promises and obligations hereinafter set forth.

1. Parties. The Parties to this Agreement are Okanogan County, a municipal subdivision of the State of Washington, hereinafter the "County", and the Office of the Hearing Examiner, hereinafter the "Hearing Examiner". (For purposes of this agreement, the hearing examiner(s) shall be XXXXXXXXXXXX.)

2. Scope of Professional Services. In accordance with the Okanogan County Code, the Hearing Examiner shall act as the County's hearing examiner and shall conduct hearings on such matters as assigned by the Director of Planning and Development, as the County Commissioner's representative, through the Office of the Hearing Examiner. The Examiner is responsible for all aspects of each matter assigned from the time of assignment through its conclusion, and issues reports thereon in the form of a decision or recommendation, with findings of fact and conclusions supporting the decision/recommendation, as provided in Okanogan County Code Chapter 2.65 and the Hearing Examiner's Rules of Procedure as adopted by the County Commissioners.

3. Term of Agreement and Termination. This Agreement shall be effective when signed by both Parties, and shall continue in force until XXXXXXXX, after which time this Agreement shall automatically renew on a biannual basis until either Party terminates this Agreement by providing written notice to the other Party.

The County shall have the right to terminate this agreement in the sole and absolute discretion of the Okanogan County Board of Commissioners, with or without cause, upon giving sixty (60) days notice to Hearings Examiner and by delivering notice of such termination to the Hearings Examiner or by mailing a copy of the same certified mail, return receipt requested, to the Hearing Examiner's last known address. All right to compensation ceases on the date stated in the notification. The Hearings Examiner shall have the right to terminate this agreement upon sixty (60) days written notice. Notice periods contained in this paragraph may be waived if done in writing.

4. Compensation and Administrative Expenses. As compensation for its services performed under this Agreement, the County shall pay the Hearing Examiner at a rate that is measured by the amount of time that the Hearing Examiner expends in providing services for the County. The hearing examiner rate shall be \$XXXXXXXX per hour of service provided for the County. The Hearing Examiner will measure the time that the Hearing Examiner expends in providing services for the County in a minimum amount of, and in increments of, one tenth of an hour. The County shall reimburse the Hearing Examiner for direct expenses advanced on the County's behalf. Representative examples include [mileage] and mailing costs. [suggestion A The Hearing Examiner shall be compensated for mileage at the rate established in federal Internal Revenue Service regulations.] [suggestion B The Hearing Examiner shall be paid a flat travel fee of \$XXXX per trip to the County.]

The County shall supply all equipment and personnel necessary for the Hearings Examiner to perform his professional services. Hearings Examiner agrees that upon termination of this Agreement, all equipment provided shall be returned in good condition and repair, except for

normal wear and tear.

5. Payment. In order to obtain payment for services, the Hearing Examiner shall submit a properly completed invoice to the County, which shall include supporting documentation that the County may require. The County shall be obligated to promptly pay the Hearing Examiner for its services and reimbursable expenses, but no more frequently than monthly. The County shall further be entitled to make payments through the County's ordinary payment process.

[If multiple/firm Each individual providing Hearing Examiner services under this agreement shall separately present to the County a monthly statement detailing the mileage and number of trips to the County for which the individual is eligible for reimbursement. Each individual providing Hearing Examiner services under this agreement shall be paid directly and promptly for the reimbursements detailed in the statement.]

6. Hearing Examiner Qualifications. The Hearing Examiner warrants that (s)he shall perform the Professional Services related services pursuant to this agreement, have sufficient education, training, skill, knowledge, ability, and experience to competently provide hearing examiner services for the County. The Hearing Examiner further warrants that (s)he has satisfied, and will continue to satisfy, all applicable statutory and regulatory requirements, including those set forth in RCW 42.23 and the appearance of fairness requirements of RCW 42.36.

7. Work Schedule and Conflicts. The Parties anticipate that the County will use the services of the Hearing Examiner on an on demand bases, and thus, the Parties agree to schedule hearings or related services within the time constraints or deadlines that are applicable to each matter, while making accommodations for the Parties' schedules. Otherwise, the Hearing Examiner shall work according to the Hearing Examiner's own schedule. However, nothing herein shall preclude the Parties from establishing a mutually agreeable hearing schedule.

The Hearing Examiner shall promptly notify the County of any conflicts of interest or other circumstances that prevent the Hearing Examiner from acting as the County's hearing examiner pursuant to this contract. If both of the above-identified hearing examiners have a conflict with a particular matter, or must recuse themselves or withdraw from a matter, the Hearing Examiner may suggest candidates to serve as pro-tempore examiners. The County shall have full authority to select any pro-tempore examiners.

8. Ownership of Materials. All County materials with which the Hearing Examiner interacts, including those that are modified by the Hearing Examiner, when such interaction occurs during the course of its services hereunder, or while using County property, shall be owned by the County and shall be "works for hire" as defined by the U.S. Copyright Act of 1976. These materials include, but are not limited to: books, computer programs, data, documents, films, pamphlets, records, reports, sound reproductions, studies, surveys, tapes, and/or the reports.

9. Confidentiality. The Hearing Examiner may use confidential information and other sensitive information gained by reason of its provision of services to the County, or by access to its property, only for County purposes. The Hearing Examiner shall not disclose, transfer, or sell any such information to any party, except as provided by law, or in the case of personal information, with the prior written consent of the person to whom the personal information pertains. The Hearing Examiner shall maintain the confidentiality of all personal information and other information gained by reason of its provision of services to the County, or by access to its property.

10. Hearing Examiner Certification Regarding Ethics. The Hearing Examiner certifies that it is in compliance with RCW 42.52, Ethics in Public Service, and that it shall continue to comply with RCW 42.52. The provisions of RCW 42.52 shall apply to the Hearing Examiner either expressly, or by analogy.

11. Independent Contractor. The Hearing Examiner acknowledges that it is an independent contractor and not an officer, employee, or agent of the County. The Hearing Examiner shall not claim any rights, privileges, or benefits that would accrue to an employee, officer or agent of the County, except those that are expressly identified in this Agreement.

12. Indemnification and Hold Harmless. The Hearing Examiner shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Hearing Examiner, its officers, employees and agents in performing this Agreement.

The County shall protect, defend, indemnify and save harmless Hearing Examiner(s) from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of County, its officers, employees or agents in performing this Agreement.

The Examiner does not assume liability or responsibility for, or in anyway release the County from liability or responsibility that arises, in whole or in part, from the existence or effect of the County's ordinances, code, policies, rules or regulations. If any cause, claim or action of any kind is commenced in which the enforceability and/or validity of any County ordinance, code, policy or regulation, including its constitutionality, is at issue, the County shall defend the same at its sole cost and expense, and if judgment is entered, or damages are awarded against the Hearing Examiner, or the Hearing Examiner and County jointly, the County shall promptly satisfy the same.

13. Notices. All notices that relate to this Agreement shall be personally delivered or mailed by certified or registered mail, postage prepaid to the following addresses, or to such other address as either party shall specify in a written notice so given:

If to the County, addressed to:  
Perry Huston  
Planning Director  
[address]

If to the Hearing Examiner, addressed to:  
Office of the Hearing Examiner  
[address]

14. Assignment. The Parties may not assign this Agreement, or any rights or obligations contained in this Agreement without the express written consent of the other Party.

15. Waiver. No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the person or party against whom it is charged. The failure of the County to require Hearing Examiner's strict compliance with the terms of this Agreement shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce any such term, but the same shall continue in full force and effect.

16. Time. Time is of the essence for the performance of every provision of this Agreement.

17. Applicable Law and Venue. The venue for any legal action arising from this Agreement shall be Pierce County, Washington. This Agreement shall be governed, construed, and interpreted according to the laws of the State of Washington.

18. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not effect the other provisions, and the remaining provisions of this Agreement shall be construed as if they are severed from the invalid or unenforceable provisions.

19. Modifications. This Agreement shall not be modified, unless such modification is in writing and signed by the County and the Hearing Examiner.

20. Complete Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

21. Counterparts. This Agreement may be executed in any number of counterparts, and such counterparts shall collectively constitute the entire Agreement.

[signature blocks]

## Douglas County Hearing Examiner

Andrew L. Kottkamp, Hearing Examiner

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December 15, 2011

Commissioner Dale Snyder, Chair  
Commissioner Ken Stanton  
Commissioner Steve Jenkins  
Douglas County Commissioners  
P.O. Box 747  
Waterville, WA 98858-0747

Re: 2011 Annual Report of the Douglas County Land Use Hearing Examiner

Dear Commissioners:

Enclosed is the Douglas County Land Use Hearing Examiner Annual Report for 2011.

Should you have any questions or wish for me to attend a meeting, please let me know.

Sincerely,



ANDREW L. KOTTKAMP  
Douglas County Hearing Examiner

ALK:sbw

Enclosure

cc: Mr. Mark Kulaas, Director, Douglas County Transportation and Land Services, w/ Enc.  
File No. 2093.00

**DOUGLAS COUNTY LAND USE HEARING EXAMINER**  
**2011 ANNUAL REPORT**

**I. INTRODUCTION**

The office of Douglas County Land Use Hearing Examiner has been in existence for many years. I have been serving as the Douglas County Land Use Hearing Examiner since May, 2006. Prior to this date I was the Hearing Examiner Pro-Tem. My current contract with Douglas County is automatically renewed on a bi-annual basis, subject to being terminated by any party at any time.

Douglas County Code, Section 2.13.130 requires the Hearing Examiner to report, in writing, to the Board of Commissioners at least once per year. The purpose of this report is to review the administration of the County's land use policies and regulating resolutions, as well as reporting on the number and type of decisions rendered since the prior report.

This report is on all actions from January 1, 2011, through November 30, 2011.

Douglas County land use hearings are generally held once a month, on the third Thursday. So far this year, decisions have been rendered in the following areas (the numbers of each specific application are in parenthesis): SP - Shoreline Permit (10), P - Plat (3), CUP - Conditional Use Permit (4), APP - Administrative Appeal (1).

This report is on all actions from January 1, 2011, through November 30, 2011. During this time frame I have rendered decisions on 15 separate permit applications.

The total amount of Hearing Examiner billings from January 1, 2011, through November 30, 2011 is \$8034.00.

**II. ANALYSIS**

**Administrative Appeal**

There was one administrative appeal for this year. There were no administrative appeals in 2010. The total amount billed so far for this matter is \$91.00. This appeal arises out of a Notice of Violation that was sent to the appellants regarding numerous alleged shoreline development violations on property along the Columbia River near Rock Island. The appellants have hired an attorney which has necessitated the County getting

the County Prosecutor involved in this matter as well. The open record public hearing was held on November 17<sup>th</sup>, 2011 and I have left the record open for additional evidence and legal argument from the appellant and the County. A decision should be rendered by the end of the year.

### **Shoreline Permits**

There were 10 shoreline permit decisions. The total amount billed for those decisions was \$3952.00. This makes an average fee per application of \$395.20. In 2010 there were 12 Shoreline permit decisions.

As in years past, shoreline permit applications generally involved the placement of docks and/or boatlifts on the Columbia River. There were also permits relating to restoration of shoreline based upon work done on the shorelines that was not authorized.

### **Plats**

There were 4 separate plat decisions totaling fees of \$1898.00. This calculates out to \$523.25 per decision. In 2010, there was 1 plat application and 1 plat amendment.

The plat decision-making process was relatively straightforward, with rules and regulations imposed by the County Commissioners being implemented by the Hearing Examiner. However, I have found that applicants are now more aggressively challenging off-site improvements upon which agencies are suggesting that the projects be conditioned. Generally, these involve off-site street improvements and/or sewer and water line improvements. In 2011, I continued to notice an increase in significant plat developments being scattered throughout the County but primarily within the urban area of East Wenatchee.

1). Most recently, there was an application for a clustered plat development on property adjacent to the Highlander Golf Club. This project was approved with conditions of approval.

2). There was also a 7 lot cluster plat that was approved. This project is located on SR 173. Another plat, known as Riverview Ranch, Inc. is a cluster subdivision of 22 lots on approximately 72 acres. This project is located at the intersection of Rock Island Road and SR 28. This project was also approved subject to conditions of approval.

3). The final plat involved a 14 lot major subdivision on approximately 4.4 acres on property that is located off Badger Mountain Road. This project was also approved subject to conditions of approval.

4). Finally, there was a final plat submitted by Don and Laura Mounter for a 23 lot subdivision located on approximately 13 acres of property off of North Baker Avenue. That project was also approved subject to conditions of approval.

### **Conditional Use Permits**

There were 4 conditional use permit application decision with a billing of 2093.00. This calculates out to \$523.25 per decision. There were 4 conditional use permit applications in 2010.

Conditional use permits are one of the most interesting and challenging areas in the land use decision process. Conditional uses are uses that are allowed within a particular zone unless there are no conditions that can be implemented to insure consistency of the use with the Comprehensive Plan and the Zoning Code and the character of the area. When deciding appropriate conditions of approval, I base those conditions upon the evidence that is submitted during the hearing process. They may be conditions that are suggested by staff, County departments, individual citizens, opponents and other experts and/or lay witnesses. In many applications there is no objection to the particular use and the conditions as proposed by the Zoning Code and Planning staff are implemented. When there are concerns by the public to a particular conditional use permit application, I must make a factual determination as to whether or not those concerns will factually and legally warrant placement of a condition. If conditions are factually and legally appropriate, it is then my responsibility to craft the language of a condition that will address the factual concerns and that can be appropriately monitored.

Conditional use permits this year included an application by Waste Management to amend their conditional use permit to increase the maximum annual volume of asphalt, concrete and soil to be crushed and processed on site.

There was also a conditional use permit for a veterinary clinic to be located on SE Fourth Street in East Wenatchee.

There was a conditional use permit issued for Sprint Boat Race Facility on property located on Grant Road near the airport.

There was also a conditional use permit requested by Selland Construction for an inert waste landfill on two locations on a subject property that when filled, would create a level building site.

All of the above referenced conditional use permits were approved subject to conditions of approval.

### **III. CONCLUSION**

Douglas County is completing its sixth year with myself serving as the Hearing Examiner. Throughout this year I have never been requested to remove myself as a Hearing Examiner, nor have been required to remove myself as a Hearing Examiner due to any conflict of interest/appearance of fairness issues.

Hearings have been held and evidence gathered in an orderly fashion. Written decisions have been rendered on a timely basis. In rendering all of my decisions, I apply the laws and regulations set by your Board and State legislatures to the facts of the case.

I would invite each of you to continue to attend hearings as you can. You will find that I consider it an important part of my duty to allow all members of the public to present the evidence and testimony they wish to be included into the record, so long as it is consistent with the laws as set forth in this state.

I recently attended the statewide conference of the Hearing Examiners Association of Washington. This is an association of all land use hearing examiners within the State of Washington. This was held in Chelan, Washington in October, 2011. This conference was held over two days. At this conference I was elected Secretary/Treasurer of the Hearing Examiners Association of Washington.

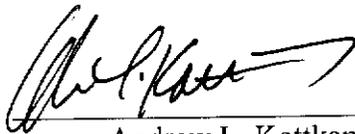
In 2011, I also served as Hearing Examiner for Chelan County, Grant County, Garfield County, Kittitas County, City of Chelan, City of Mattawa, City of Entiat, City of Wenatchee, City of East Wenatchee, City of Leavenworth, City of Cashmere, Town of Coulee City, City of Grand Coulee, City of Kittitas, City of Rock Island and the City of Quincy. I also serve as Hearing Examiner for Chelan-Douglas Health District.

Once again, I would like to commend the entire Douglas County Planning Department and staff for their professionalism in the preparation and presentation of their staff reports and their conduct at hearings. Their diligence and hard work make my job easier as they present the application materials and preliminary evidence in a succinct and easily comprehensible format. It allows me to do my job on a more efficient basis which saves the County money. They are always prepared and always professional at hearings. In short, we have a Planning Department of which the entire County can be proud.

In summary, the Hearing Examiner process continues to be successfully implemented in Douglas County.

Respectfully submitted this 14<sup>th</sup> day of December, 2011.

DOUGLAS COUNTY LAND USE HEARING EXAMINER



Andrew L. Kottkamp