

August 31, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **A09F0001**

**RON BISHOP**  
Fee Appeal

Location: South 360th Street and 25th Place South (Parcel no. 282104-9094)

Appellant: **Ron Bishop**  
35920—25th Place South  
Federal Way, Washington 98003  
Telephone: (253) 927-7092

King County: Department of Development and Environmental Services (DDES)  
*represented by* **Steve Bottheim** and Molly Johnson  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

**EXAMINER PROCEEDINGS:**

Hearing opened:	April 14, 2009
Hearing closed:	April 14, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. This matter is the appeal of DDES project permit review fees associated with Appellant Ron Bishop's three-lot short plat application filed under File L08S0011. The application was submitted to DDES on February 15, 2008 and received formal preliminary approval by DDES on November 7, 2008.
2. County staff time expended in permit review is a chargeable expense to the permittee under county code. [Title 27 KCC]
3. At the time of the short plat application, the review fee estimate by DDES was \$15,403.00.
4. Actual fees billed for the short plat review were \$11,301.00, leaving \$4,102.00 short of the estimate, which amount was refunded.
5. Appellant Bishop filed a fee waiver request with DDES. In response, DDES waived 9.05 hours/\$1,267.00 in light of some inefficiency of time in the inter-departmental coordination between DDES and the county Department of Transportation (KCDOT) on a sight distance issue, for which a road standards variance was for a while contemplated as necessary. KCDOT determined after some period of review that DDES had authority to decide the sight distance issue outside of a formal KCDOT (County Road Engineer) variance process.<sup>1</sup>
6. In the course of the sight distance review, it was determined that a frontage improvement issue also needed to be addressed, including possibly a formal variance.
7. After the fee waiver decision by DDES, Mr. Bishop appealed the fees charged in the instant case. The appeal claims essentially are:
  - A. The sight distance variance requirement should have been waived by DDES, and failure to do so inappropriately caused unnecessary additional private engineering costs to the project and led to the triggering of the late requirement of frontage improvements (which apparently had previously been thought not necessary).
  - B. At least 16 hours were charged for addressing the sight distance issues, including interdepartmental processing determinations; and overall the project incurred a delay of over six months, resulting in "at least an additional 4 hours of routine status review time."
  - C. The delays surrounding the subject project "cost an additional \$8,000 in carrying costs."

Lastly, Mr. Bishop states that in general the billed project review time "seems like a lot of hours" to address what he had understood to have been initially viewed by DDES staff as "a simple short plat."

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<sup>1</sup> It appears the County Road Engineer has the discretion to delegate the review to DDES rather than invoke formal KCDOT review authority.

8. KCDOT testified that the sight distance review took a “typical” period of time for administrative review.
9. DDES contends that the project’s private engineering consultant costs would have been the same regardless whether the sight distance issues were addressed by KCDOT or DDES.
10. Mr. Bishop acknowledged at hearing that the 9.05 hour waiver “did reconcile some” of the disputed fees. Further, he acknowledged that indirect costs of the allegedly unnecessary delay are differentiated from actual DDES review fees. Lastly, Mr. Bishop, who did not present any evidence or specificity as to what particular individual charges were unreasonable in the project review, acknowledged that there “may very well be an explanation” and that “if [the subject project review was] similar [to other comparable short plats, he was] not in a position to question [the billing].”
11. The Examiner has reviewed the evidence presented, particularly the billing sheet and fee statement excerpts offered, and cannot discern from the record that “at least an additional 4 hours of routine status review time,” as claimed by the Appellant, were attributable specifically to the asserted delay caused by the sight distance review.
12. In the final analysis, no evidence has been presented that DDES’s billed review fees (after taking into account the reduction of \$1,267.00) are unreasonable charges.

#### CONCLUSIONS:

1. The Examiner’s jurisdiction in the instant case is limited to the county staff time expended in project review. The Examiner has no subject matter jurisdiction over costs which may have been incurred by a project applicant to engage in the permit review, such as in advocacy of a permittee’s position on issues or in preparing or presenting factual information or technical studies. If there are claims against the county for what may be felt to be unreasonable requirements resulting in permittee expenditures other than the county review fees, those claims must be addressed to some other forum. In particular, the claim of inappropriate delay and resultant expense of the project review due to the sight distance machinations between DDES and KCDOT over review responsibility, alleged to have resulted in additional project costs outside of county review fees, is a matter outside of Hearing Examiner jurisdiction and must be taken up as a separate type of claim.
2. The claim that the requirement of frontage improvements was, from the Appellant’s perspective, an inappropriately late-arising issue (with the implication being that it was unfairly brought to light) is a matter pertinent to the short plat approval itself, not to the review fee appeal. If there was disputation of the frontage improvement requirements imposed at the time of short plat preliminary approval, the approval decision could have been appealed for that reason. The Examiner does not have subject matter jurisdiction to weigh into the frontage improvement requirement (and must therefore in general consider related review fees to be legitimately based).
3. With respect to sight distance review time billing, it appears there were some interdepartmental inefficiencies in determining the ultimate decisionmaking process. DDES appears to have made a reasonable adjustment of such time in the Appellant’s favor by waiving 9.05 hours for a reduction of \$1,267.00 in fees.

4. No other adjustment appears justified on any grounds of unreasonableness in the instant case. As noted above, little in the way of specifics have been offered to support Appellant's claim that the review time amounted to "a lot of hours" and seemed to involve more review time than had been predicted. The original fee estimate, which significantly exceeded the actual review time charge, seems to contradict that claim (albeit the Appellant did state at hearing that he had contemplated disputing the fee estimate).<sup>2</sup>
5. In the final analysis, it cannot be concluded from the facts presented in this case that the time billed by DDES (after the adjustment by waiver of 9.05 hours/\$1,267.00) is an unreasonable charge or inconsistent with Title 27 KCC. The appeal must therefore be denied.

**DECISION:**

The fee appeal is DENIED as not supported by the record presented.

ORDERED August 31, 2009.

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Peter T. Donahue  
King County Hearing Examiner

**NOTICE**

County code provides that the Hearing Examiner decision on fee appeals under Chapter 27.50 KCC is the final decision for the County.

**MINUTES OF THE APRIL 14, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. A09F0001**

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Steve Bottheim and Molly Johnson representing the Department and Ron Bishop, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for A09F0001
Exhibit No. 2	Project management statement with highlighted hours waived
Exhibit No. 3	Notes from DDES showing hours charged
Exhibit No. 4	Fee Waiver/Adjustment of Fees Authorization form
Exhibit No. 5	Letter to Ron Bishop from Randy Sandin dated March 4, 2009

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<sup>2</sup> It should be noted here that the burden of proof in fee appeal matters rests on the project applicant. The applicant must show "that the particular billing or fee was unreasonable or inconsistent with [the development fee] title." [KCC 27.50.080]