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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

ANNIE JANICKI,

Petitioner,

v.

CITY OF SEDRO WOOLLEY, a municipal  
corporation, and DELUXE RECYCLING AND  
DISPOSAL LLC, a Washington Limited  
Liability Company,

Respondents,

vs.

SKAGIT COUNTY, a political subdivision in  
the State of Washington,

Intervenor.

**NO. 08-2-01130-8**

**DELUXE RECYCLING AND  
DISPOSAL LLC's REPLY IN  
FAVOR OF MOTION TO  
DISMISS**

**I.  
REQUEST FOR RELIEF**

Petitioner has filed a second appeal of a decision by Sedro Woolley to issue a Mitigated Determination of Non-Significance (MDNS) to Deluxe Recycling and Disposal LLC ("Deluxe") to conduct a recycling center on property zoned Industrial. The MDNS was upheld by the Hearing Examiner.

1 Subsequently, Petitioner has appealed this ruling to Superior Court. Deluxe  
2 requests that the Court grant its motion to dismiss for failure to timely perfect the  
3 appeal.  
4

5 **II.**  
6 **COUNTER STATEMENT OF FACTS**

7 **A. Administrative Proceedings.**

8 The City issued the MDNS on March 7 in regard to the Deluxe proposal to  
9 conduct a recycling center. On March 5, an ordinance became effective,  
10 changing the time period to appeal environmental threshold determinations to  
11 the Hearing Examiner from 15 calendar days of the date the decision becomes  
12 final to 14 calendar days from the decision. The Petitioner's appeal of this  
13 MDNS decision was filed with the Hearing Examiner after the appeal period had  
14 expired – 19 calendar days after the decision. Sedro Woolley had published  
15 notice of the decision and advised that the public would have 14 days from the  
16 date of publication to appeal the MDNS. The City's notice was inconsistent  
17 contrary to the appeal deadline established by Sedro Woolley Code 2.88.170(b).  
18

19 **B. Superior Court Proceedings.**

20 Petitioner admits that it failed to name and serve the property owner of the  
21 property subject to the permit at issue within 21 days of the issuance of the  
22 decision. The property owner is an indispensable party, required to be named  
23 and served as party defendant. Petitioner agrees Deluxe Recycling and  
24 Disposal LLC is listed in the decision as the Applicant's contact or proponent.  
25 The written decision does not list the name of the property owner. Petitioner  
26

1 misleads the Court when it contends "Deluxe represented to the City that Deluxe  
2 was the owner of the property." (Page 4, Petitioner's Brief in Objection)  
3  
4 Inexplicably, Petitioner makes the statement after it establishes that Deluxe was  
5 listed as an Applicant/contact or proponent, and not as a property owner in the  
6 Hearing Examiner decision.

7 Petitioner was able to research the name of the property owner by  
8 examining the Assessor records. Eighteen days after the appeal period had  
9 expired, Petitioner filed a "Notice of Joinder" in an attempt to add the property  
10 owner as a party defendant. There is no dispute Petitioner failed to name and  
11 serve either the prior owner or current owner of the property, Fire Ridge LLC, by  
12 the deadline of June 12 as a party defendant. Petitioner alleges that the statute  
13 does not require that the property owner be an indispensable party to the action.  
14

15 Deluxe, Steve Snell and Larry McCarter have no interest in either  
16 TreeSource Acquisition Company, LLC or Fire Ridge LLC (McCarter, Snell  
17 Dec.'s) A substantial part of Skagit County's statement of facts are inadmissible  
18 and/or not relevant, but are simply introduced in an attempt to divert the Court's  
19 attention in issuing a decision on the true issue here. Deluxe has filed a  
20 separate motion to strike parts of Skagit County's proposed facts and exhibits.  
21

22 **III.**  
23 **SUMMARY OF ARGUMENT**

24 Petitioner fails to take ownership of its complete negligence in not naming  
25 the property owner of the subject property as a party defendant within 21 days of  
26 the decision. Instead, the Petitioner attempts to blame other parties for its  
27

1 negligence. A property owner is an indispensable party to land use proceedings.  
2  
3 The Court has no jurisdiction to decide a land use case without the property  
4 owner included as a party. See North Street Association v. Olympia, 96 Wn.2d  
5 359, 369, 635 P.2d 721 (1981). Petitioner presents no legitimate excuse for  
6 failure to name the property owner as a defendant within the 21-day period.  
7 Instead, they contend RCW 36.70C.040 does not require or compel Petitioner to  
8 name and serve the property owner as a party to the proceedings. However,  
9 RCW 36.70C.040 continues to require that the property owner be a party in any  
10 land use proceeding subject to the act.  
11

12 At the administrative level, Deluxe represented itself in the various  
13 documents as the proponent/Applicant. The Hearing Examiner decision also  
14 lists Deluxe as the "proponent" not the property owner.

15 Petitioner alleges that there was no need to research the property owner  
16 as Deluxe represented itself in the administrative proceedings as the  
17 proponent/Applicant. Then, Petitioner misleads the Court by stating that "Deluxe  
18 represented to the City that it was the owner of the property." (Page 5, of  
19 Petitioner's argument) A proponent/Applicant is much different than a property  
20 owner. Deluxe could not have represented itself as the owner of the property as  
21 TreeSource Acquisition Company, LLC, a Washington Limited Liability  
22 Company, was the owner of the property until May 21, 2008, when the property  
23 was sold to Fire Ridge LLC, a Washington Limited Liability Company. (See  
24 Declaration of Steve Seeger)  
25  
26

1 The Hearing Examiner decision lists Deluxe as a proponent, not the  
2 property owner. Thus, RCW 36.70C.040(2)(b)(i-ii) requires that the Petitioner  
3 name as a party and file and serve the person indentified by name and address  
4 of the local jurisdiction written decision as an Applicant and each person  
5 identified by name and address in the local jurisdiction written decision as an  
6 owner of the property at issue. Here, there is no dispute that the written decision  
7 does not list the name and address of the property owner of the property subject  
8 to the permit. Thus, RCW 36.70C.040(2)(c) requires that if no person is  
9 identified in the written decision is provided in subsection (b). Each person  
10 identified by name and address in the Assessor Records as a taxpayer of the  
11 property at issue is to be listed as a party defendant.

14 Responsibility rests with the Petitioner to name all indispensable parties.  
15 A land use petition is barred if there is a failure to name all required parties within  
16 the 21-day deadline. [RCW 36.70C.040(2)] The Court may not grant relief  
17 unless the petition is timely filed.

19 A. RCW 36.70C.050 does not obligate Deluxe to join the property owner  
20 Fire Ridge LLC as a party to this action nor does it negate Petitioner's  
21 responsibility under RCW 36.70C.040 to join all proper and  
indispensable parties including the property owner within the requisite  
21-day appeal period.

22 RCW 36.70C.050 only shifts the burden to Applicant to secure the joinder  
23 of the property owner if the Applicant for the land use decision is not the owner  
24 of the real property at issue, and if the owner is not identified in the decision itself  
25 or through tax assessor records. Deluxe acknowledges that it is not the owner of  
26

1 the land and the property owner is not listed in the Hearing Examiner decision.  
2  
3 However, before the burden shifts to Applicant to secure joinder, there must be  
4 evidence presented by Petitioner that a property owner could not have been  
5 discovered through an examination of the Tax Assessor Records. Dependent on  
6 when the Assessor Records were checked, the records would clearly lists either  
7 TreeSource Acquisition Company, LLC or Fire Ridge LLC as the property owner  
8 of the property subject to the permit. This is readily ascertainable in examining  
9 any of the parcel numbers listed in the Hearing Examiner decision with the  
10 Assessor records. (Phil Serka dec., Exhibit "B")  
11

12 There is nothing in the record that establishes that Petitioner was unable  
13 to verify ownership of the property from examination of the Assessor records.  
14 Instead, eighteen days after the appeal period elapsed, Petitioner did examine  
15 taxpayer records and determined that Fire Ridge LLC was the property owner  
16 and attempted to join the property owner, Fire Ridge LLC, as a party to the  
17 action. TreeSource Acquisition Company, LLC transferred title to the property to  
18 Fire Ridge LLC by a recorded deed. (See Seeger dec.) RCW 36.70C.050 only  
19 requires the burden to shift to an Applicant to join the property owner in the event  
20 that it has special information as to the name of the property owner that cannot  
21 be found from the Hearing Examiner decision or through the Tax Assessor  
22 Records, such as if title were transferred by an unrecorded deed.  
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1  
2 There is no defense for Petitioner not having examined the Assessor  
3 Records and verifying the name of the property owner within the 21-day appeal  
4 period.

5 B. RCW 36.70C.040 obligates the Petitioner to name and serve the  
6 property owner as an indispensable party to the petition under the  
7 Land Use Petition Act.

8 Petitioner alleges that RCW 36.70C.040 does not apply when the Hearing  
9 Examiner identifies all "parties in the record." Skagit County agrees with this  
10 interpretation and states that "requirement that a property owner be a party  
11 defendant named prior to expiration of the 21-day appeal period can simply be  
12 avoided by the property owner transferring the property to a "newly minted shell  
13 company just before the 21-day filing deadline expires." These arguments are  
14 not logical and not based on plain language of the statute nor based on common  
15 law. The Petitioner never checked the Assessor Records, never named either  
16 the prior owner TreeSource Acquisition Company, LLC or Fire Ridge LLC as an  
17 owner. Thus, Deluxe fails to see how a transfer of the property within the 21-day  
18 appeal period created any prejudice to Petitioner when the Petitioner made no  
19 attempts to have the property owner named as a party within the 21-day appeal  
20 period. RCW 36.70C.040 requires in all cases that the property owner be  
21 named as a party as either identified from the written decision or as the named  
22 taxpayer identified from the county Assessor Records. A property owner is an  
23 indispensable party required to be named as a defendant and served prior to  
24 expiration of time periods. There is no instance where a petitioner in a land use  
25  
26

1 case can avoid the requirement to include the property owner as a party. In  
2 addition, Petitioner's argument that only those named as parties are listed in the  
3 Hearing Examiner decision need be named as defendants does not hold any  
4 water. RCW 36.70C.040(2)(b)(i-ii) requires that the Applicant **and** property  
5 owner named in the written decision, be required parties. Failure to name the  
6 property owner in the written decision does not mean that the property owner is  
7 no longer a necessary party. It requires the Petitioner to name the  
8 taxpayer/property owner as identified in the County Assessor Records in order to  
9 perfect its appeal. The Hearing Examiner does not have the authority to  
10 determine Superior Court jurisdictional requirements and dispense with the  
11 requirement of naming a property owner as an indispensable party by simply  
12 omitting the property owner's name from the decision. The RCW 36.70C.040(c)  
13 requirements would have no meaning or purpose if the required naming of a  
14 property owner as listed in the Assessor Records as a party to the proceeding  
15 could be avoided by the Hearing Examiner simply omitting the owner's name  
16 from the written decision.  
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20 Petitioner did not even attempt to name predecessor property owner,  
21 TreeSource Acquisition Company, LLC, or Fire Ridge LLC, as the property  
22 owner. The record does not indicate that Petitioner made any attempt to  
23 research the Assessor Records within the 21-day appeal period. On the other  
24 hand, Deluxe has established that Assessor Records clearly identifying the  
25 property owner by a simple check of the parcel numbers listed in the Hearing  
26

1 Examiner decision with the Assessor Records. There is no defensible excuse for  
2  
3 Petitioner's failure to name the property owner as a party. The 21-day appeal  
4 period was from May 22 – June 12, 2008. Until May 30<sup>th</sup>, the date the deed was  
5 recorded, TreeSource Acquisition Company, LLC was the owner. From May 30  
6 to June 12<sup>th</sup>, Fire Ridge LLC was the owner of the property. The Petitioner could  
7 have easily satisfied the joinder requirement by simply naming the property  
8 owner listed in the Assessor Records as the owner at the time they checked  
9 within the 21-day appeal period. The naming of the owner would have satisfied  
10 the requirement despite the subsequent transfer of the property. In accordance  
11 with the civil rules, an amendment to the petition changing the real party of  
12 interest would have been permitted.  
13

14 Neither Skagit County nor the Petitioner deny that common law requires  
15 the joinder of the property owners as indispensable parties to land use petitions.  
16 Property owners are obviously an indispensable party as the decision will  
17 significantly alter an owner's property value or impact the potential uses of the  
18 property.  
19

20 C. Petitioners have failed to exhaust the administrative remedies by  
21 appealing the decision of Sedro Woolley to issue the MDNS to the  
22 Hearing Examiner in a timely manner in accordance with the local  
23 ordinance.

24 The City of Sedro Woolley ordinance required that an appeal of the  
25 MDNS to the Hearing Examiner be filed in writing with the responsible official  
26 within 14 calendar days of the decision (emphasis mine). [City of Sedro  
27 Woolley Code 2.88.170(b)] Neither Skagit County nor the Petitioner deny the

1 validity of this ordinance or that it applied to this particular appeal. This  
2 ordinance is clear and unambiguous. The record establishes that the Petitioner  
3 filed their appeal with the Hearing Examiner 19 days after the Mitigated  
4 Determination of Non-Significance was issued, not within the required 14  
5 calendar days. A copy of the Code is attached as Exhibit "A." Thus, the Hearing  
6 Examiner had no jurisdiction to hear this appeal. The error made by City of  
7 Sedro Woolley in its publication of the notice of the MDNS misquoting the appeal  
8 deadline does not extend the appeal period nor does this error bind Deluxe.  
9 Appeal periods are designed to protect Deluxe and other property owners and  
10 cannot be extended or waived. Parties have the responsibility to know the law  
11 and the appropriate appeal periods set forth therein. Neither Skagit County nor  
12 the Petitioner have provided any legal authority that would allow Petitioner to  
13 avoid compliance with the deadline to file the appeal with the Hearing Examiner.  
14

15  
16 Since the appeal of the Hearing Examiner was not timely, Petitioner failed  
17 to exhaust administrative remedies. Thus, there is no land use decision that can  
18 be reviewed by the Court.  
19

#### 20 **IV.** 21 **CONCLUSION**

22 The Land Use Petition Act (LUPA) requires in all cases that the Petitioner  
23 name and serve the property owner as an indispensable party within the 21-day  
24 appeal period. The obligation to name and serve a property owner is required by  
25 RCW 36.70C.040. The property owner listed in the written decision is required  
26 to be a party named within 21 days. If the property owner is not listed in the  
27

1 decision, the Petitioner was obligated to name the property owner listed as  
2 taxpayer/property owner from the records of the County Assessor.  
3

4 The record clearly establishes the Petitioner did not name any property  
5 owner as a defendant prior to expiration of the 21-day appeal deadline. The  
6 record also establishes that the property owner could have been identifiable from  
7 the County Assessor Records. In accordance with RCW 36.70C.040, the land  
8 use petition is barred and the Court has no other option but to dismiss the  
9 petition as it has no jurisdiction to hear the appeal.  
10

11 Based on the aforementioned reasons, Deluxe Recycling and Disposal  
12 LLC respectfully requests that the petition be dismissed.

13 DATED this 23 day July, 2008.

14 Respectfully submitted,

15 **ADELSTEIN, SHARPE & SERKA LLP**

16  
17 BY:   
18 **PHILIP A. SERKA, WSBA #6814**  
19 Attorney for Deluxe Recycling and Disposal LLC

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# EXHIBIT "A"

ORDINANCE NO. 1607-08

## AN ORDINANCE ADDING A NEW CHAPTER TO TITLE 2 ESTABLISHING A HEARING EXAMINER; AND MODIFYING THE PROCEDURES OF THE DEVELOPMENT CODE TO INCLUDE A HEARING EXAMINER

**WHEREAS**, the City Council has adopted the classification of Noncharter Code City pursuant to the Optional Municipal Code of the State of Washington, 35A RCW; and

**WHEREAS**, the Optional Municipal Code requires a different procedure for making land use decisions than currently exists in the Sedro-Woolley Municipal Code (SWMC); and

**WHEREAS**, the City Council and Planning Commission held a joint meeting on November 14, 2007 and directed staff to revise development standards and processes; and which process is undergoing and is anticipated to be completed within 12 months from the date of this ordinance; and

**WHEREAS**, the City Council desires to create the position of hearing examiner and utilize that office in the land use decision making of the City;

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY DOES ORDAIN AS FOLLOWS:**

**Section 1.** A new chapter is added to Title 2 SWMC establishing the position of Hearing Examiner and shall read as follows:

**2. \_\_\_ Hearing examiner established**

There is created the office of the Sedro-Woolley Hearing Examiner. The hearing examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term "examiner" or "hearing examiner" as used in this chapter shall include examiners pro-tem.

**2. \_\_\_ Appointment.**

The mayor shall appoint a hearing examiner and hearing examiners pro-tem, as needed. The mayor is authorized to execute professional service contracts with examiners, in a form approved by the city attorney, provided that such contract conforms with this Chapter of the SWMC as exists or is hereafter amended. An examiner pro-tem shall serve in the event of the absence or disqualification of the examiner.

**2. \_\_\_ Qualifications.**

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasijudicial hearings and to discharge other delegated functions. The hearing examiner shall comply with the canons of judicial conduct as promulgated by the Washington Supreme Court.

**2. \_\_\_ Removal.**

Examiners may be removed from office for cause by the mayor, subject to confirmation of a majority vote of the city council.

**2. . . . Freedom from improper influence.**

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him or her, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his or her duties in any other way; provided, that this section shall not be read as prohibiting the city staff from making such reports and recommendations as are required in the exercise of their duties; and provided, further, this section shall not prohibit the city attorney from rendering legal service to the examiner upon request.

**2. . . . Conflict of interest.**

The examiner shall be subject to the same code of ethics as other appointed public officers in code cities, as set forth in RCW 35A.42.020 and Chapter 42.23 RCW, as the same now exists or may hereafter be amended.

**2. . . . Rules.**

The examiner shall have the power to prescribe rules, consistent with city ordinances, for the scheduling and conduct of hearings and other procedural matters related to the duties of the office.

**2. . . . Duties.**

The hearing examiner is vested with the duty and authority to hold public hearings, render decisions and exercise the following powers:

- A. Receive and examine available information;
- B. Hold and conduct public hearings in accordance with SWMC Chapter 2.90, RCW Chapter 42.32, and all other applicable law, and to prepare a record thereof;
- C. Make recommendations and decisions on all applications, permits or approvals as described in SWMC Chapter 2.90;
- D. Hear and make final decisions on appeals made pursuant to SWMC Chapter 2.90;
- E. Administer oaths and affirmations;
- F. Issue subpoenas and examine witnesses; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;
- G. Regulate the course of hearings;
- H. Make and enter written findings of fact and conclusions to support his or her decisions;
- I. At the examiner's discretion, hold conferences for the settlement or simplification of the issues;
- J. Conduct discovery;
- K. Dispose of procedural requests of similar matters;
- L. Take official notice of matters of law or material facts;
- M. Issue summary orders in supplementary proceedings; and
- N. Take any other action authorized by or necessary to carry out this chapter and those matters within the jurisdiction of the examiner.

**2. . . . Authority of hearing examiner to hear impact fee appeals.**

- A. Pursuant to RCW 82.02.070(5), the hearing examiner shall have authority to hear and determine impact fee appeals as set forth in Section 8 of the Impact


Fee Ordinance, Chapter 15.60 of the Sedro-Woolley Municipal Code. For this section, decisions of the hearing examiner are subject to review by the city council.

B. Pursuant to RCW 82.02.070(5), the hearing examiner shall have authority to hear and determine impact fee appeals as set forth in Section 8 of the Sedro-Woolley School District No. 101 Impact Fee Ordinance, Chapter 15.64 of the Sedro-Woolley Municipal Code. For this section, decisions of the hearing examiner are subject to review by the city council.

**2.      Conflicting code procedures and rules of procedure.**

Any and all provisions of this code, and any and all provisions of the rules of procedure adopted by the examiner, which are in conflict with this chapter are superseded.

**Section 2.** SWMC Section 2.88.170 B is amended to read as follows:

 An appeal must be filed in writing with the responsible official within 14 calendar days of the decision. The appeal shall identify the decision, contain a summary of the grounds for the appeal and be accompanied by an appeal fee in an amount established by resolution of the city council. Following the receipt of the appeal and fee, the responsible official shall transmit a copy of the appeal to the hearing examiner for an open record hearing pursuant to SWMC 2.90. Any party with standing may file an appeal of the decision of the hearing examiner's decision with the Superior Court per the Land Use Petition Act RCW 36.70 C.



**Section 3.** SWMC Chapter 2.90 is amended as noted in each subsection below; all other sections of SWMC 2.90 to remain unchanged.

**A.** SWMC Section 2.90.010.C.2. is amended as follows:

Type II: Hearing examiner final decision with open record hearing.  
SEPA (mitigated) determination of non-significance, if administrative decision is appealed;  
Impact fees, if contested;  
Shoreline permit;  
Variances and de novo hearings under SWMC Chapter 17.66;  
Conditional Uses;  
Variances.

**B.** SWMC Section 2.90.010 C.3 is amended as follows:

Type III: Decision by city council following hearing examiner open record public hearing and recommendation.

Preliminary Subdivision (Long Plat) approval;  
Planned Residential Development;  
Binding Site Plan;  
Site specific rezone;

**C.** SWMC Section 2.90.010 C.5 is amended as follows:

Type V: Legislative decision by city council following planning commission open record public hearing and recommendation.

- Comprehensive Plan amendment;
- Land use code amendment;
- Area-wide zoning map amendment.

D. SWMC Section 2.90.010.D.3 is amended as follows:

Type II procedures apply to matters requiring a public hearing and final decision before the hearing examiner. Closed record appeals are before the city council. No closed record appeal is provided for decisions of the hearing examiner that were appeals of an administrative decision.

E. SWMC Section 2.90.010.D.4 is amended as follows:

Type III procedures apply to matters requiring a decision by the city council upon a recommendation of the hearing examiner. The open record hearing is conducted by the hearing examiner. No closed record appeal is provided.

**Section 4.** SWMC section 2.48.040 is repealed in its entirety.

**Section 5.** SWMC Title 15 is amended as noted; all other portions of the respective chapter and section to remain unchanged.

A. SWMC Section 15.60.150 is amended as follows:

- A. A developer may appeal the amount of an impact fee determined by the director to the hearing examiner as provided in SWMC Title 2.90.
- B. In order to appeal, the developer must pay the fee or post a bond or other acceptable security for the fee. Notice of appeal must be filed within fourteen days of issuance of a building permit or other land use approval or decision for which the fee was required.
- C. The developer shall bear the burden of proving:
  - 1. That the director committed error in calculating the developer's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors; or
  - 2. That the director based his determination upon incorrect data.
- D. The hearing examiner shall affirm the decision of the director, modify the decision of the director and recalculate the fee or credit, or remand the matter back to the director for additional findings and recomputation of the fee or credit.

B. SWMC Section 15.64.080 is amended as follows:

- A. Any fee payer may pay the impact fees imposed by this chapter under protest in order to obtain the development approval and/or a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the fee payer of the property where such development activity will occur. No appeals shall be permitted unless and until the impact fees at issue have

been paid. SWMC Chapter 2.90 shall govern the appeal process, to the extent applicable.

B. The responsible official's determinations with respect to the applicability of the impact fees to a given development approval and/or building permit, the availability of an exemption, the availability or value of a credit, or the responsible official's decision concerning the independent fee calculation which is authorized in Section 15.64.150, or the impact fees imposed by the responsible official pursuant to Section 15.64.150, or any other determination which the responsible official is authorized to make pursuant to this chapter, can be appealed to the hearing examiner.

C. If the director makes a determination on an adjustment, credit, exemption or independent fee calculation contrary to or inconsistent with the determination or analysis prepared by District No. 101, the district may appeal the responsible official's determination to the hearing examiner.

D. Appeals shall be taken within fourteen working days of the responsible official's issuance of a written determination by filing with the hearing examiner a notice of appeal specifying the grounds thereof, and depositing an administrative fee in the amount of three hundred dollars. The responsible official shall transmit to the hearing examiner all papers constituting the record for the determination, including where appropriate, the independent fee calculation.

E. The responsible official shall fix a time for the hearing of the appeal, give notice to the parties in interest, and decide the same. At the hearing, any party may appear in person or by agent or attorney. If the matter which is the subject of the appeal requires development approval which also requires a hearing before the hearing examiner, both the appeal and the development approval hearing may be combined in a single hearing.

F. The hearing examiner is authorized to make findings of fact regarding the applicability of the impact fees to a given development activity, the availability or amount of the credit, or the accuracy or applicability of an independent fee calculation. The decision of the hearing examiner shall be final, except as provided in this section.

G. The hearing examiner may, so long as such action is in conformance with the provisions of this chapter, reverse or affirm, in whole or in part, or may modify the determinations of the responsible official with respect to the amount of the impact fees imposed or the credit awarded upon a determination that it is proper to do so based on principles of fairness, and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers which have been granted to the responsible official by this chapter.

H. District No. 101 or any fee payer who believes that the decision of the hearing examiner is based on erroneous procedures, errors of law or fact, error in judgment, or has discovered new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the hearing examiner within fourteen working days of the date the decision is rendered. Such fee payer is the appellant for the purposes of this section. This request shall set forth the specific errors or new information relied upon by such appellant, and the

planning commission may, after review of the record, take further action as it deems proper.

I. The filing of a request for reconsideration shall effectively stay the appeal period until the hearing examiner takes further action.

J. Where the hearing examiner determines that there is a flaw in the impact fee program or that a specific exemption or credit should be awarded on a consistent basis or that the principles of fairness require amendments to this chapter, the hearing examiner may advise the city council as to any question or questions that the hearing examiner believes should be reviewed as part of the council's annual or other periodic review of the impact fee schedules as mandated by Section 15.64.120.

K. District No. 101 or any fee payer aggrieved by any decision of the hearing examiner may submit an appeal of the decision in writing to the city council within fourteen working days from the date the decision of the hearing examiner is rendered, requesting a review of such decision. Such appeals shall be upon the record, established and made at the hearing held by the hearing examiner, provided that new evidence which was not available at the time of hearing held by the hearing examiner may be included in such appeal. The term "new evidence" means only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

L. Upon such written notice of appeal being filed within the time period allotted, a hearing shall be held by the city council. Such hearing shall be held in accordance with SWMC Chapter 2.90 and the following appeal procedures:

1. The responsible official or other designee (the "respondent(s)") shall present a summary of the findings, conclusions and decision, as well as the alleged errors forming the basis of the appeal.

2. The appellant(s) and the respondent(s) to the appeal shall have the opportunity to present oral arguments before the council; provided that, the appellants may reserve a portion of their time for rebuttal. Such oral argument shall be confined to the record and to any alleged errors therein or to any allegation of irregularities in procedure before the hearing examiner. The council may request additional information from any staff member or party, or any factual information from members of the audience at its discretion. Such additional information shall be part of the record.

3. If the council finds that:

- a. The hearing examiner's findings or decision contains substantial error;
- b. The hearing examiner's proceedings were materially affected by irregularities in procedure;
- c. The hearing examiner's decision was unsupported by substantial evidence in view of the entire record as submitted; or

d. The hearing examiner's decision is in conflict with the city's adopted plans, policies and ordinances, it may remand for further hearing before the hearing examiner or may reserve the hearing examiner's decision. In addition, the council may choose to modify the hearing examiner's decision based on the above criteria. Furthermore, any matter may be continued to a time certain for additional city staff

analysis desired by the council, before a final determination by the council. If the council requests additional staff analysis the appellant shall be provided a copy and afforded reasonable time to review the analysis and respond to the council before final determination by the council.

4. If the council determines that there is no basis for the alleged errors set forth in the appeal, it may adopt the findings of the hearing examiner and accept the decision of the hearing examiner.

M. This procedure is the only method for appealing alleged errors or irregularities in procedure which may have occurred before the hearing examiner. All objections are deemed waived if no appeal is taken from the action by the hearing examiner.

N. Any matter requiring action by the council shall be taken by the adoption of a motion by the council. When taking any such final action, the council shall make and enter findings of fact from the record and conclusions thereof which support its action. The council may adopt all or portions of the hearing examiner's findings and conclusions.

O. The action of the council approving, modifying or rejecting a decision of the hearing examiner shall be final and conclusive, unless within twenty-one calendar days from the date of the council action District No. 101 or any fee payer applies for a writ of certiorari or writ of review to the Superior Court of Washington for Skagit County, for purpose of review of the action taken.

C. SWMC Section 15.64.150.E is amended as follows:

Determinations made by the director pursuant to this section may be appealed to the hearing examiner subject to the procedures set forth in Section 15.64.080.

**Section 6.** SWMC Title 16 is amended as follows; all other portions of the respective chapter and section to remain unchanged.

A. SWMC Section 16.12.055 is amended as follows:

Any party that wishes to appeal the planning director's decision regarding standards and improvement requirements of SWMC Section 16.12.030(C), may petition for an open record hearing before the hearing examiner. Notice of the petition for hearing shall be provided to all parties entitled to notice under SWMC Chapter 2.90. The hearing examiner shall have the powers and duties of the director, and may approve the short plat and/or variance, approve with conditions, or deny the short plat application.

B. SWMC Section 16.12.080 is amended as follows:

Upon final approval of a short plat application by the director or hearing examiner, the short plat shall be approved on its face by the planning director, city engineer, and clerk-treasurer, and filed for record with the Skagit County auditor. No short plat or short subdivision granted approval by the planning director shall be deemed to have final approval until filed.

**Section 7.** SWMC Title 17 is amended as follows; all other portions of the respective chapter and section to remain unchanged.

A. SWMC Section 17.04.040 is amended as follows:

Responsibility for administration and interpretation of this title shall rest with the planning director or designee. Any interpretation or action of the planning director may be appealed to the hearing examiner by submittal in writing to the planning director within fourteen (14) calendar days of the decision. Appeals shall be heard by the hearing examiner within thirty (30) days from the date the appeal is filed and the applicable fee is paid. Also, the planning director may at any time defer to the hearing examiner or the city council where uncertainty exists as to interpretations.

B. SWMC Section 17.43.070.D is amended as follows:

Public Hearing. A PRD is a Type III land use application under Ch. 2.90. The hearing examiner shall hold a public hearing on the proposed PRD.

C. SWMC Section 17.43.070.E is amended as follows:

Hearing Examiner Recommendation. Following the public hearing, the hearing examiner shall make a report of findings and recommendations with respect to the proposed PRD, and shall forward the report to the city council. Such report shall include, but need not be limited to, the following items:

1. Suitability of the site area for the proposed development;
2. Requirements of the subdivision code for the proposed development;
3. Reasons for density bonuses;
4. Time limitations for the entire development and specified stages;
5. Development in accordance with the Sedro-Woolley comprehensive plan;
6. Public purposes have been served by the proposed development;
7. Compliance with the design standards and guidelines.

D. SWMC Section 17.43.070.F is amended as follows:

City Council Decision. After receipt of the hearing examiner's findings and recommendations, the city council shall hold a public hearing on the proposed PRD. The city council shall give approval, approval with modifications or disapproval to the proposed PRD. The city council's decision may be appealed to Skagit County Superior Court as allowed in SWMC 2.90.

E. SWMC Section 17.52.030 is amended as follows:

The procedure for a rezone application shall be as set forth in Section 2.90.010 C.3 for consolidated permit processing, and also includes the following:

A. The applicant is encouraged to consult with the planning director prior to application.

B. The applicant completes and submits to the planning director a rezone application form, environmental checklist and fee. The application form will establish the necessary information.

C. The planning director schedules a public hearing before the hearing examiner the soonest meeting for which time exists to meet advertising and notice requirements.

D. Planning director mails a notice of public hearing to the owners of all property within three hundred feet and causes same to be published in a newspaper of general circulation. Date of mailing and publication must be at least fifteen days before the public hearing.

E. The hearing examiner holds public hearing and makes recommendation to the city council.

F. The planning director schedules a closed record hearing before the city council at it's soonest meeting for which time exists to meet advertising requirements.

G. The city council holds closed record hearing.

I. The city council considers the hearing examiner's recommendation and other factors as it deems appropriate. Council may affirm, modify or disaffirm the recommendation of the hearing examiner.

**F. SWMC Section 17.56.030 is amended as follows:**

The procedure for a conditional use permit shall be as set forth in Section 2.90.010 D.3 for consolidated permit processing, and also includes the following:

A. The applicant is encouraged to consult with the planning director prior to application.

B. The applicant completes and submits to the planning director a conditional use permit application form together with fee. The application form will establish the necessary information.

C. The planning director schedules a public hearing before the hearing examiner the soonest meeting for which time exists to meet advertising and notice requirements.

D. The planning director mails a notice of public hearing to the owners of all property within three hundred feet and causes same to be published in a newspaper of general circulation. Date of mailing and publication must be at least fifteen days before the public hearing.

E. The hearing examiner holds a public hearing and issues a decision. The hearing examiner is delegated authority for conditional use permits but in the case of developments which the hearing examiner considers major, it may instead make recommendation to the council, which may affirm, modify or disaffirm the recommendation of the hearing examiner.

F. Unless the hearing examiner chooses to recommend, the decision may be appealed to the city council if submitted in writing to the planning director within fourteen (14) calendar days.

**G. SWMC Section 17.56.050 is amended as follows:**

Conditional use permits shall become void if substantial progress toward construction of improvements is not made within two years or if the use has not commenced within five years, which periods may be extended by the hearing examiner for good cause.

**H. SWMC Section 17.60.040 is amended as follows:**

Variances and zoning waivers shall become void if substantial progress is not made toward construction of improvements within two years, or if construction has not been completed within five years, which periods may be extended by the hearing examiner for good cause.

**I.** SWMC Section 17.64.030 is amended as follows:

The procedure for a temporary permit application shall be as follows:

A. Applicant completes and submits to the planning department a temporary permit application form together with fee. The application form will establish the necessary information requirements.

B. The planning director judges whether the criteria established in Section 17.64.010 will be met and grants or denies accordingly, with time limitations and other conditions as necessary.

C. The decision of the planning director may be appealed to the hearing examiner pursuant to the procedures set forth in Chapter 2.90 of the municipal code.

**J.** SWMC Section 17.66.130 is re-titled and amended as follows:

The hearing examiner shall hear and decide appeals de novo when it is alleged there is an error in any requirement, decision, or determination made by the building official in the enforcement or administration of the ordinance codified in this chapter. Procedure for such appeals is per SWMC Chapter 2.90.

**K.** SWMC Section 17.68.030 is amended as follows:

The procedure for a home occupation permit application shall be as follows:

A. The applicant completes and submits to the city planning department a home occupation permit application form together with fee. The application form will establish the necessary information.

B. The planning director judges whether the application will conform to the definition of home occupation and grants or denies accordingly, with conditions as necessary.

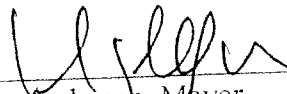
C. The decision of the planning director may be appealed to the hearing examiner pursuant to the procedures set forth in Chapter 2.90 of the municipal code.

**Section 8. CONFLICTS SUPERCEDED.** In case of conflicts with other chapters and sections of the SWMC concerning development regulations and the procedures to administer said regulations, the provisions of this ordinance shall prevail.

**Section 9. EFFECTIVE DATE.** This ordinance shall take effect five (5) days after the approval by the City Council and publication as provided by law.

**Section 10. SEVERABILITY.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

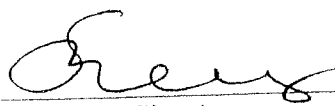
**PASSED** by majority vote of the members of the Sedro-Woolley City Council this 27th day of February, 2008, and signed in authentication of its passage this 28th day of February, 2008.

  
\_\_\_\_\_  
Mike Anderson, Mayor

Attest:

  
\_\_\_\_\_  
Patsy Nelson, Clerk/Treasurer

Approved as to form:

  
\_\_\_\_\_  
Eron Berg, City Attorney

Published March 5, 2008