

Performance Audit Report

Eight Counties' Building Permit and Inspection Fees

Clark, Klickitat, Pacific, Pend Oreille, Skamania, Walla Walla, Whatcom, Yakima

Report No. 1002634



December 29, 2009



Washington State Auditor Brian Sonntag, CGFM

www.sao.wa.gov

A message to the citizens of Washington



Brian Sonntag, CGFM
State Auditor

In accordance with Senate Bill 5120, the State Auditor's Office conducted this performance audit of eight counties' building and inspection permit fees and the process they use to set the fees. This bill was passed by the 2009 Legislature and took effect in July 2009. We completed the fieldwork and issued the report between August 2009 and December 2009.

The bill requires that we establish and select members of a temporary advisory committee to review the statewide guidance we recommend in the audit.

I would like to thank the committee members for sharing their experience and expertise with us to help us make sound recommendations that can be followed by the eight counties involved in the audit and by all counties, cities, and towns in the state.

I would also like to thank the eight counties that participated in the audit for sharing their processes and experiences. This work enabled us to identify guidance that counties, cities, and towns across the state can use to set fees that comply with state law. In addition, we identified changes to state law the Legislature can make to help these counties, cities, and towns successful in their efforts.

The public hearings to this audit will be posted on our Web site at www.sao.wa.gov. Please check the Web site if you are interested in the outcome of this audit.

A handwritten signature in blue ink that reads "Brian Sonntag". The signature is fluid and cursive, written in a professional style.



Mission Statement

The State Auditor's Office independently serves the citizens of Washington by promoting accountability, fiscal integrity and openness in state and local government. Working with these governments and with citizens, we strive to ensure the efficient and effective use of public resources.

Background

Introduction

The 2009 Legislature passed Senate Bill 5120, requiring the Washington State Auditor's Office to conduct an independent performance audit of eight counties to determine the reasonableness of building and inspection fees. We contracted with Talbot, Korvola & Warwick, LLP to conduct the performance audit.

About Senate Bill 5120

Senate Bill 5120, effective July 26, 2009, and other state law requires permit and inspection fees for agricultural and other structures to not exceed the costs associated with reviewing permit applications, conducting inspections and preparing specific environmental documents. It further states that permitting fees only cover the costs to counties, cities, and towns of processing applications, inspecting and preparing detailed statements.

Some county responses indicate our audit should have focused exclusively on agricultural building permits. However, the bill requires the State Auditor's Office to review the reasonableness of building permit and inspection fees permitted under Chapter 82.02.020 RCW, which refers to all building permits. Therefore, we reviewed all building permit types in this audit.

Although the bill required us to consider different guidance for big versus small counties, cities and towns, state law requires all counties to establish cost-based fees. Therefore, our guidance applies to counties, cities and towns of all sizes.

The bill also requires the State Auditor to conduct a performance audit of the reasonableness of building and inspection fees that are imposed by eight counties:

- Four counties located west of the Cascade mountain range.
- Four counties located east of the Cascade mountain range.

The bill further specifies that the counties included in the audit must represent a diversity of agricultural economies.

The State Auditor's Office selected the following counties:

- Clark County
- Klickitat County
- Pacific County
- Pend Oreille County
- Skamania County
- Walla Walla County
- Whatcom County
- Yakima County

Advisory Committee

The legislation required the State Auditor's Office to establish a temporary advisory committee and appoint the members. Members include representatives of county and city government, the Washington Dairy Federation, Washington Fryer Commission, Washington Farm Bureau, Washington Association of Building Officials, Washington State Association of Counties and the Washington State Department of Commerce's State Building Code Council.

The committee advised the State Auditor's Office in the developing guidance for determining allowable costs and methodologies for allocating them to the permitting program and in developing usable recommendations.

About the audit

Objectives

To meet the requirements of the legislation, the State Auditor's Office developed the following audit objectives:

- Determine whether eight counties' agricultural, residential and commercial permitting application fees are limited to what is necessary to cover direct and indirect costs associated with permitting.
- Identify the methods used by each county to calculate agricultural, residential, and commercial permit fees and how those methods match up with direction provided by state law (Chapter 82.02.020 RCW and Chapter 19.27.015 RCW).
- Assess whether the methods ensure fees are no greater than what is necessary to pay the direct and indirect costs of permitting. Identify uniform guidance to help counties determine allowable costs and how to allocate them to the building permit program.

Scope

We conducted the audit from August 2009 through November 2009 in accordance with generally accepted government auditing standards. These standards require that the audit be planned and performed to provide reasonable assurance that evidence is sufficient and appropriate to support our findings and conclusions.

We analyzed and reviewed data for 2006 through 2008 and 2009, as available. We interviewed various employees in each county's building divisions as well as other appropriate county employees. To better understand permitting, inspection and plan review practices, we visited each county and observed operations. After our preliminary review and analysis of information, we provided all initial findings to the appropriate county employees and finalized our findings and conclusions based on specific feedback. All information contained within the report was reviewed with county employees for accuracy and reasonableness.

For purposes of this performance audit, agricultural, residential and commercial building permitting includes activities related to residential code, fire, plumbing and mechanical codes, as well as the state energy and handicap access codes through both building/plan review and on-site inspections conducted during construction.

In addition, we included the nine elements of Initiative 900, which are outlined in the sidebar to the right.

The audit cost as of November 20, 2009 was approximately \$250,000.

About Initiative 900

Washington voters approved Initiative 900 in November 2005, giving the State Auditor's Office the authority to conduct independent performance audits of state and local government entities on behalf of citizens to promote accountability and cost-effective uses of public resources.

I-900 directs us to address the following elements in each performance audit:

- Identification of cost savings.
- Identification of services that can be reduced or eliminated.
- Identification of programs or services that can be transferred to the private sector.
- Analysis of gaps or overlaps in programs or services and recommendations to correct them.
- Feasibility of pooling auditee's information technology systems.
- Analysis of the roles and functions of the auditee and recommendations to change or eliminate roles or functions.
- Recommendations for statutory or regulatory changes that may be necessary for the auditee to properly carry out its functions.
- Analysis of the auditee's performance data, performance measures and self-assessment systems.
- Identification of best practices.

Initiative 900 provides no penalties for auditees that do not follow recommendations in performance audit reports.

The complete text of the Initiative is available on our [Web site](#).

What we found

We found several themes among the eight counties:

- State law requires counties to set permit fees to recover only the costs of administering the program. Achieving this objective will require counties to adopt cost-recovery methods for fee setting. The eight counties use varying approaches to set building permit fees. Most of these approaches do not set fees to recover costs, but instead focus on setting rates at a reasonable level in relation to established benchmarks.
- We identified common challenges in establishing an appropriate fee amount and provide guidance to assist counties in setting them.
- Cost tracking and cost allocation challenges exist at most of the eight counties audited. We provide guidance and recommendations to assist these and all other counties, cities and towns in addressing these challenges.
- A review of annual building fees compared to plan review and inspection costs by county showed most of the eight counties sometimes charge more than necessary to cover these costs.
- Counties have difficulty predicting future building activity and the resulting revenue from permit fees, which makes it difficult to set fees at the right amount to cover costs. Revisions to state law are necessary in light of the ups and downs that occur with building and permitting activity and the uncertainty about what are appropriate building permit processing activities and allowable expenses. For this reason, we recommend the state Legislature develop legislation that:
 - Allows for thresholds of working capital from surplus building permit revenue.¹
 - Defines building permit processing activities and allowable expenses.
 - Specifically allows for appropriate indirect costs for all permit types.

¹ The State Auditor's Office is also funded with charges for services and is allowed working capital up to 5 percent of its appropriations under RCW 43.09.416. See Appendix H.

What's next?

Initiative 900 requires the legislative bodies for the audited agencies hold at least one public hearing to consider the audit findings and to receive comments from the public within 30 days of this report's issue.

The corresponding legislative body must consider this report in connection with its spending practices. A report must be submitted by the legislative body by July 1 each year detailing the status of the legislative implementation of the State Auditor's recommendations. Justification must be provided for recommendations not implemented. Details of other corrective action must be provided as well.

The state Legislature's Joint Legislative Audit and Review Committee (JLARC) will summarize any statewide issues that require action from the Legislature and will notify the appropriate fiscal and policy committees of public hearing agendas.

Follow-up performance audits of any state or local government entity or program may be conducted when determined necessary by the State Auditor.

For more information

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Performance Audit of County Building Permit and Inspection Fees



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December 23, 2009

Mr. Brian Sonntag
Washington State Auditor
Washington State Auditor's Office
3200 Capitol Blvd. SW
PO Box 40031
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Dear Mr. Sonntag:

We have completed our performance audit of County Building Permit and Inspection Fees. The impetus for this performance audit, Senate Bill 5120, allows permitting fees to be set only at a level that covers the costs to counties, cities and towns of processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections. Our analysis of a sample of eight counties' current approaches and practices found that this bill and other state laws have a major impact on how municipalities can establish and charge future building permit fees. Historically, most of the eight counties reviewed have not identified all costs specifically associated with the permitting process and do not necessarily have a process in place to adequately do so. In addition, revenues received from permit fees in many of these counties have, in the past, been greater than expenses associated with the permitting process. These additional funds have been used to help support other county services. This practice is not allowed under the Bill or under other state laws and could result in modifications to the level and types of services provided by some counties.

This report contains our detailed analysis and conclusions based on our review.

We wish to express our appreciation to county personnel we spoke with for their cooperation and assistance during this audit.

Talbot, Korvola & Warwick, LLP

Talbot, Korvola & Warwick, LLP

Certified Public Accountants & Consultants

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Performance Audit of County Building Permit and Inspection Fees

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Introduction



Introduction

The Washington State Auditor's Office solicited competitive bids to conduct a performance audit of eight counties to determine the reasonableness of building and inspection fees. Under contract to the Auditor's Office, Talbot, Korvola & Warwick, LLP completed the performance audit.

Objectives

Senate Bill 5120, effective July 26, 2009, requires permit and inspection fees for new agricultural structures to not exceed the direct and indirect costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents. It, and other state laws, require that permitting and plan review fees only cover the costs to counties, cities, towns, and other municipal corporations of processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections.

The bill also requires the State Auditor to conduct a performance audit of the reasonableness of building and inspection fees that are imposed by eight counties:

- Four counties located west of the Cascade mountain range.
- Four counties located east of the Cascade mountain range.
- The selected counties must represent a diversity of agricultural economies.

Based on these specifications, the State Auditor's Office selected the following counties:

- | | |
|------------|----------------|
| • Clark | • Walla Walla |
| • Pacific | • Klickitat |
| • Whatcom | • Yakima |
| • Skamania | • Pend Oreille |

To meet the requirements of the bill, the State Auditor's Office also established the following audit objectives:

1. Determine whether eight counties' agricultural, residential and commercial permitting application fees are limited to what is necessary to cover direct and indirect costs associated with permitting.



2. Identify the methods used by each county to calculate agricultural, residential, and commercial planning and permit fees and how those methods match up with direction provided by state law (Chapter 82.02.020 RCW and Chapter 19.27.015 RCW). Assess whether the methods ensure fees are no greater than what is necessary to pay the direct and indirect costs of planning and permitting.
3. Identify uniform guidance to help counties determine allowable costs and how to allocate them to the permitting program.

Approach

We conducted the audit from August through November 2009 in accordance with generally accepted government auditing standards. These standards require that the audit be planned and performed to provide reasonable assurance that evidence is sufficient and appropriate to support our findings and conclusions. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was planned and performed to:

- Obtain an understanding of the nature of the area being audited.
- Identify and assess management controls as they relate to the specific objectives and scope of the audit.
- Identify legal and regulatory requirements.
- Identify criteria needed to evaluate matters subject to the audit.
- Identify sources of sufficient and appropriate evidence and determine the amount and type necessary to formulate a reasonable basis for audit conclusions and findings.

To gain a comprehensive understanding of each county's approach and organization regarding permitting, inspection, and plan review practices, we initially requested and reviewed information from each county including:

- County and Building Division budgets.
- Ordinances, resolutions, and decisions concerning fees.
- Written policies and procedures.
- Organizational charts.
- Building division staffing information.
- Permit information.
- Fee schedules.
- Application processing methodology.
- Performance indicators/standards.
- Cost studies/analyses.



- Indirect cost methodologies.
- Other applicable information.

We analyzed and reviewed data for 2006 through 2008 and 2009, as available. We interviewed various employees in each county's building divisions as well as other appropriate county employees. To better understand permitting, inspection, and plan review practices, we visited each county and observed operations. After our preliminary review and analysis of information, we provided all initial findings to the appropriate county employees and finalized our findings and conclusions based on specific feedback. All information contained within the report was reviewed with county employees for accuracy and reasonableness.

For purposes of this performance audit, agricultural, residential, and commercial building permitting includes activities related to residential code, fire, plumbing and mechanical codes, as well as the state energy and handicap access codes through both building/plan review and on-site inspections conducted during construction.

Information tracking and recording varied among counties. As a result, for some counties, permit expenditures were estimated using budgeted expenditures. To accommodate these estimates, we identified employees associated with building permitting through county budgets. Because they sometimes worked on multiple activities, interviews were conducted to estimate time they spent on permitting activities. Annual wages and benefits were obtained and applied based on these time estimates. Using these procedures, we estimated the county's permitting expenses. We affirmed the basis of our estimates with county personnel.

For other counties, we obtained permitting expenditures from their general ledger systems. As these systems are examined as part of the annual financial statement audits, our testing was limited to determining those employees whose payroll costs were charged to the building permitting programs and assuring each actually worked for the program. Where employees worked on multiple activities, interviews were conducted to estimate the portion of their time



spent on permitting activities. Using this information, we recorded only that portion dedicated to permitting. We affirmed the basis of our calculations with county personnel.

Our examination of indirect cost plans was limited to verifying the existence of plans identified by counties and assuring that cost elements contained in those plans appeared reasonable. We did not audit the accuracy and completeness of these plans. Had we done so, it is possible our comparisons of permit revenues and expenditures would have been based on different numbers.

The report also discloses annual permit revenue. Each county provided audited¹ revenue numbers for 2006 through 2008. However, revenue for 2009 was obtained from each county's general ledger systems and was not audited.

Additionally, each of the eight counties provided us the number of permits issued annually since 2006. No procedures were performed to verify the accuracy and completeness of this information.

The focus of our objectives evolved as the audit progressed. The final scope and focus is the product of our initial study orientation and the identification of significant issues and opportunities not recognized or whose significance may not have been fully appreciated prior to commencement of work.

Information provided during interviews became one source for observations noted in this report. The information gained from these individuals and from other corroborative sources provided insight into the issues, needs, and expectations surrounding the audit and was invaluable in reaching the conclusions and recommendations presented within this report. However, not all of the issues raised by county employees fell within the scope of this project.

¹ Audited as part of the state's annual financial statement audits



Initiative-900

In November 2005, voters approved Initiative 900, giving the State Auditor's Office the authority to conduct independent, comprehensive performance audits of state and local government agencies.

As required by the Initiative, each performance audit examines the economy, efficiency and effectiveness of the policies, management, fiscal affairs and operations of state and local governments, and shall include nine specific elements:

1. Identification of cost savings
2. Identification of services that can be reduced or eliminated
3. Identification of programs or services that can be transferred to the private sector
4. Analysis of gaps or overlaps in programs or services and recommendations to correct gaps or overlaps
5. Feasibility of pooling information technology systems within the department
6. Analysis of the roles and functions within the department and recommendations to change or eliminate departmental roles or functions
7. Analysis of departmental performance data, performance measures, and self-assessment systems
8. Recommendations for statutory or regulatory changes that may be necessary
9. Identification of best practices

Although this performance audit focused on meeting the objectives of Senate Bill 5120, the specific elements of Initiative 900 were included as applicable.



Results



Results

The Counties

Washington counties currently subject construction projects to building codes and zoning ordinances. These codes and ordinances provide minimum standards to safeguard health, property and public welfare by regulating and controlling design, construction, and the quality of materials. Codes published by the International Code Council (ICC), which include the *International Building Code (IBC)*, and the *International Residential Code (IRC)*, are commonly used.

Typically, specific codes and ordinances are enacted to regulate residential, commercial, industrial, and agricultural development within a county. The codes impose certain regulations such as:

- Placement on property
- Size of building
- Setbacks from easements and property lines
- Maximum lot coverage requirements
- Height limitations
- Permitted uses

Building permits are required prior to construction for all building, plumbing, mechanical, and electrical work. Although the eight counties we reviewed have some variations in the building permitting process, each:

- Receives permit applications
- Reviews for completeness
 - Code compliance
 - Site plan (plumbing, mechanical)
 - Drawings
- Enters into a permit tracking system
- Calculates fee amounts
- Notifies applicants of approval
- Receives fee payments from applicants
- Issues permits



The state allows reasonable fees to be established and collected from applicants for a permit to cover the cost of processing applications, inspecting and reviewing plans, and preparing detailed statements. Counties have developed fee schedules based on a variety of factors, from surveying other counties in Washington and setting rates based on averages, to charging a specific percentage of direct department costs to using industry benchmarks.

Each of the eight counties reviewed for this performance audit has created building divisions responsible for issuing permits and ensuring construction projects are in compliance with building codes. Half of the counties we examined have established the division in their Community Development Departments while others are located in Public Works, Public Services Department, Planning and Development Services, and Building Inspection Department.

Division staffing reflects the size of the county and the volume of building activity. Building Division personnel range from less than three full-time equivalents in Skamania and Pend Oreille counties to over 20 in Whatcom County. Recently, economic conditions have forced many counties to downsize building division staff. In 2009, four of the counties reduced their workforce.

County Revenue and Expense Analysis

Audit Objective 1: Determine whether eight counties' agricultural, residential and commercial permitting application fees are limited to what is necessary to cover direct and indirect costs associated with permitting.

Counties have historically established fees at levels believed to be reasonable and appropriate. No specific guidelines detailing the amount of fees charged were in place. However, counties are required to set permit fees at amounts that do not exceed the costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents. This will require a major shift in the methods employed by counties and cities to budget and establish fees.

Our review of prior years indicates that most audited counties have not consistently met this law when measured on an annual basis. Agricultural, residential, and commercial permitting



application fees generated greater revenue than what was necessary to cover direct and indirect costs associated with planning and permitting. Based on our review of state law, it is unclear as to whether it is appropriate for counties to charge indirect costs for all building permit types².

To determine how the eight counties identify and allocate costs, a review of actual revenues and expenses for the years 2006 - 2008 and 2009³, was conducted. Although each county had the revenue and expense information readily available, most counties combined the information with the department the building function resides in, making it difficult to isolate actual permitting process costs. Non-building permit activities – planning, nuisance abatement, fire marshal services, etc. – are often included in the departments’ revenue and expense reports.

To determine only the costs of building/plan review and on-site inspections, we analyzed each county’s budgets and detailed expense reports. The following identifies costs included for each county for each year reviewed. Detailed information for each county can be found in *Appendix A: Specific County Recommendations*.

Salaries/Wages and Benefits

Four of the eight counties do not formally track employees’ time. Each person records the number of hours they work but not the activity associated with each hour. In most counties, some employees devote 100 percent of their time to building activities and all costs are directly attributable. For the counties whose employees work on multiple functions, we estimated the actual time spent on building division activities based on discussions with employees or through an allocation of time based on FTE. For example, if a department has 15 employees and five are dedicated to building activities, 33 percent of time of those individuals working in multiple areas would be allocated to the building division. These percentages varied each year as staffing levels changed.

² In light of the existing statutory language, the Washington State Court of Appeals (137 Wn. App. 338, Feb. 2007 Home Builders Ass'n of Kitsap County v. City of Bainbridge Island) ruled that permit fees could not be used to pay for allocated indirect costs. In 2004, a superior court judge ruled that indirect costs are allowable. Tiger Mountain LLC v. King County, Snohomish County Superior Court Cause No. 03-2-05287-4, Order on Motions for Partial Summary Judgment (filed May 24, 2004). See Appendix G.

³ Partial year as information was available



Non-Payroll Direct Costs

Five of the eight counties do not specifically identify non-payroll direct costs that correspond to permitting activities. These costs include:

- Office Supplies
- Communication
- Travel
- Rentals
- Training
- Software
- Professional Memberships
- Vehicles
- Tools
- Repairs
- Equipment
- Fuel
- Miscellaneous expenses

We included 100 percent of the costs that could be directly identified. Using FTE as a basis, other costs were allocated for our analysis. Although using FTE does not ensure a precise calculation of supplies used for permit processing, it provides a reasonable estimate for illustrative purposes.

Indirect Costs

Three of the eight counties do not have a formal county-wide cost allocation plan. In some counties, a basic percentage is identified and allocated. However, that allocation typically did not include costs such as facilities, maintenance, utilities, human resources, etc.

Counties with current cost allocation plans are allocating indirect costs that are reasonable and necessary to cover direct and indirect costs associated with the permitting process. Services paid for by the building divisions are applicable to day-to-day



operations. However, these plans were not necessarily inclusive of all indirect costs⁴, resulting in lower expenses being allocated to building permit processes.

For counties that did not have an inclusive county-wide indirect cost allocation, 25 percent of wages and salaries that were included as the base county allocation. This number was based on:

- Allocations of the reviewed counties with a plan.
- Reasonable percentage used by other organizations.

Applying this methodology, we were able to identify, by county and by year, whether revenue from building permits was greater or less than estimated expenses. If greater, building permits generated more revenue than necessary to cover all direct and indirect costs. If less, other county resources helped pay for permitting services. The following illustration summarizes each county’s surplus or deficit based on estimated indirect and direct costs – salaries/wages and benefits and supplies and materials. Highlighted numbers indicate revenue was greater than expenses (surplus):

Building Permit Revenue/Estimated Expenses

	2006	2007	2008	2009	
Clark	\$1,143,869	\$1,502,389	\$1,868,555	\$183,373	(10/31/09)
Klickitat	\$598	\$35,939	\$48,299	\$5,291	(6/30/09)
Pacific	\$169,713	\$30,550	\$40,472	\$35,225	(10/31/09)
Pend Oreille	\$45,159	\$14,052	\$2,032	\$37,302	(6/30/09)
Skamania	\$78,393	\$18,617	\$20,541	\$49,264	(6/30/09)
Walla Walla	\$127,053	\$171,492	\$3,475	\$79,087	(10/31/09)
Whatcom	\$457,286	\$244,666	\$57,650	\$4,891	(6/30/09)
Yakima	\$278,088	\$296,631	\$403,092	\$97,399	(8/31/09)

Source: Compiled by TKW from county information

Illustration 1

As identified in the above illustration, all counties with the exception of Klickitat and Clark in 2006 and Pacific and Clark in 2007, had surpluses – revenues received from building permitting

⁴ As identified by OMB Circular A-87



fees exceed the estimated costs of providing applicable services. In 2008, only Whatcom County generated a surplus.

The counties that have estimated surplus funds have spent them to support other services such as planning, enforcement, fire inspections, environmental health, and public works activities or to establish account reserves. Because of sharp decreases in building permit revenue, most of these counties will rely on their general funds to supplement funding for building permit processing in 2009.

Permit Fee Development

Audit Objective 2: Identify the methods used by each county to calculate agricultural, residential, and commercial permit fees and how those methods match up with direction provided by state law (Chapter 82.02.020 RCW and Chapter 19.27.015 RCW). Assess whether the methods ensure fees are no greater than what is necessary to pay the direct and indirect costs of planning and permitting.

Permit fee development varies among counties. As mentioned previously, counties have historically established fees at levels believed to be reasonable and appropriate with no specific focus on the identification of the cost of providing permitting services and an attempt to recover those costs. As a result, the methods employed by most counties do not ensure fees are no greater than what is necessary to pay the direct and indirect costs of planning and permitting. Currently, only Clark and Pend Oreille Counties have methodologies in place to meet the requirements of the law.

Counties provide many basic services that are funded through a variety of sources. Taxes, fines, and grants fund many of the services available to all county residents – animal control, law enforcement, corrections, health care, parks, etc. Other services only benefit certain individuals or groups and are funded primarily through user fees. Building permitting is funded by a fee collected from people who use the services.



Building permit fees do not necessarily have a direct relationship with the costs of the service. Building functions have traditionally developed fee schedules based on the relationship between the value of the project and the amount of work required to review plans, inspect activities and administer the process. Many governments, however, are attempting to restructure fees to recover the actual cost of providing the service. However, to recover costs that are in direct proportion to the services provided, all costs need to be identified. Because most counties' building division expenses are combined with other functions and are not budgeted separately, actual costs of the building permitting process have not historically been identified.

Although the permit fee development process varied among counties reviewed, all use a base methodology (or some variation) as established by the International Code Council. This method uses the following "formula":

$$\text{Total Permit Fee} = \text{Total Valuation} * \text{Fee}$$

$$\text{Total Valuation} = (\text{Building Square Footage}(1) * \text{Valuation Rate}(2))$$

(1) By Type of Building

(2) Rate established by ICC and updated every six months

$$\text{Fee} = \text{Amount established by ICC and applied per } \$1,000$$

Example:	
3000 square-foot residence	Fee Calculation
Valuation Rate: \$65.00	Total Valuation: 3000sq ft * \$65.00 = \$195,000
Fees: \$785.00 for first \$100,000 plus	Fees: \$ 785.00
\$4.30 for each additional \$1,000	\$4.30*95 = \$ 408.50
	Total Permit Fee: \$1,193.50

Variations to this methodology include:

Clark County

Community Development relies primarily on application fees to fund three of its programs: Development Services, Building Safety and the Permit Center. The fees cover cases for preliminary review, environmental review, engineering, development inspection and building. During 2008, a cost-of-service analysis was conducted to



support a full cost-recovery fee proposal. The comprehensive study took into account comparable community permit fees, time spent on permits and actual cost. At the close of 2008, the Board of County Commissioners delayed adoption of a new fee proposal. In 2009, the Board adopted the new fee proposal that self-funds 85 percent of permit expenses, with the residual coming from the General Fund. The new fee structure took effect July 15, 2009.

Klickitat County

Building permit fees were set by ordinance in 2001. The County used a valuation method that, based on data provided by the International Code Council (ICC) through its *Building Safety Journal*,⁵ established the basis for fee development. While the ICC updates these valuation numbers every six months, the county is currently using 2004 valuations. Through a survey of other counties in Washington, fees were identified and set at the low end based on an average of counties in Eastern Washington. Fees were tied to the 1991 Uniform Building Code and modified by a factor of 1.25. The County has not increased building permit fees since 2001.

Pacific County

Pacific County uses the base ICC methodology but modifies its building permit fees using information obtained from other counties, building industry information, and the expertise of its current building inspectors who each have private sector experience. The Department also considers the cost of doing business and what they perceive the public can pay.

Pend Oreille County

Between 1999 and 2004, Pend Oreille County determined permit fees based on the Uniform Building Code. The methodology for residential structures was changed in 2005 from square footage to base cost. The rates were established to assure that 80 percent of direct department costs were covered by department-generated revenues.

⁵ Published every six months



Skamania County

The County has established its building permit fees using the *Building Safety Journal's*⁶ suggested amounts in 1994. These amounts have not been updated to current values.

Walla Walla County

Walla Walla County has established its building permit fees using 80 percent of the *Building Safety Journal's* suggested amounts.

Whatcom County

The County obtains the amount charged for building permit fees from five comparable jurisdictions, including the City of Bellingham, and calculates the median to use as its base. It then determines what fees are being charged by other County departments, such as the Health Department to determine what the rate should be for services that are based on an hourly rate.

Yakima County

Prior to 1995, Yakima County established its building permit fees based on the International Conference of Building Officials Model Code Fee Schedule using valuation data from the *Building Safety Journal*. In December 1995, the County began increasing fees every January 1 according to the Consumer Price Index (CPI) for Seattle. Valuation is calculated using the most recent data from the *Building Safety Journal*.

What Does This All Mean?

The eight counties use varying approaches to set building permit fees. Most of these approaches focus on setting the rates at a reasonable level in relation to an established benchmark. The requirements imposed by state law will require the counties to set permit fees at a level sufficient to recover only the costs of administering the program. Achieving this objective will require counties to adopt a cost-recovery methodology to fee setting.

⁶ International Building Code



Cost Determination

All Washington counties will have to base building permitting fees on the actual cost of services rather than the construction value. This methodology will require the identification of actual costs of services rendered. Actual costs include more than direct labor associated with the permitting process. Actual cost calculations typically include:

- Direct costs (labor, materials and supplies)
- Indirect costs:
 - Internal (department)
 - External (county)

Some counties will have difficulty identifying indirect costs. Many building entities' costs are combined in departments providing other services. Non-building permit activities are not separately recorded. Direct labor, supplies, and materials are not necessarily individually tracked to the service they are associated with.

Many counties⁷ do not currently have an inclusive cost allocation plan that allocates various county-wide services. These costs include:

- Building space
- Custodial services
- City administrative services (attorney, commissioners, auditor, chief administrative officer, human resources, etc.)
- Utilities
- IT services
- Vehicles

Building Permitting Process Determination

State law establishes a general definition of allowable services as they relate to permitting - reviewing permit applications, conducting inspections, and preparing specific environmental documents. Unrelated services previously associated with or paid for by building permit fees, cannot be included.

⁷ Appendix A: County-Specific Recommendations contains additional detail



A recent lawsuit⁸ filed in Clark County reinforces this. A complaint was filed in 2002 alleging the County was charging excessive building permit fees because state law only allowed fees for the cost of reviewing permit applications, conducting inspections, and preparing documents under the State Environmental Policy Act. In 2009, the Court ruled the County cannot lawfully use building permit fees to pay for the expense of code enforcement activities that occur prior to filing a permit application. It further stated that pre-application code enforcement activities are not part of “processing applications” under Chapter 82.02.020 RCW, but instead are fundamentally law enforcement activities that cannot be funded through the building permit fees authorized by Chapter 82.02.020 RCW.

Implications of the Law

Ability to Provide Services

Some counties have generated additional revenue through building permit fees and used those funds to support other services such as planning, enforcement, fire inspections, environmental health, and public works activities. As identified in Illustration 1 on page 10, in 2006 and 2007, six of the eight counties reviewed generated surplus funds.

These surplus funds may, in part, represent working capital that is needed to maintain operations and is a standard practice for governmental entities. An example of this practice is shown under Chapter 43.09.416 RCW. See Appendix H.

Building permit fees are restricted to activities directly related to the process. To compensate, counties will have to either:

- Fund current services with general fund dollars. However, given the nature of government financing, those dollars would potentially decrease funding for other public activities such as law enforcement, health care, parks, etc.
- Increase fees for services that are currently supplemented by permitting fees.
- Eliminate services.

⁸ Building Industry Association of Clark County, et al. v. Clark County, No. 02-2-01116-1. See Appendix G.

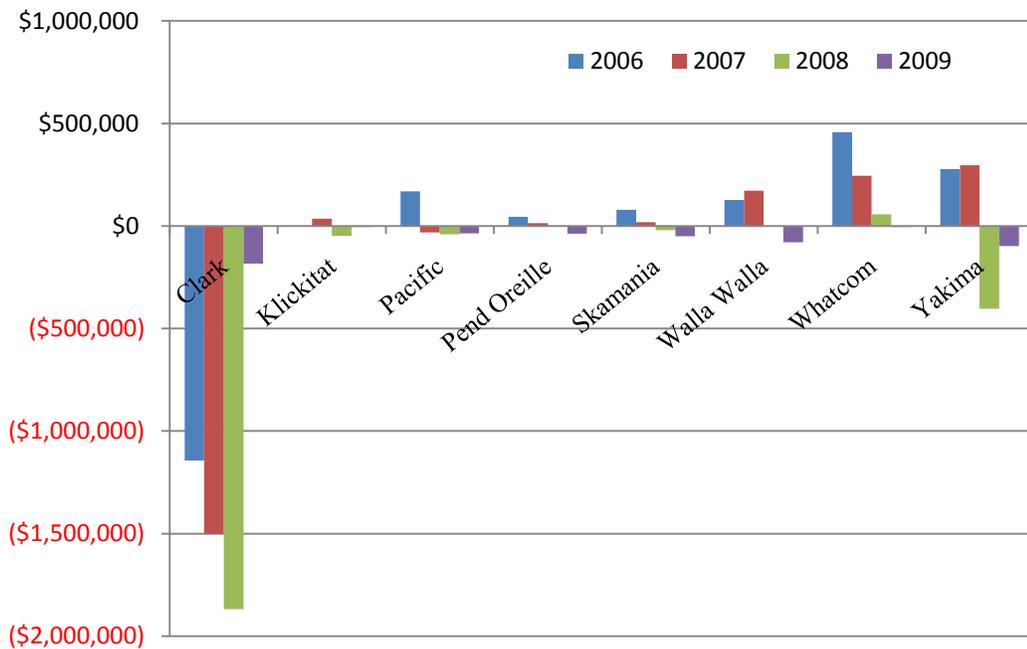


Unanswered Questions

Funding Variations

The law does not necessarily allow for a stable level of funding. Because projections are difficult, extensive fluctuations in permit applications and accompanying fees occur. Based on our analysis to determine whether revenue from building permits was greater or less than expenses, we identified extensive variations by year in each county. The following illustration highlights those variances:

County Surplus/Deficit by Year



Source: Compiled by TKW from county information

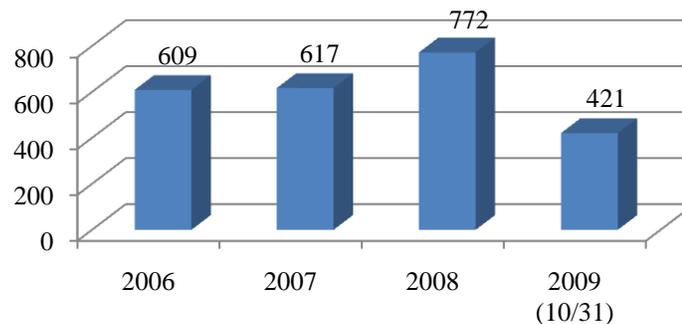
Illustration 2

Revenues and expenses do not always correspond in building departments. Permits may be issued and payment received in one budget year with services provided in another. Surpluses may actually reflect the receipt of these fees without accompanying costs.



The law or any administrative rules do not provide guidance regarding the development of a surplus up to a certain level of funding to offset uncertainty that could occur annually. Staffing levels and resource allocations would be subject to projections and could result in difficulty determining potential revenue. As shown in the following illustration, permits issued for one of the reviewed counties annually fluctuate resulting in varying receipts.

Permits Issued



Source: Compiled by TKW from county information

Illustration 3

Variations in revenue could result in counties reducing staffing levels in one year and re-hiring or increasing staffing levels in another. In some counties, this could result in the loss of experienced employees who would be difficult to replace in better years. Available staff with knowledge and experience could be difficult to find. Customer service could be negatively impacted.

Conversely, the law offers no direction regarding what to do with surplus revenue. In the event revenue is higher than projected, it is unclear as to what to do with the additional revenue or how adjustments should be made.



Building Activity Determination

The law states that “*permitting and plan review fees only cover the costs to counties, cities, towns, and other municipal corporations of processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections.*” The law however, does not specifically define which activities these areas include. This lack of definition makes it difficult for counties to determine what constitutes processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections. Questions as to whether activities such as services provided to the general public (process/application details, general information, reporting, etc.) should be “county” costs and paid by the general fund or included as a component of building fees.

Without definitive guidance, counties will have to make their own determination of appropriate activities, potentially resulting in decisions that do not meet legislative intent or are inconsistent with other counties.

Recommendation No. 1

The Washington State Legislature should develop legislation that:

- Allows for thresholds of working capital from surplus building permit revenues⁹,
- Defines building permit processing activities and allowable expenses, and
- Specifically allows for appropriate indirect costs for all permit types.

Guidance

Audit Objective 3: Identify uniform guidance to help counties determine allowable costs and how to allocate them to the permitting program.

⁹ The Washington State Auditor’s Office is also funded with charges for services and is allowed working capital up to five percent of its appropriations under RCW 43.09.416. See Appendix H.



Allowable Cost Determination

Under the provisions of the law, a county may only cover the costs of processing applications, inspecting and reviewing plans, preparing detailed statements required by Chapter 43.21C RCW, and performing necessary inspections under this chapter. Two factors determine if a cost is allowable. First, whether the activity is allowable under the provisions of state law and second, if the cost is allowable. State law is specific as to the allowable cost categories – processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections - but not necessarily allowable activities. For clarification, these can be defined as any activity necessary to process a building permit from the point the applicant makes contact with the county to when the certificate of occupancy is issued. Activities not associated with a specific building permit would not be considered an allowable activity. Pre-application code enforcement activities for example, would be excluded and should be funded from non-building permit sources.

The second factor to consider is the allowability of the specific cost itself. While the law does not provide detailed guidance in this area, there are established standards determining allowability of costs for government entities.

Appendix B contains guidance related to the tracking of costs related to allowable permitting activities.

Fee Determination

Setting the appropriate amount of user fees requires identifying the actual costs of services rendered. Actual costs include more than direct labor associated with the permitting process. These costs typically include:

- Direct costs (labor, materials and supplies)
- Indirect costs
 - Internal (department)
 - External (county)



Before a county is able to calculate appropriate user fees for building permits, it must first have systems in place to determine and track the direct and indirect costs associated with these activities. Systems should allow the county to track actual employee time for allowable building permit activities as well as time that cannot be charged against building permit revenue. Unallowable activities will need to be funded from sources other than building permit revenues. Activities within the building division should be reviewed to determine classification as direct or indirect. Indirect costs, both internal and external, should be tracked separately and allocated using a reasonable methodology.

There are many variations on cost recovery. After reviewing several of the established approaches to plan review and inspection fee cost recovery, we recommend counties consider adopting the Modified Cost/Revenue Allocation Methodology described by the International Code Council in *Establishing Building Permit Fees*, 2nd Edition and all updates. This approach allows counties to demonstrate cost recovery without placing an excessive burden on staff.

Under the Modified Cost/Revenue Allocation Methodology, plan review and inspection fees are based on the prior year's activity. Adjustments are made for any anticipated changes in building permit activity. Building permit fees under this methodology are calculated on square footage rather than building valuation. The Modified Cost/Revenue Allocation Methodology is summarized in Appendix C.



Appendix

A. County-Specific Recommendations



County-Specific Recommendations

Summary

Counties are required to set permit fees at amounts that do not exceed the costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents. Meeting this requirement will require counties to adopt a cost-recovery methodology for setting fees – a deviation from most counties' current approach. Counties have historically not set fees to recover costs, but instead set rates at a reasonable level in relation to established benchmarks.

As summarized in the following illustration, most counties do not currently have methodologies in place to meet the requirements of the law. Two counties attempt to base their permitting fees on a cost recovery method. However only Clark County appears to have all of the necessary systems and processes in place to determine both direct and indirect costs used in developing a building permit cost recovery model. Although Pend Oreille County has a process in place for cost recovery, it does not set fees for full cost recovery. Whatcom County has been developing a method to allocate County indirect costs, and has initiated a time tracking system and segregated building services expenses from other departmental costs. Yakima has many of the basic components while the other counties reviewed face challenges in identifying all appropriate costs.

The ability to identify and allocate applicable county and department costs to the building permitting process will be the greatest challenge for many counties. Four of the counties currently have no formal county-wide cost allocation plan while six have no department cost allocation plan. Without the identification of these costs, actual expenses cannot be determined. Additionally, half of the counties reviewed have no formal method to track the time expended on permitting activities inhibiting their ability to determine actual labor costs. Four counties do not specifically track supplies and materials - also hindering the capturing of actual costs.



County Summary

	County Organization	Estimated 2009 FTE (Building)	2008 Permits Issued	2008 Revenues	County-Wide Cost Allocation Plan	Department Cost Allocation Plan	Time Tracking	Fees Based on Cost Recovery	Non-Payroll Direct Costs Identification
Clark	Community Development	10.9	4,621	\$2,997,036	Yes	Yes	Yes	Yes	Yes
Klickitat	Building Inspection	7	490	\$357,933	No	No	No	No	No
Pacific	Community Development	4.25	200	\$360,384	No	No	No	No	No
Pend Oreille	Community Development	2.8	110	\$184,679	Yes	No	No	Yes	No
Skamania	Public Works	2.29	249	\$162,500	Yes	No	Yes	No	Yes
Walla Walla	Community Development	6.8	772	\$545,531	No	No	No	No	No
Whatcom	Planning and Development Services	20.6	1,644	\$2,338,362	Yes	No	Yes (as of 2009)	No	No (Will be initiating)
Yakima	Public Services	16.8	1,194	\$1,499,214	Yes	Yes	Yes	No	Yes

Source: Compiled by TKW from county information

Illustration 4

Based on our review of state law and recent court decisions, it is unclear as to whether it is appropriate for counties to charge indirect costs for all building permit types.¹⁰ However, we have made specific recommendations to assist each reviewed county in developing practices and processes to identify and track applicable costs. The implementation of these recommendations will depend on clarification of state law by the legislature.

Recommendation No. 2

Counties that currently do not have an emphasis on cost recovery:

- Klickitat
- Pacific
- Skamania
- Walla Walla
- Whatcom
- Yakima

should adopt the Modified Cost/Revenue Allocation Methodology described by the International Code Council or other comparable methodologies.

¹⁰ See Appendix G



Clark County

Clark County Community Development experienced an extensive drop in building permits that resulted in significant employee lay-offs in 2008 and 2009. With costs exceeding revenue, the Department went through five lay-off efforts to reduce the size of a department-wide deficit.

Year	Permits	Revenue
2008	4,621	\$2,997,036
2007	6,455	\$4,254,285
2006	6,977	\$4,485,834

The first lay-off exercise resulted in 27 positions being eliminated, all but two of which were vacant positions. The second and third wave of lay-offs occurred in late 2008 totaling more than 30 positions - 14.6 associated with the

building division. A re-organization also moved 18 engineers to Public Works beginning in 2009. Altogether, Community Development has seen its work force reduced by more than 65 positions leaving 39 FTE's with 10.9 in Building.

Building Inspection now includes the following positions:

- Chief Building Official (0.5)
- Building Manager (0.4)
- Lead Building Inspector (2.0)
- Building Inspector III (4.0)
- Office Assistant III (1.0)
- Lead Plan Examiner (1.0)
- Senior Plan Examiner(2.0)

Clark County has recently undergone an extensive review of both cost allocation and permit fees. Specific processes and practices have been implemented to assure that all costs associated with permitting and plan review fees are identified and limited to what is reasonable and necessary to those permitting, inspection, and plan review activities as required by the law.

Clark County appears to have all of the necessary systems and processes in place to determine both direct and indirect cost used in developing a building permit cost recovery model.

Klickitat County

Klickitat County's Building Inspection Department is responsible for ensuring building and structural compliance with the County Construction Codes. The Department administers the



International Residential Code, International Fire Code, Uniform Plumbing Code, International Mechanical Code, as well as the Washington State Energy Code and Indoor Air Quality Code through both building/plan review and on-site inspections conducted during construction. These codes are as adopted by Chapter 19.27 RCW. The Department is responsible for enforcing the County’s Nuisance and Building Codes.

Year	Permits	Revenue
2008	490	\$357,933
2007	537	\$427,544
2006	492	\$370,322

The Building Inspection Department is comprised of eight positions, six full-time and two part-time, totaling seven FTE. The Department currently includes the following positions:

- Building and Compliance Director
- Building Inspector
- Code Compliance Officer
- Plans Examiner
- Four Administrative Assistants (2 full-time and 2 part-time)

Time Recording

The County does not track employees’ time by activity – each person records time by division rather than the activity associated with each hour – making it difficult to actually determine time devoted to building permit activities.

Recommendation No. 3

Klickitat County should develop a process to track Building Inspection Department personnel’s time based on actual activities performed.

Cost Allocation

The County does not have a formal cost allocation plan and does not currently allocate indirect overhead to departments.

Recommendation No. 4

Klickitat County should develop a County-wide cost allocation plan to accurately identify and allocate indirect County charges.



Fund Structure

The County records all revenues and expenditures associated with building permit activities in the General Fund – building permit activities are comingled with other General Fund activities

Recommendation No. 5

Klickitat County should create a separate enterprise fund to track building permit revenues and expenditures.

Pacific County

Year	Permits	Revenue
2008	200	\$360,384
2007	219	\$289,287
2006	293	\$513,766

Pacific County Department of Community Development (DCD) serves as the County’s lead agency in land-use and environmental policy development. DCD serves as "a one-stop shopping" permit center for land use project review in Pacific County.

- The Planning Division reviews project proposals for compliance with zoning restrictions, critical area and drainage, and road access requirements, ordinances, and shoreline regulations.
- The Environmental Health Division conducts on-site septic and water system inspections, operates a drinking water laboratory, and administers public health programs addressing public food services, recreational vehicle parks, public swimming pools, solid waste facilities, complaint investigation, and communicable disease outbreaks.
- The Building Division is responsible for ensuring building and structural compliance with the County Construction Codes. The Building Division administers the international residential code, fire, plumbing and mechanical codes, as well as the state energy and handicap access codes through both building/plan review and on-site inspections conducted during construction.

The Department of Community Development has 12 positions in 2009 of which 4.25 FTE perform Building Division activities:

- Department Director (.25)
- Assistant Director (.25)
- IS Tech (.5)
- Administrative Assistants - Permit Techs (1.0)



- Enforcement Officer (.25)
- Building Inspectors (2.0)

Time Recording

The County does not formally track employees’ time – each person records hours but not the activity associated with each hour – making it difficult to actually determine time devoted to Building and Planning divisions.

Recommendation No. 6

Pacific County should develop a process to track Community Development Department personnel’s time based on actual activities performed.

Cost Allocation

The County does not have a formal cost allocation plan. The current percentage allocation does not include such costs as facility - rental/ maintenance/etc., utilities, human resources, etc.

Recommendation No. 7

Pacific County should develop a County-wide cost allocation plan to accurately identify and allocate indirect County charges.

Pend Oreille County

The Community Development Department, formerly the Planning Department, was separated from the Public Works Department in 2009. There are 2.8 FTE responsible for current and long-range planning, building and development permitting, and code enforcement. In addition, Department personnel assist with the County’s Geographic Information Systems (GIS) efforts in mapping the County as well as updating the County’s shoreline Master Program.

Year	Permits	Revenue
2008	318	\$184,679
2007	405	\$206,625
2006	390	\$211,795

A variety of permits are processed in this Department, including residential, additions, outside decks, framed garages, carports, pole buildings, manufactured homes, wood stoves, mechanical/heat, and plumbing.



The Department's revenues and expenditures are tracked separately from other funds. When the Department reported to the Public Works Director and County Engineer, no departmental overhead charges were calculated. The Department now reports directly to the Board of County Commissioners. The County administrative overhead is calculated based on United States Office of Management and Budget (OMB) Circular A-87, cost principles for state, local, and Indian tribal governments, using the simplified method, which is not reflected within the budget or departmental financials.

The Department uses a manual system and spreadsheets to track and record permits. However, a new system is being implemented and is anticipated to go live in the spring of 2010. This system is compatible with the County's financial system as well as its GIS. The use of an automated permit system is expected to minimize or eliminate the need to enter the same data into multiple systems.

Time Recording

Only one position in the Community Development Department formally tracks time. This position is responsible for enforcement activities, which are not separated from other field inspection activities. The other two positions within the Department record hours but not the activity associated with each hour – making it difficult to actually determine time devoted to building permit services.

Recommendation No. 8

Pend Orielle County should develop a process to track Community Development Department personnel's time based on actual activities performed.

Determining Building Permit Fee Schedules

Before 2004, the County used the Uniform Building Code to determine permit fees. The current methodology is based on covering approximately 80 percent of departmental costs, regardless of whether those activities are related to processing building permits.

Comparing permit fee receipts with allowable permit expenses, including County



administrative overhead, and excluding Public Works administrative overhead, it would appear that the revenues received for building permit services has been greater than determined expenses for 2006 and 2007:

2006	\$45,159
2007	\$14,052

For 2008 and 2009 (through June 30), revenue received for building permits was less than determined expenses:

2008	\$ 2,032
2009	\$37,302

To assure fees are developed that cover permit fee costs, but do not fund other activities, the County should evaluate the cost of processing building permits and adjust the fee schedule accordingly.

Recommendation No. 9

Pend Orielle County should adjust its permit fee schedule to cover only allowable permit-related activities once the true cost of processing building permits can be determined.

Skamania County

Year	Permits	Revenue
2008	249	\$162,500
2007	254	\$213,003
2006	307	\$261,757

Skamania County Community Development Department (SCCD) serves as the county lead agency in land-use and environmental policy development. SCCD serves as a "one stop shopping" permit center for land use project review in Skamania County.

- The Planning Division reviews project proposals for compliance with zoning restrictions, critical area and drainage, National Scenic Area, Clear & Grade, State Environmental Policy Act threshold determinations, and shoreline regulations.
- The Environmental Health Division conducts on-site septic and water system inspections, administers public health programs addressing public food services, public swimming pools, solid waste facilities, complaint investigation, and communicable disease outbreaks.
- The Building Division is a division of the Public Works Department and is located in the same building as the Community Development Department. They review construction plans and perform building inspections to ensure compliance with the



International Building Code and other applicable construction codes. They also review road access requirements, issue approach permits, road right-of-way use permits, utility permits and assign new addresses.

Permit Fees

A variety of different permits are processed within this Department, including residential, additions, outside decks, framed garages, carports, pole buildings, manufactured homes, wood stoves, mechanical/heat, and plumbing. The County has established its building permit fees (square foot construction costs) using the *Building Safety Journal's*¹¹ suggested amounts from 1994. Previous Department directors established the process and it has continued using basic structure amounts with no differences between fine and regular building.

By using outdated versions of fees the County does not maintain current information to determine fees. Secondly, not differentiating between fine and general building fees hasn't allowed the county to determine the true costs of permitting.

Recommendation No. 10

Skamania County should:

- Review building permit fees to ensure they are accurate and cover current expenses.
- Develop specific procedures to assure building fees remain accurate.

Cost Allocation

The County relies on the County Auditor's Office to determine its indirect cost and then uses the number to budget. In an effort to assure all allowable costs are included in the fee rate schedule, the County should develop a methodology for allocating County as well as departmental overhead costs to its various functions.

Recommendation No. 11

Skamania County should develop a departmental cost allocation plan to accurately identify and allocate indirect County and departmental charges.

¹¹ International Building Code



Building Revenues and Expense Fund

Skamania County does not have an enterprise fund and is supplementing the general fund in years that revenues exceed expenditures.

Recommendation No. 12

Skamania should develop a separate enterprise fund for building permits.

Walla Walla County

Year	Permits	Revenue
2008	772	\$545,531
2007	617	\$596,628
2006	609	\$636,883

The Community Development Department through its Building, Code Compliance, and Planning Divisions assures that all development in the unincorporated areas of the County conforms to the County's Comprehensive Plan, development regulations, and Building Code in accordance with Walla Walla County Code. The Department also provides technical assistance, inspection services, and code compliance in accordance with Walla Walla County Building Code. Although receipts from various permitting, review, and inspection activities provide the primary source of funding for the department, general fund dollars also are required.

The Department had 12 positions in 2008 – 6.8 FTE allocated to the Building Division:

- Department Director (.5)
- Planners (.8)
- Building Official (1.0)
- Building Inspectors (2.0)
- Permit Technicians (1.5)
- Code Enforcement Officer (.5)
- Administrative Assistant (.5)

Time Recording

The County does not formally track employees' time – each person records hours but not the activity associate with each hour – making it difficult to actually determine time devoted to each division – Building, Code Compliance, and Planning.



Recommendation No. 13

Walla Walla County should develop a process to track Community Development Department personnel’s time based on actual activities performed.

Cost Allocation

The County does not have a formal cost allocation plan. The current percentage allocation does not include such costs as facility - rental/ maintenance/insurance, etc., utilities, human resources, service vehicle operation and maintenance (including insurance), etc.

Recommendation No. 14

Walla Walla County should develop a County-wide cost allocation plan to accurately identify and allocate indirect County charges.

Whatcom County

Permits are processed within the Building Services Division of the Planning & Development Services Department. There are two other divisions - Natural Resources and Planning - along with administrative staff that support all three functions. Administration includes the GIS and enforcement functions. There are a total of 67.6 FTE within the Planning & Development Services Department.

Building Services has 20.6 FTE and is responsible for processing permits and includes Fire Inspectors that not only assist with fire system inspections, but also provides public awareness and fire marshal duties. The Division has experienced a decrease in FTE due to economic conditions. In addition to an unfilled Clerk position, the number of Plans Examiners has fluctuated over the last six years, from as many as five to the current level of 2.5 FTE.

Year	Permits	Revenue
2008	1,392	\$2,338,362
2007	1,644	\$2,393,718
2006	1,925	\$2,637,527

A variety of different permits are processed within this Department, including residential, commercial, detached buildings, mobile homes, and revisions. These include inspections, as necessary, for foundations, floors, driveways, roads, private bridges, decks,

handrails, extensions, framing, plumbing, mechanical, insulation, and electrical.



Over the last several years, the Department has made major adjustments to its account code structure to segregate Building Services expenses from other departmental costs. It also began tracking time in 2009 using an internal database that was created for this purpose. The database has not been in place long enough to determine how much time each position spends on permit-related activities. However, based on conversations with personnel and management, we have determined that approximately 92 percent of Division employee's time is spent on permit-related activities.

Cost Allocation

The Department has developed a methodology to allocate County overhead to its various divisions. However, it currently is not formally allocating those overhead costs to its internal divisions. In an effort to assure all allowable costs are included in the fee rate schedule, the County should implement its methodology for allocating County as well as departmental overhead costs to its various functions.

Recommendation No. 15

Whatcom County should implement its departmental cost allocation plan to accurately identify and allocate indirect County and departmental charges.

Determining Building Permit Fee Schedules

The County establishes its building permit fee schedule based on the median of five comparable jurisdictions, including the City of Bellingham. Specific fees are identified based on an estimated time to complete at a specific hourly rate. When services require additional time for processing, an hourly rate is charged in addition to the standard fee to assure costs are being covered. This hourly rate is consistent with hourly rates charged in other County departments.

Comparing permit fee receipts with allowable permit expenses, including Departmental and County overhead, it would appear the revenue received for building permit services has been greater than determined expenses between 2006 through 2008:



2006	\$457,286
2007	\$244,666
2008	\$57,650

Between January 1 and June 30, 2009, revenue received for building permits was less than determined expenses by \$4,891.

To assure fees are developed that cover allowable permit fee costs, but do not fund other activities, the County should evaluate the cost of processing building permits and adjust the fee schedule accordingly.

Recommendation No. 16

Whatcom County should adjust its permit fee schedule to cover only allowable permit-related activities.

Yakima County

The Public Services Department is responsible for the construction and maintenance of bridges and roads, solid waste and moderate risk waste disposal, water and sewer operations, building permit and code enforcement, equipment services, county buildings, and county-wide flood control. The department is divided into four divisions:

- Transportation Services
- Development Services
- Environmental Services
- Building and Fire Safety

Year	Permits	Revenue
2008	1,194	\$1,499,214
2007	1,149	\$1,879,891
2006	1,133	\$1,748,302

Yakima County Building and Fire Safety administers and enforces the Yakima County Building, Mechanical, Plumbing and Fire Code ordinances. These ordinances are enacted to safeguard life, health, property, and general public welfare.

The ordinances regulate and control the design, construction, and quality of materials, use and occupancy, location and placement, and repair and maintenance of all buildings and structures in unincorporated Yakima County. Building and Fire Safety also enforces the Zoning



Ordinances, Abatement of Dangerous Buildings and Public Nuisances Ordinance, Flood Hazard Ordinance, State Energy Code, Indoor Air Quality, Barrier Free regulations, and Yakima County Abandoned Vehicle Ordinance. The division has a total of 30 FTE and is divided into the following functional areas:

- Building Safety
 - Inspection
 - Code Enforcement
 - Project Coordination
- Fire Safety

Although Yakima County does not set fees on a full cost recovery basis, the County appears to have all of the necessary systems and processes in place to determine both direct and indirect cost used in developing a building permit cost recovery model.



Cost Guidance

Allowable Cost Determination

Under the provisions of the law, a county may only cover the costs of processing applications; inspecting and reviewing plans, preparing detailed statements required by Chapter 43.21C RCW, and performing necessary inspections under this chapter. Two factors determine if a cost is allowable. First, whether the activity is allowable under the provisions of the law and second, if the cost is allowable. The law is specific as to the allowable cost categories – processing applications, inspecting and reviewing plans, preparing detailed statements, and performing necessary inspections - but not necessarily allowable activities. For clarification, these can be defined as any activity necessary to process a building permit from the point the applicant makes contact with the county to when the certificate of occupancy is issued. Activities not associated with a specific building permit would not be considered an allowable activity. Code enforcement activities for example, would be excluded and should be funded from non-building permit sources.

The second factor to consider is the allowability of the specific cost itself. While the law does not provide detailed guidance in this area, there are established standards determining allowability of costs for government entities.

Examples of direct costs:

- Salaries wages of employees working on allowable building permitting activities
- Office Supplies
- Communication
- Travel
- Rentals
- Training
- Software
- Professional Memberships
- Vehicles
- Tools
- Repairs



- Equipment
- Fuel
- Miscellaneous expenses

Examples of indirect costs:

- Building space
- Custodial services
- City administrative services (attorney, commissioners, auditor, chief administrative officer, human resources, etc.)
- Utilities
- IT services
- Vehicles

Functions Necessary to Track Allowable Costs

The following functions will be necessary in order to effectively track the costs associated with allowable permitting activities:

- A county-wide cost allocation plan that conforms to OMB Circular A-87
- An internal department cost allocation plan
- The use of separate funds or accounts to track the costs associated with allowable building permit activities
- Tracking of time by employees who work on allowable building activities as well as other unallowable activities

State law authorizes all counties, big and small, to establish permit fees that match but do not exceed the costs related to allowable permit processing activities. Cities and towns must also follow this same law. For this reason, we have developed common cost guidance for big and small counties, cities, and towns alike.

The approach used for this audit and the county specific recommendations provide a basis for understanding the functions shown above.

- Audit Approach - pages 2-4
- Cost Revenue and Expense Analysis - pages 6-9
- County Specific Recommendations - Appendix A



Methodologies for Allocating Allowable Costs to Specific Projects

OMB Circular A-87 is an authoritative and generally accepted practice for allocating allowable costs. This circular provides for the following two allocation methods:

1. Simplified Method

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

2. Multiple Allocation Base Method

The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool. This is a more complicated method than the Simplified Method

A complete description of both methods can be found at the OMB web site:

<http://www.whitehouse.gov/omb/rewrite/circulars/a087/a087-all.html>



Fee Determination Guidance

The Modified Cost/Revenue Allocation Methodology is summarized in the following steps:

- Step 1.** Determine the total revenue collected for allowable building permit activities. This would include revenue from plan-check and inspection fees collected during the prior fiscal year. All revenue should be net of refunds.
- Step 2.** Evaluate the prior year service level to determine if adjustments are necessary. Service-level adjustments may be necessary if current staffing levels are insufficient to complete a building permit within the required time. Adjustments may also be necessary for anticipated changes in permit activity.
- Step 3.** Determine the total allowable expenditures associated with building permit activities. Allowable expenditures should include both the direct and indirect costs associated with administering the building permit program. Compare total plan-check and inspection revenue to total expenditures from the prior year. If prior-year activity resulted in a revenue surplus or deficit, and there are no service level adjustments made in step 2, fees should be adjusted accordingly.
- Step 4.** Determine total square footage for building permits issued in the prior year by permit type. At a minimum, square footage should be tracked by the following categories:
- New Commercial/Industrial
 - Commercial/Industrial Additions and Alterations
 - New Residential
 - Residential Additions and Alterations
- Step 5.** Allocate plan-check and inspection fee revenues from step 1 proportional to square footage from step 4 to determine total revenue for each permit type. For example, if plan-check square footage from the previous year totaled 200,000 square feet, and 50,000 of this was for new residential construction, 25 percent of the plan review revenue would be allocated to new residential.
- Step 6.** Calculate hourly rates for plan-check and building inspection. Hourly rates should include direct charges for salary and benefits and both internal and external overhead charges.

Internal overhead charges, and the portion of the countywide overhead allocated to the building permit function, should be allocated to the plan-check and inspection functions using a reasonable allocation basis.



An authoritative reference to assist counties in identifying a methodology for allocating indirect costs is the United States Office of Management and Budget's (OMB) Circular A-87. This circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments. Basic guidelines are defined by the circular that focus on factors affecting allowability of costs. Costs should be:

- Necessary and reasonable.
A cost is considered reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
- Authorized or not prohibited under State or local laws or regulations.
- Consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- Accorded consistent treatment.
- Determined in accordance with generally accepted accounting principles.
- Adequately documented.

Indirect costs are those costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved. Indirect costs apply to costs originating in the department (internal) as well as those incurred by other departments (external) in supplying goods, services, and facilities.

Once the total plan-check and inspection costs have been determined, they are divided by the total productive hours to determine the hourly rate for each function. Adjustments to the total hours are made for vacations, sick leave, holidays, training, and administrative time to arrive at total productive hours. Hourly rates are calculated for both plan-check and inspection.

Step 7. Allocate total inspection and plan-check costs to the various permit types. Total inspection and plan-check costs for each permit type are determined by multiplying the total square footage by permit type (step 4) by the average per-square-foot inspection and plan-check time by the hourly rates determined in step 6. Per-square-foot inspection and plan-check times can be obtained either from county data or industry data obtained from surveying other jurisdictions. Average inspection and plan-check times are included in the publication *Establishing Building Permit Fees, 2nd Edition*. These average times were determined through a survey of jurisdictions in California.

Step 8. Compare total projected revenues and expenses to determine if adjustments are necessary.



I-900 Elements

I-900 Element	Recommendations															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1. Identification of cost savings.																
2. Identification of services that can be reduced or eliminated.																
3. Identification of programs or services that can be transferred to the private sector.																
4. Analysis of gaps or overlaps in programs or services and recommendations to correct them.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
5. Feasibility of pooling the entity's information technology systems.																
6. Analysis of the roles and functions of the entity and recommendations to change or eliminate roles or functions.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
7. Analysis of departmental performance data, performance measures and self-assessment systems.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
8. Recommendations for statutory or regulatory changes that may be necessary.	X															
9. Identification of best practices.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X



County Responses

As required by generally accepted government auditing standards, responsible officials of each reviewed county were requested to provide their views and comments concerning the content of the audit report and their county's specific recommendations. Because of the timing of the report, some county responses were provided based on information obtained in previous drafts. This final report contains modifications based on county and legislative input and county comments may not be current given those changes.



proud past, promising future

CLARK COUNTY
WASHINGTON

December 21, 2009

The Honorable Brian Sonntag, State Auditor
Office of State Auditor
Legislative Building, P.O. Box 40021
Olympia, WA 98504-0021

Dear Brian Sonntag:

We appreciate the opportunity to review your draft report (Performance Audit of County Building Permit and Inspection Fees) dated 12/18/09 that stems from Senate Bill 5120, and which includes your office's review of Clark County's building permit fee activity.

Our comments are based on the report as it relates to Clark County. This is a complex legal area, and we appreciate that making a recommendation on fee setting methodology for diverse counties is not easy. We acknowledge that the fee calculation approach recommended in the report, based on one methodology identified by the International Code Council ("Establishing Building Permit Fees, 2nd Edition") is one which can produce fees calculated on a reasonable basis.

Given the varied nature of the jurisdictions in the State of Washington that issue building permits, we hope that other methodologies will also be deemed acceptable provided they comply with the requirements of State law.

We appreciated the courtesy and professionalism of the staff charged with conducting this performance audit.

Sincerely,

Bill Barron
County Administrator

c: Bonnie Nims, State Auditor Office
Brad Rafish, TKW



KLICKITAT COUNTY



BUILDING DEPARTMENT

228 W. MAIN STREET, MS-CH-20, GOLDENDALE WASHINGTON 98620
PHONE 509 773-3706 • 800-583-8078 • FAX 509 773-2480
SKIP GRIMES: BUILDING & COMPLIANCE DIRECTOR

December 17, 2009

Bonnie Nims,
Sr. Performance Audit Project Coordinator
Washington State Auditor's Office
P.O. Box 40031
Olympia, WA 98504

RE: Performance Audit of County Building Permit & Inspection Fees

Dear Ms. Nims:

In response to the Performance Audit performed as per Senate Bill 5120, please find below the responses to pertinent Recommendations for Klickitat County Building Department.

Recommendation 2: Counties that currently do not have an emphasis on cost recovery:

- Klickitat
- Pacific
- Skamania
- Walla Walla
- Whatcom
- Yakima

should adopt the Modified Cost/Revenue Allocation Methodology described by the International Code Council.

Response: Klickitat County will review the referenced information described by the International Code Council.

Recommendation 3: Klickitat County should develop a process to track Building Inspection Department personnel's time based on actual activities performed.

Response: As stated in the audit, Klickitat County currently tracks staff time by division rather than activity associated with each hour. It doesn't seem reasonable to track activities associated with each hour, rather, it seems excessive, burdensome, expensive and a waste of tax-payer dollars when arriving at nearly the same result.

Recommendation 4: Klickitat County should develop a County-wide cost allocation plan to accurately identify and allocate indirect County charges.

Response: It appears from the audit that the county most capable of tracking both direct and indirect costs has the most excessive surpluses. This would not appear to speak well to cost recovery methods. Klickitat County, in using our prescribed method, normally operates in a deficit as is depicted in the graph on page 16 of the audit results.

Further, the cost to Klickitat County would be sizeable in developing and maintaining a cost allocation plan. Klickitat County further believes it would spend far more in tracking cost allocations than it would save by doing so.

Recommendation 5: Klickitat County should create a separate enterprise fund to track building permit revenues and expenditures.

Response: This has been tried with the Building Department in Klickitat County in the past with little success. As a small county, it is very difficult to attract qualified staff. An enterprise fund does not allow for a stable level of funding. As stated in the audit, projections are very difficult with extensive fluctuations in permits. Extreme fee changes could occur from year to year, thereby, making it very difficult for builders, as well as owner builders, to have any reliance on anticipated costs. Trying to anticipate fee structures based on fluctuations in the economy seems unreasonable.

As further stated in the audit, variations in revenue could result in counties reducing staffing levels in one year and re-hiring or increasing staffing levels in another. This is especially difficult in a small county where recruiting qualified people is difficult at best. The loss of experienced employees would be difficult to replace in better years. Available staff with knowledge and experience could be difficult to find. Customer service could be negatively impacted.

After consultation with the Klickitat County Board of County Commissioners, Klickitat County believes that the scope and extent of the audit far exceeds the actual intent of SB 5120 in that SB 5120 clearly states “an act relating to agricultural structures.” In no way does Klickitat County agree with this audit nor the recommendations made by the State Auditor’s Office.

The cost of implementation and maintenance of the recommendations of this audit would seem to far outweigh any benefit provided to the taxpayer. For a small county with limited staff, the burden and costs will be extreme and difficult to comply with. The loss of experienced employees during lean years will be difficult to replace during better years.

What it appears is being allowed as costs considered relative to permits is unreasonable. Costs such as post permit issuance enforcement/compliance; costs associated with development of handouts, brochures; pre-permit staff time spent on general questions, whether ultimately permitted or not; pre-permit courtesy inspections; etc. These are all costs incurred by a building department attempting to effectively serve the general public. Codes are adopted by the State of Washington under RCW 19.27 and mandated to be

enforced in each jurisdiction. It would seem to fly in the face of reason not to include these additional costs in carrying out the intent of the state building code.

Section 5 of SB 5120 references RCW 43.09.470 which relates to Initiative Measure 900. In a small jurisdiction the recommendation of this audit will have an opposite impact than the intent of Initiative 900. In addition, Section 5 of SB 5120 states the performance audit should be based on the reasonableness of building and inspection fees permitted under RCW 82.02.020. This statute relates to impact fees where as building permit fees are codified in RCW 19.27. Klickitat County Building Department does not charge impact fees as defined in RCW 82.02.090(3).

Klickitat County will document compliance with SB 5120 as it relates to agricultural structure fees.

The time frame allowed by the State Auditor's Office for a response to the recommendations has been very brief.

Sincerely,



Skip Gimes,
Building & Compliance Director

Cc TKW
Board of County Commissioners



Pacific County Department of Community Development

PLANNING • ENVIRONMENTAL HEALTH • BUILDING

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PACIFIC COUNTY COURTHOUSE
National Historic Site

December 16, 2009

Bonnie Nims
Senior Performance Audit Project Coordinator
Washington State Auditor's Office

RE: Pacific County response to the performance audit of County Building Permit and Inspection Fees

Dear Ms. Nims:

Thank you for the opportunity to respond to the performance audit of County Building Permit and Inspection Fees. Pacific County is committed to performing to the highest standards and to addressing the issues raised by the audit.

First and foremost, Pacific County questions the underlying premise and stated objectives of the performance audit. Senate Bill 5120 specifically addresses permitting for agricultural structures only and does not address building permits for all other structures. Pacific County participated in the early discussions surrounding permit fees for agricultural buildings during the past legislative session, but it seems to have expanded beyond the scope of the original question and/or concern over permitting for agricultural structures. This audit did not review our permitting fees or processes for agricultural structures.

Furthermore, we believe that both the audit and Senate Bill 5120 fail to capture the essence of what a building permit represents. Pacific County contends that a building permit is a culminating activity or a milestone in a multi-faceted review process where all

of the parts finally come together and result in a tangible, on the ground, project. It is at the building permit stage where some of the less tangible expenses associated with the preliminary reviews, i.e., setbacks, zoning, use, height, road access, drainage, wetland impacts, floodplain impacts, utility review, etc. can be recovered. This view is even more important in our organization where we utilize a one stop permit shop housing all of the permitting functions under one organization roof, and where we have a relatively small staff that is cross trained across all programs to help improve customer service and response times. In conjunction with this, our jurisdiction does not routinely see or permit large scale subdivisions nor the large scale commercial projects typical of the larger counties; rather, we tend to permit the small “mom and pop” type of projects that require lots of time and hand holding throughout the permitting and construction process.

Audit Objective 1: Determine whether eight counties agriculture, residential and commercial planning and permitting application fees are limited to what is necessary to cover direct and indirect costs associated with planning and permitting.

This audit objective includes both “planning” and “permitting” application fees; however, SB 5120 and the performance audit only focus on building permitting and does not include any discussion on the planning application fees. Therefore, it is unclear as to whether the overall objective of the audit is just solely building related activities excluding any planning related permitting and/or activities.

Pacific County disagrees with the comment made under Audit Objective 1 on page 6 of the audit: “Our review of prior years indicates that most counties have not consistently met this law when measured on an annual basis.” Pacific County believes that this statement is misleading as attempts to measure permitting fees relative to expenses on an annual basis, as most projects, is not workable because the bulk of the work associated with the projects we review, permit and inspect typically exceed one year.

As a small County, we are subject to more extreme market variations than larger more urbanized County’s because a large percentage of our residential construction is for the secondary or recreational housing market. And as a result, many projects tend to take years, rather than months, to complete. This is why standards for review should be considered on a multi-year basis rather than on an annual basis. We believe the audit shows that we have met the intent of the law.

Pacific County disagrees with the assumption made on page 9 of the audit: “If greater, building permits generated more revenue than necessary to cover all direct and indirect costs. If less, other county resources helped pay for permitting services.” Currently, Pacific County Department of Community Development, which houses the building permit function, operates as a separate enterprise fund without any general fund support. We maintain a fund balance to ensure we can meet minimum monthly cash flow requirements and we do use building revenues from busier years to help cover building program shortfalls during slower years. These revenues are not transferred into the County’s general fund nor are they used to pay for other permitting costs or other County services. The importance of having the ability to carry forward revenue is that it enables this Department to maintain adequate staffing levels with minimal disruption through different market cycles.

Pacific County disagrees with the statement on page 10 of the audit: “Other services only benefit certain individuals or groups and are funded primarily through user fees. Building permitting is funded by a fee collected from the people who use the services.” This statement is misleading and not entirely true. A primary reason why local governments conduct a building permitting and inspection program is to protect the public’s health, safety and welfare. The actual consumer or benefactor of the building permit is not necessarily the one paying the fee. The consumer of that product or project includes members of the general public using those buildings either as occupant or visitors, the subsequent purchasers of a residential structure, or employees in an industrial or commercial building. There is an inherent public benefit in a permitting/inspection program that goes beyond the physical permit issued on a specific project. Conversely, the owner of a project also realizes a benefit from standardized codes and permitting. Their ability to get reasonable insurance or financing, or competitive and reasonable costs of construction are directly impacted by standardized construction and fire/life safety codes.

We think the statement attributed to Pacific County page 12 is partially incorrect and/or misleading. Pacific County set its current building fees through a multi-year effort beginning in 2004 that included several public workshops, public notifications and meetings. Once these fees were set, they have not changed in the past three years. We initially reviewed the valuation data for various types of new construction provided by in the Building Safety Journal, conducted a fee/valuation comparison with other comparable jurisdictions, evaluated the actual cost & values of construction in our jurisdiction, and then established a fee structure that was reasonable to the overall public while covering the costs of doing business. The audit analysis concludes that all eight jurisdictions use varying approaches to setting building permit fees, when in reality, all eight of the sampled jurisdictions use essentially the same process: utilize the Building Safety Journal valuation data for establishing a baseline value for new construction and then modify to meet the needs and true values associated with the local jurisdiction.

We agree with the discussion of unanswered questions on page 15, especially a consideration of revenue carry over, and believe that would be a good starting point for the advisory group.

Pacific County disagrees with the discussion on Page 18 under “Allowable Cost Determination.” The viewpoint is too narrow and does not allow for the recovery of those costs associated with a project that are outside the boundaries of processing a permit as discussed in the audit or in SB 5120. How does a local jurisdiction recover the costs of time spent with a potential applicant on a project prior to formal application submittal? Furthermore, the audit is silent on recouping the “softer” costs associated with permitting, namely the educational component, the time spent helping answer questions prior to, and during the project, the time spent talking with the concerned neighbors, the time spent coordinating certain aspects of the permit with other reviews/permits, etc. Many projects require substantial work prior to actual permit application that we don’t charge for but recover after the fees are paid.

Pacific County has doubts about the proposed recommendation for fee determination as stated starting on page 19. While most jurisdictions use a value based approach to setting fees, the proposed recommendation to use the “Modified Cost/Revenue Allocation Method” is simply swapping the value based approach with a square footage based approach based on

last year's level of permitting. In a small jurisdiction susceptible to wide swings in the market and building activity, the previous year is not necessarily a good determinate of the following year. A boom year may lead to overcharging the following year, while a bust year may lead to undercharging the following year. We don't have many commercial or industrial projects, so when we do, it will be a challenge to set a fee for the actual review/permitting of that type of project if there was not one from the year before. A value based fee system is fairer across the board for all parties.

Recommendations Specific to Pacific County

Recommendation 6: Pacific County should develop a process to track Community Development personnel's time based on actual activities performed.

Pacific County Department of Community Development is committed to maximizing its limited staff time devoted to our core values and core mission rather than using valuable time tracking minutes attributed to specific projects. Our staff maintains monthly timesheets that tracks time by hours for work being conducted. For example, our two building inspectors spend the bulk of their time either conducting plan review, conducting inspections, researching code questions, assisting the public, etc., and whose time is accounted for as building. Our other staff members do the same. The challenge we face is for those staff members whose work transcends boundaries. Our permit technician may spend four hours processing a permit application, namely reviewing the application for completeness, assembling the paperwork, entering into the system, receipting payment, making copies, setting up a file, routing to other staff members, talking to the applicant at the counter or on the phone, assembling all the reviewed work, and then issuing the permit (which is actually a series of permits – building permit, septic permit/approval, planning permit, critical areas permit, road approach, etc.). How do we track or assign their time to a specific function or cost? Or, how do we track the administrator's time who oversee the building program as one component of their broader stewardship? During the audit, we expressed that we spend approximately 25% of our time on building related issues. The percentage was derived by dividing our general responsibilities into four areas: planning, environmental health, building and administration. Some of this time maybe related to a specific project already permitted, reviewed and inspected, while other time may be spent on a code related question with applicability to three pending permits. Some days the amount of time spent on a building related issue may be eight hours, while on another day it may be ½ hour. How does one break out this type of time? The challenges we face in this is that we are a small department, with a small staff that does a variety of different permitting.

Recommendation 7: Pacific County should develop a County-wide cost allocation plan to accurately identify and allocate indirect County charges.

We agree with this recommendation.

In conclusion, the Performance Audit of County Building Permit and Inspection Fees appear to raise a number of issues that need further exploration and consideration. Pacific County agrees with the concept that the costs associated with a building permit should represent the costs of a local jurisdiction doing business.

If you have any questions, you may contact me at (360) 875-9356 or (360) 642-9382.

Sincerely,

Michael A. DeSimone
Director

Cc: Board of Commissioners
Faith Taylor-Eldred, Assistant Director
Bryan Harrison, County Administrative Officer



From: Mike Lithgow [mailto:MLithgow@pendoreille.org]
Sent: Monday, December 21, 2009 8:17 AM
To: Bonnie Nims
Cc: Anne Nottingham
Subject: RE: Performance Audit of Building Permits

Bonnie and Anne,
Thanks for your hard work on this audit. The law is a little confusing and the case law seems to complicate things. Considering all of that I thought you all did a good job and making the process as painless and easy to understand as possible. We feel the report does an adequate job of describing Pend Oreille County's situation.

Thanks again.



Michael Lithgow

Director

PEND OREILLE COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT
625 W 4TH STREET
PO BOX 5066
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Website www.pendoreilleco.org



**Skamania County
Department of Public Works**

Post Office Box 790
Stevenson, Washington 98648
Office (509) 427-3910
FAX: (509) 427-3919

November 25, 2009

For Your Review,

I would like to provide you with information that you may not have been told that may clarify our time tracking in Public Works.

Additional Information – Time Recording

Skamania County Public Works does track our time for the Building Department. Both Marlon and Teddi have assigned Activity Codes for various job requirements in their division. I am attaching a .pdf of their divisions report to better explain their activities and costs.

I will also be developing a means to capture other employee's time from Public Works, i.e., Director, County Engineer and administrative staff from within Public Works and record those hours directly into Building and Well. All other Public Works employee time is internally tracked with our Cost Accounting Management System (CAMS) but is not specifically towards Building and Well when working for their division. This program is an in-house program that is used for Public Works accounting needs and not by the County Auditor's Office for payroll, which only utilizes total hours.

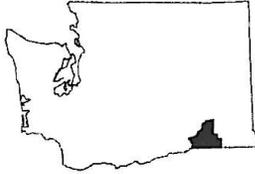
What we do not have is specific tracking to any one permit. Inspections are grouped together but separated by residential, commercial or agricultural. Admin time is mainly for Marlon when he is completing day-to-day ops and plan review. Teddi's time generally is towards permits and general office work.

I do plan on implementing permit tracking in 2010 with CAMS so we can see what geography and type of permits actually cost. This tracking would include permitting, plan reviews, inspections through to closing the permit.

Thank you for the opportunity to respond and if you have any questions, feel free to give me a call.

A handwritten signature in black ink, appearing to read 'Larry Douglass'.

Larry Douglass
Public Works Director



WALLA WALLA COUNTY

Community Development Department

310 W. Poplar, Suite 200 • Walla Walla, WA 99362-2865

December 21, 2009

Bonnie Nims, CGAP
Senior Performance Audit Project Coordinator
Washington State Auditor's Office

Dear Ms. Nims:

Thank you for sending us the draft report Performance Audit of County Building Permit and Inspection Fees, version 4, sent by you via e-mail to me on Thursday, December 17, 2009.

Please accept the following comments as the official response from Walla Walla County, in addition to the comments sent to TKW (Brad Rafish) via e-mail on Dec. 17th and Dec. 16th.

1. It is our understanding that the numbers used in the report are just estimates, and the methodology to derive the figures is unclear.
2. For Walla Walla County, the State auditor's office should not have counted \$27,500 in state grant funds as permit revenue in 2008. There should be at least a \$20,912 deficit shown for 2008.
3. For all years, not all staff costs were included in the figures shown for expenditures.
4. Walla Walla County does not share building permit funds with public works or the health department.
5. Calculation of fees based on square footage is no better than calculation based on valuation. Indeed it may be worse, since a more valuable building is more complicated in construction.
6. Because Counties have to do the work after funds are received, the reliance on a surplus fund balance at the end of the year is inaccurate. Permit fees are paid one year, but the work of inspections and review may extend into the next year, or even longer, depending on the complexity of the project. This information is not presented in the report.

Thank you for providing our staff with the opportunity to comment on the report. If you have any questions please feel free to contact me at: (509) 524-2621.

Sincerely,

Tom Glover, Director

cc: B. Bradley
T. Blevins



From: Sam Ryan [mailto:JRyan@co.whatcom.wa.us]
Sent: Tuesday, December 22, 2009 12:09 PM
To: Bonnie Nims
Cc: Darla Smith; David Stalheim
Subject: Re: FW: Performance Audit of Building Permits

No problem-we will reserve a room for this.

Darla and I had discussed the report and in general it was good. There are a couple of items that I'd like to address:

Environmental issues are not really addressed in the report, except if a SEPA is required. This is a huge issue for local jurisdictions that are required to enforce not only state but federal regulations (IE:ESA). This is all done while processing a building permit-it is not included in the building permit fees or the report.

Page 11-the statement ..."counties have historically established fees at levels believed to be reasonable and appropriate with no specific focus on the identification of the cost of providing permitting services and an attempt to recover those cost" is an incorrect statement. We have worked to limit the costs of permits to cover services rendered-it shows in the decline of revenue surplus to expenditures from 2006-2009.

Page 14, we use 5 counties plus the City of Bellingham to get our permit co averages.

Page 20, I think the Modified Cost/Revenue Allocation Methodology described in the ICC in Establishing Building Permit Fees is too complicated and takes away from the local jurisdictions ability to reflect their economy. There needs to some standardization but one size does not fit all.

I do agree that a surplus revenue limit could be established-but it must be reasonable so that staffing levels do not bounce back & forth. Training and experience need to weigh in to the process.

Thank you for the opportunity to offer comments.



Public Services

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VERN M. REDIFER, P.E. - Director

December 21, 2009

Bonnie Nims
Sr. Performance Audit Project Coordinator
Washington State Auditor's Office
P.O. Box 40031
Olympia, WA 98504

RE: Performance Audit of County Building Permit and Inspection Fees dated 12/18/2009

Dear Ms. Nims:

Yakima County offers the following comments regarding the subject performance audit. Yakima County proposes that the language on page 13, paragraph 4 "Yakima County" be replaced with the following language that more accurately depicts the current methodology Yakima County uses in establishing building permit fees.

Prior to 1995, Yakima County established its building permit fees based on the fee schedule contained in the UBC in combination with building valuations published by ICBO. Since 1995, Yakima County has established building permit fees using the 1995 UBC fee schedule adjusted annually by the Seattle CPI in combination with building valuations published by ICC in the Building Safety Journal. Yakima County is presently utilizing the ICC 2004 valuation table.

Recommendation No. 1

The Washington State Legislature should develop legislation that:

- Allows for thresholds of working capital from surplus building permit revenues
- Defines building permit processing activities and allowable expenses
- Specifically allows for appropriate indirect costs.

Response: Yakima County recommends that the Legislature utilize the advisory committee to assist the Legislature in developing the legislative guidelines for reserve thresholds, permit processing activities, allowable expenses, and appropriate indirect costs. The advisory committee should include building official representatives. The use of the advisory committee will ensure that all facets of the permit process and the services provided are covered in the legislation.

Yakima County ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding Yakima County's Title VI Program, you may contact the Title VI Coordinator at 509-574-2300.

If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.

Recommendation No. 2

Counties that currently do not have an emphasis on cost recovery:

- Klickitat
- Pacific
- Skamania
- Walla Walla
- Whatcom
- Yakima

should adopt the Modified Cost/Revenue Allocation Methodology described by the International Code Council.

Response: Yakima County does provide an emphasis on cost recovery when establishing its building permit fees. Such emphasis is inherent in the operation of an Enterprise Fund. Yakima County annually:

- Forecasts the upcoming years permitting activity based on historical data and market trends;
- Estimates the staffing levels and associated costs necessary to meet the projected permitting activities;
- Calculates anticipated revenue based on projected permit activities using existing permit fees; and,
- Compares and reconciles projected expenditures, projected revenues, existing fund balance, and operational cash flow needs to establish appropriate permit fees.

Yakima County believes that the extent of this audit exceeds the intent outlined in SB5120, which appears to have been directed at permit fees for agricultural buildings and not residential or commercial building permits. Furthermore the recommendations are requesting legislative action that would produce redundant legislation in regards to setting fees for building permit and inspection fees, which are already outlined in RCW 19.27 and by the International Code Council. Should the legislation adopt to the letter the recommendation as a result of this audit, the service levels currently being provided to the building community will be diminished, and result in higher over all fees. This result would be in violation of the intent of Initiative 900.

Yakima County would further express concern about reliance upon legal interpretations that may not be relevant to this issue. For example, the Kitsap County v. City of Bainbridge case referenced and attached to the report is a Division II that involved an addition to building permit fees to fund affordable housing. Thus relevance to the issue of permit fees for agricultural buildings is questionable. There is a significant body of statutory provisions that authorize the establishment of building permit fees by cities, towns and counties.

Sincerely,



David Saunders
Yakima County Building Official

CC: TKW
Board of County Commissioners
Vern Redifer, Public Services Director



CERTIFICATION OF ENROLLMENT

SENATE BILL 5120

Chapter 362, Laws of 2009

61st Legislature 2009 Regular Session

AGRICULTURAL STRUCTURES--FEES

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 20, 2009

YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 15, 2009

YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 6, 2009, 2:04 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5120** as passed by the Senate and the House of Representatives on the dates heron set forth.

THOMAS HOEMANN

Secretary

FILED

May 8, 2009

**Secretary of State
State of Washington**

SENATE BILL 5120

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senators Fairley, McDermott, and Holmquist

Read first time 01/14/09. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to agricultural structures; amending RCW 19.27.015 2
2 and 19.27.100; adding a new section to chapter 19.27 RCW; creating new
3 sections; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that permit and
6 inspection fees for new agricultural structures should not exceed the
7 direct and indirect costs associated with reviewing permit
8 applications, conducting inspections, and preparing specific
9 environmental documents.

10 **Sec. 2.** RCW 19.27.015 and 1996 c 157 s 1 are each amended to read
11 as follows:

12 As used in this chapter:

13 (1) "Agricultural structure" means a structure designed and
14 constructed to house farm implements, hay, grain, poultry, livestock,
15 or other horticultural products. This structure may not be a place of
16 human habitation or a place of employment where agricultural products
17 are processed, treated, or packaged, nor may it be a place used by the
18 public;

1 (2) "City" means a city or town;

2 ((+2)) (3) "Multifamily residential building" means common wall
3 residential buildings that consist of four or fewer units, that do not
4 exceed two stories in height, that are less than five thousand square
5 feet in area, and that have a one-hour fire-resistive occupancy
6 separation between units; and

7 ((+3)) (4) "Temporary growing structure" means a structure that
8 has the sides and roof covered with polyethylene, polyvinyl, or similar
9 flexible synthetic material and is used to provide plants with either
10 frost protection or increased heat retention.

11 NEW SECTION. Sec. 3. A new section is added to chapter 19.27 RCW
12 to read as follows:

13 Permitting and plan review fees under this chapter for agricultural
14 structures may only cover the costs to counties, cities, towns, and
15 other municipal corporations of processing applications, inspecting and
16 reviewing plans, preparing detailed statements required by chapter
17 43.21C RCW, and performing necessary inspections under this chapter.

18 **Sec. 4.** RCW 19.27.100 and 1975 1st ex.s. c 8 s 1 are each amended
19 to read as follows:

20 Except for permitting fees for agricultural structures under
21 section 3 of this act, nothing in this chapter shall prohibit a city,
22 town, or county of the state from imposing fees different from those
23 set forth in the state building code.

24 NEW SECTION. Sec. 5. (1) The state auditor, in accordance with
25 RCW 43.09.470, must conduct a performance audit of the reasonableness
26 of building and inspection fees permitted under RCW 82.02.020 that are
27 imposed by eight counties, as determined by the auditor. In selecting
28 counties for the audit, the auditor must choose four counties located
29 west of the crest of the Cascade mountain range, and four counties
30 located east of the crest of the Cascade mountain range. The selected
31 counties must represent a diversity of agricultural economies. In
32 completing the audit, the state auditor must include guidance on
33 determining allowable costs, and methodologies for allocating costs to
34 specific projects. The state auditor, when developing written cost

1 allocation guidance, must consider variances in the sizes of local
2 government entities.

3 (2) In completing the audit report required by this section, the
4 state auditor must establish and consult with a county government
5 advisory committee. The advisory committee must consist of members
6 from county and city governments and other interested parties, as
7 determined by the auditor.

8 (3) The state auditor must provide a final audit report to the
9 appropriate committees of the house of representatives and the senate
10 by December 31, 2009.

11 (4) Revenues from the performance audits of the government account
12 created in RCW 43.09.475 must be used for the audit required by this
13 section.

14 (5) This section expires July 1, 2011.

Passed by the Senate April 20, 2009.

Passed by the House April 15, 2009.

Approved by the Governor May 6, 2009.

Filed in Office of Secretary of State May 8, 2009.

**Building Industry Association of Southwest Washington, Pacific
Lifestyle Homes, Inc., R.C. Olin, LLC, and Quail Construction, Inc.
vs. Clark County**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

BUILDING INDUSTRY ASSOCIATION OF)	No. 02-2-01116-1
SOUTHWEST WASHINGTON, PACIFIC)	
LIFESTYLE HOMES, INC., R.C. OLIN, LLC, and)	
QUAIL CONSTRUCTION, INC.)	
)	
Plaintiffs,)	ORDER PARTIALLY GRANTING
)	PLAINTIFFS' MOTION FOR
vs.)	PARTIAL SUMMARY JUDGMENT
)	
CLARK COUNTY, a municipal subdivision of the)	
State of Washington,)	
)	
Defendant.)	
_____)	

THIS MATTER having come on regularly on September 8, 2008, before the undersigned judge of the above court has reviewed the records and files herein, including:

1. Plaintiffs' Motion for Partial Summary Judgment;
2. Declaration of John M. Groen in Support of Motion for Partial Summary Judgment, and Exhibits attached thereto;
3. Response to Motion for Summary Judgment, and Exhibits A-C attached thereto.
4. Declaration of Christopher LaFrance in Opposition to Summary Judgment, August 28, 2008.
5. Declaration of Linda Moorhead in Opposition to Summary Judgment, August 28, 2008.
6. Plaintiffs' Reply in Support of Motion for Partial Summary Judgment.

The Court has also considered the records and files in this matter, and heard the oral argument of counsel for the parties. The Court finds that there are no genuine issues of material fact regarding Plaintiffs' legal issue raised in this motion for partial summary judgment and Plaintiffs are entitled to the relief sought as a matter of law.

IT IS HEREBY ORDERED:

Clark County cannot lawfully include in building permit fees the expense of code enforcement activities that occur prior to the filing of a permit application. Pre-application code enforcement activities are not part of "processing applications" under RCW 82.02.020, but instead are fundamentally law enforcement activities that cannot be funded through the building permit fees authorized by RCW 82.02.020.

At this time the Court is not making a ruling regarding the specific relief to the Plaintiff class or to whether or not prejudgment interest is appropriate.

DONE this _____ day of September, 2008.

Honorable James E. Warme

Presented by:

GROEN STEPHENS & KLINGE LLP

By: _____
John M. Groen, WSBA #20864
Attorneys for Plaintiffs

Copy received; approved as to form;
Notice of Presentation waived:

CLARK COUNTY PROSECUTING ATTORNEY

By: _____
E. Bronson Potter, WSBA #9102
Attorneys for Defendant Clark County

**137 Wn. App. 338, Feb. 2007 Home Builders Ass'n of Kitsap County
vs. City of Bainbridge Island**

137 Wn. App. 338, Feb. 2007 Home Builders Ass'n of Kitsap County v. City of Bainbridge Island

[No. 34743-1-II. Division Two. February 21, 2007.]

HOME BUILDERS ASSOCIATION OF KITSAP COUNTY ET AL ., *Appellants* , v. THE CITY OF BAINBRIDGE ISLAND , *Respondent* .

[1] Appeal - Review - Issues of Law - Standard of Review. Questions of law are reviewed de novo.

[2] Appeal - Review - Issues Not Raised in Trial Court - Discretion of Appellate Court. An appellate court has the discretion to consider claims of error that were not first raised in the trial court.

[3] Appeal - Review - Issues Not Raised in Trial Court - Court Rules - Effect. RAP 2.5(a) allows but does not compel an appellate court to refuse to review claims of error that were not first raised before the trial court.

[4] Appeal - Review - Issues Not Raised in Trial Court - Purpose of Prohibition. The general rule that an appellate court will not review claims of error that were not first raised in the trial court reflects the policy of encouraging the efficient use of judicial resources.

[5] Appeal - Review - Issues Not Raised in Trial Court - Judicial Economy. An appellate court may consider an issue raised for the first time on appeal if the efficient use of judicial resources would not be served by declining to consider the issue.

[6] Appeal - Review - Issues Not Raised in Trial Court - Issue of Public Importance - No Existing Authority. An issue involving a matter of significant interest to the public and government decision makers and concerning which there is no existing authority is one that may properly be considered for the first time on appeal in the best interest of wise use of judicial resources.

[7] Statutes - Construction - Statutory Language - Plain Meaning - In General. When interpreting a statute, a court first seeks to determine the statute's plain meaning from the statutory language alone. Only if the statute is ambiguous will the court resort to aids of construction, such as legislative history.

[8] Municipal Corporations - Development Fees - Statutory Prohibition - Exceptions - Burden of Proof. For purposes of RCW [82.02.020](#) , which prohibits local governments from imposing any tax, fee, or charge, directly or indirectly, on the development, subdivision, classification, or reclassification of land except as specifically authorized by the statute, the burden of establishing a statutory exception is on the party claiming the exception. Where the party claiming the exception is a local agency, the local agency has the burden of demonstrating that the claimed exception applies.

[9] Municipal Corporations - Development Fees - Statutory Prohibition - Exceptions - Cost Recovery Permitting Fee - Authorized Costs - Reasonableness of Fee - Burden of Proof. That portion of RCW [82.02.020](#) allowing local governments to charge reasonable fees on building permit applications based on the costs of processing applications, inspecting and reviewing plans, and preparing environmental statements is an exception to the statute's general rule prohibiting local governments from imposing any tax, fee, or charge, directly or indirectly, on the development, subdivision, classification, or reclassification of land. When the validity of a building permit fee is challenged on the basis that it exceeds what is allowed by the cost-recovery exception, the burden is on the local government to show that the fee is limited to the statutorily authorized costs and that the fee is reasonable.

[10] Statutes - Construction - Unambiguous Language - Plain Meaning - In General. When a statute's meaning is clear on its face, a court is constrained to interpret the statute according to its clear meaning. The expansion of a statute beyond its clear meaning is a matter for the legislature, not the courts.

[11] Municipal Corporations - Development Fees - Statutory Prohibition - Exceptions - Cost Recovery Permitting Fee - Authorized Costs - Scope - Limitation. Under RCW [82.02.020](#) , the only costs a local jurisdiction may use as the basis of a reasonable fee charged to an applicant for a land development or construction permit are the costs of "processing applications, inspecting and reviewing plans, or preparing detailed [environmental] statements." No other costs are allowed; nor may the statutorily allowed costs be read so broadly as to include all costs that may be attributable to a local jurisdiction's building and planning department.[12] Municipal Corporations - Development Fees - Statutory Prohibition - Exceptions - Cost Recovery Permitting Fee - Authorized Costs - Reasonableness of Fee - What Constitutes. For purposes of RCW [82.02.020](#) , which allows local governments to charge reasonable fees to applicants for building and land development permits based on the costs of processing applications, inspecting and reviewing plans, and preparing environmental statements, "reasonable" means "being or remaining within the bounds of reason: not extreme: not excessive." Whether a fee is "grossly disproportionate" is not the standard for determining whether the fee satisfies the reasonableness requirement.

[13] Municipal Corporations - Development Fees - Statutory Prohibition - Exceptions - Cost Recovery Permitting Fee - Authorized Costs - Reasonableness of Fee - Reviewability. For purposes of RCW [82.02.020](#) , which allows local governments to charge reasonable fees to applicants for building and land development permits based on the costs of processing applications, inspecting and reviewing plans, and preparing environmental statements, the reasonableness of a local jurisdiction's fee is a matter that is subject to judicial review.

Nature of Action: Action challenging the validity of a city's increase in its building permit fees.

Superior Court: After entering a partial summary judgment in favor of the city, ruling that the fees did not constitute an unlawful tax, the Superior Court for Kitsap County, No. 01-2-01773-1, Leonard W. Costello, J., on August 19, 2005, entered a judgment in favor of the city, ruling that the increased fees were reasonable and dismissing the plaintiffs' claims.

Court of Appeals: Holding that the city has the burden of establishing the statutory validity of the fee increases and the reasonableness of the fees, the court *reverses* the judgment and *remands* the case for further proceedings.

Richard M. Stephens (of Groen Stephens & Klinge, L.L.P.), for appellants.

Dan S. Lossing and Rosemary A. Larson (of Inslee, Best, Doezie & Ryder, P.S.), for respondent.

¶1 Van Deren, J. - The Home Builders Association of Kitsap County, Hillandale Homes, L.L.C., Jefferson Properties, Inc., and Andy Mueller Construction Co. (collectively Home Builders) appeal the trial court's finding that the city of Bainbridge Island's (City) fees for building permits are reasonable and do not violate RCW [82.02.020](#) . Home Builders assign error to the trial court's findings of fact and conclusions of law, urging de novo review by this court because the trial court: (1) erred by placing the burden of proof on Home Builders, (2) used the wrong standard to determine if the City's fees were reasonable, and (3) erred by concluding that the reasonableness of the costs the City included in calculating its permit fees was a political judgment beyond judicial review.

¶2 We hold that the burden of showing that the fees comply with a statutory exception and are reasonable rests with the City. Because we cannot resolve disputed factual assertions decided under the wrong burden of proof, we remand to the trial court to determine whether the City's fees are (1) limited to those the legislature specified and, if so, (2) reasonable in light of the statutory limitations placed on the fees the City may impose.

FACTS

¶3 The City charges fees for issuing building permits. The fees may include a building permit fee, «1» a plan check fee, «2» a planning review fee, «3» and a drainage review fee. «4»

¶4 "The City accounts for and tracks its revenues and expenses in different funds." Clerk's Papers (CP) at 174. The current expense fund holds the City's revenues that are not required by law to be placed in a separate fund. The revenues in the current expense fund are primarily collected through general taxes. All fees and costs associated with processing ministerial building permits are accounted for in the building subfund.

«1» The building permit fee is collected to cover a portion of the City's costs in processing building permit applications.

«2» The plan check fee covers a portion of the costs associated with reviewing the application plans and specifications for compliance with the technical requirements of the Uniform Building Code.

«3» The planning review fee covers a portion of the costs associated with the Current Planning Division's review of planning issues.

«4» The drainage review fee covers a portion of the work done on reviewing the adequacy of the proposed storm water drainage provisions.

¶5 The City allocates overhead costs to the building subfund. The City's accounting practices, including the allocation of overhead costs to various departments, comply with standards of municipal accounting and cost allocation. Trial exhibit 18 included a cost recovery survey for other cities in western Washington, indicating that the fees the City charged "do not appear to be out of line." CP at 1181.

¶6 The director of finance and administrative services for the City testified that the fees the City charged do not cover all costs incurred to process the permit applications or review the plans submitted with the applications. He further testified that in 1999 and 2000, the fees covered between 68.6 percent and 70.6 percent of the costs that were calculated based on numerous direct and indirect costs to the City of regulating building and development within the

City and maintaining a planning department. The City's cost calculation includes such items as the cost of the city hall building ownership as well as certain legal fees incurred by the City. The City's collected building permit fees are insufficient to fund the City's costs to regulate all building within the City. The City deposited funds into the building subfund from the current expense fund to account for the insufficient funds in the building subfund. «5»

¶7 In order to fund an affordable housing program, the City needed to either increase revenues or decrease expenditures out of the current expense fund. On December 8, 1999, the city council adopted Resolution No. 99-31 that increased the building permit fee and the fee for planning review. The resolution was titled:

A RESOLUTION OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON RELATING
TO THE IMPOSITION OF A SURCHARGE ON BUILDING PERMIT FEES AND PLAN
REVIEW CHARGES FOR THE PURPOSE OF PARTIALLY

«5»"In 1999, the City transferred \$1,100,000 from the Current Expense Fund to the Building and Development Services Fund" to account for the deficit "and in 2000, the City transferred \$1,455, 000." CP at 177.

FUNDING AN AFFORDABLE HOUSING TRUST FUND AND AMENDING SECTION 9
OF THE BAINBRIDGE ISLAND FEE SCHEDULE.\ [6]

CP at 185. The building permit fee was increased from 100 percent of the amount shown in the Uniform Building Code (UBC) to 110 percent of the amount in the UBC. The City also increased the fee for planning review from 10 percent of the building permit fee to 20 percent. "The Resolution did not increase the plan check fee." CP at 1180.

¶8 Home Builders filed a class action lawsuit against the City on behalf of all persons or entities that paid building permit fees in the City after passage of Resolution 99-31. Home Builders originally challenged the City's building permit fee increase, arguing that the City raised the fees for a purpose other than processing building permits, violating RCW [82.02.020](#) .

¶9 Both Home Builders and the City moved for summary judgment. Home Builders argued that, as a matter of law, the fee increase violated RCW [82.02.020](#) because the City intended to use the funds from the building permit fee increase to support the affordable housing project, not to cover costs of processing building permit applications, and that the building permit fee increase was an illegal tax.

¶10 The City argued that (1) the increase in building permit fees was not an illegal tax in violation of RCW [82.02.020](#) and (2) the building permit application fees were "reasonable fees" permitted by RCW [82.02.020](#) to cover the cost of processing the building permit applications and inspecting and reviewing building plans.

¶11 The trial court denied Home Builders' motion and granted the City's summary judgment motion in part. It agreed that, as a matter of law, the building permit fees were not an illegal tax. The trial court reserved for trial the issue of whether the building permit fees were "reasonable fees" to cover the cost of processing building permit applications. After trial, the court found for the City, issuing a memorandum decision, stating that the fees were reasonable and dismissed Home Builders' claims.

¶12 Home Builders appeal; «7»claiming seven assignments of error relating to the trial court's findings of fact and conclusions of law and stating the issues pertaining to the assignments of error as questions of law.

ANALYSIS

I. THE STATUTORY LANGUAGE

¶13 Subject to identified statutory exceptions in RCW [82.02.050](#) through RCW [82.02.090](#) , RCW [82.02.020](#) forbids the imposition of any fee, either direct or indirect, on construction activities. But it expressly allows an exception to this general rule to cover cities' costs to process building permit applications, inspect and review plans, or prepare State Environmental Policy Act (SEPA) «8»statements:

Except as provided in RCW [82.02.050](#) through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

....

«7» Home Builders first filed for direct review by the Washington Supreme Court under RAP 4.2(a)(3). The Supreme Court denied review and transferred the appeal to us.

«8» Ch. 43.21C RCW.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter [43.21C](#) RCW.

RCW [82.02.020](#) (emphasis added).

II. STANDARD OF REVIEW

¶14 Home Builders first argue that the trial court erred in placing the burden of proof on them to disprove the reasonableness of the City's fee calculation for processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter [43.21C](#) RCW. They also challenge the standard used to determine whether the fees were reasonable and the scope of judicial review of costs used to set the fees.

[1-5] ¶15 We review legal questions de novo. «9» *Sunnyside Valley Irrigation Dist. v. Dickie*, [149 Wn.2d 873](#), 880, 73 P.3d 369 (2003). The City asserts on appeal that Home Builders cannot raise these issues because they did not properly preserve them at trial. But Home Builders appeal the trial court's final judgment and its conclusions of law, and the City answered these same claims and fully briefed them on appeal. See RAP 2.2(a)(1). "The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a) (emphasis added). Our refusal to review is not compulsory. See RAP 2.5(a). The rule that appellate courts will not review errors not raised in trial court reflects the policy of encouraging the efficient use of judicial resources. *State v. Scott*, [110 Wn.2d 682](#), 685, 757 P.2d 492 (1988). Here, declining to address the legal

«9» Home Builders also challenge findings of fact 9, 10, 14, 16, 17, and 18. Findings of fact are reviewed by this court for substantial evidence. *Wenatchee Sportsmen Ass'n v. Chelan County*, [141 Wn.2d 169](#), 176, 4 P.3d 123 (2000). But because we hold that the trial court erred in not first requiring the City to demonstrate its compliance with the specific statutory exceptions to the prohibition on development fees, we do not reach the factual contentions based on the erroneous placement of the initial burden of proof.

issues would not serve to encourage the efficient use of judicial resources and we, therefore, address Home Builders' legal issues.

[6] ¶16 The legal issues Home Builders raises are essential to every trial court's consideration of a permit fee challenge under RCW [82.02.020](#). They are a matter of significant interest to the public and to governmental entities that regulate building and development; and, therefore, it is in the best interest of judicial resources if we address them here. *Scott*, [110 Wn.2d at 685](#). It is of particular importance because we can find no authority interpreting whether the legislature intended to identify the bases of the questioned fees as an exception to the general prohibition of fees on construction and the corresponding allocation of the burden of proof under RCW [82.02.020](#).

[7]¶17 Home Builders' challenge requires that we interpret RCW [82.02.020](#) . When interpreting a statute, we first look at its plain meaning from the statutory language itself. *Cerrillo v. Esparza* , [158 Wn.2d 194](#) , 201, 142 P.3d 155 (2006). Only if the statute is ambiguous do we resort to aids of statutory constructions, including legislative history. *City of Olympia v. Drebeck* , [156 Wn.2d 289](#) , 295, 126 P.3d 802 (2006).

III. EXCEPTION TO PROHIBITION ON FEES AND BURDEN OF PROOF

[8, 9]¶18 Home Builders argue that the trial court erred in placing the burden of proof on them to disprove the reasonableness of the City's fees. Relying on *Isla Verde International Holdings, Inc. v. City of Camas* , [146 Wn.2d 740](#) , 49 P.3d 867 (2002), they assert that a party claiming an exception to a rule, here, the City, bears the burden of demonstrating that the claimed exception applies. The City disagrees, arguing that the trial court did not err in placing the burden of proof on Home Builders. The City asserts that the burden of proof falls on the party challenging a fee's reasonableness.

¶19 On appeal, Home Builders have not challenged the constitutionality of, or inherent power of, the City to impose these fees but argue that the costs included in calculating the fees do not fall within the legislative exception. Thus, the general rule that a party challenging the reasonableness of a fee bears the burden of persuasion does not apply and the cases the City relies on are inapposite. «10»The City is correct that the burden of proof rests with any challenger who asserts that a fee or tax is invalid or unconstitutional because it is unreasonable. See *Thurston County Rental Owners Ass'n v. Thurston County* , [85 Wn. App. 171](#) , 931 P.2d 208, review denied , [132 Wn.2d 1010](#) (1997) (the party who challenges the reasonableness of the fees bears the burden of proof). But Home Builders challenge whether the City's fees fall within the allowed statutory exceptions to RCW [82.02.020](#) .

¶20 In *Isla Verde* , our Supreme Court held that, for purposes of RCW [82.02.020](#) , the burden of establishing a statutory exception is on the party claiming the exception. *Isla Verde* , [146 Wn.2d at 759](#) . RCW [82.02.020](#) prohibits a city from collecting fees except for (1) involuntary impact fees permitted under RCW [82.02.050](#) through RCW [82.02.090](#) , (2) dedications of land, (3) easements, and (4) "voluntary agreements that allow a payment in lieu of dedication of land or to a mitigate direct impact . . . of a proposed development." *Isla Verde* , [146 Wn.2d at 753](#) -54. But RCW [82.02.020](#) also allows and itemizes exceptions for reasonable fees based on costs of processing applications, inspecting and reviewing plans, and preparing SEPA statements.

«10» *Brown v. City of Yakima* , [116 Wn.2d 556](#) , 807 P.2d 353 (1991); *Louthan v. King County* , [94 Wn.2d 422](#) , 617 P.2d 977 (1980); *Teter v. Clark County* , [104 Wn.2d 227](#) , 704 P.2d 1171 (1985); *Hillis Homes, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County* , [105 Wn.2d 288](#) , 714 P.2d 1163 (1986); *Prisk v. City of Poulsbo* , [46 Wn. App. 793](#) , 732 P.2d 1013 (1987); *Lincoln Shiloh Assocs. v. Mukilteo Water Dist.* , [45 Wn. App. 123](#) , 724 P.2d 1083 (1986).

¶21 In *Isla Verde* , a developer challenged the legality of a 30 percent "open space" «11»set aside, and the court analyzed whether the set aside fell under the exception for dedications of land in RCW [82.02.020](#) . *Isla Verde* , [146 Wn.2d at 755](#) -60. Our Supreme Court held that " RCW [82.02.020](#) requires strict compliance with its terms"; thus, "[a] tax, fee, or charge, either direct or indirect, imposed on development is invalid unless it falls within one of the exceptions specified in the statute." *Isla Verde* , [146 Wn.2d at 755](#) .

¶22 RCW [82.02.020](#) 's provision allowing cities to collect reasonable fees for processing applications, inspecting and reviewing plans, or preparing detailed statements required by SEPA is an express exception to its general prohibition of fees on development projects. Here, the trial court did not analyze whether (1) the City's building permit fees were fully within the allowable exceptions to RCW [82.02.020](#) or (2) the actual fees imposed were limited to RCW [82.02.020](#) 's identified exceptions. The only issue at trial was whether the City's costs and the resulting fees were reasonable. This prevented Home Builders' challenge to whether the imposed fees were an allowable exception because the City was not required to show that the fee calculation was limited to the legislatively specified costs of processing applications, inspecting and reviewing plans, or preparing SEPA statements. The City argued and the trial court agreed that the entire cost of the City's regulation of building within its city limits was the proper basis of the fees charged.

¶23 Because these fees are, by statute, an exception to the general prohibition against fees on construction and development, the City must show that its fees fall within the specific exception and that they are reasonable. Thus, the trial court erred and we vacate and remand the case for further proceedings allocating the burden of proof to the City.

«11» "[O]pen space(s)" [is] defined [as an area] set aside and suitable for active or passive recreation.' " *Isla Verde* , [146 Wn.2d at 746](#) n.2 (quoting former CAMAS MUNICIPAL CODE 18.62.020.

IV. COSTS USED TO CALCULATE PERMIT FEES UNDER RCW [82.02.020](#)

[10, 11]¶24 Because the issue of which costs are used in determining whether the City's fees comply with the exceptions in RCW [82.02.020](#) will arise on remand, we examine the statute's exceptions. RCW [82.02.020](#) is not ambiguous. The legislature clearly prohibited cities from imposing fees on construction or development unless those fees were specifically allowed by statute. The legislature itemized the costs to be used as a basis for reasonable fees charged to permit applicants. Those fees are based on costs of "processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter RCW 43.21C RCW [SEPA]." RCW [82.02.020](#) .

¶25 The City would have us read these costs broadly, to include all costs the City attributes to its building and planning department. In support of its position, it produced a cost recovery survey for other cities in western Washington. The survey persuaded the trial court that the fees the City charged were comparable. But there is no evidence in the record before us that the basis of the survey was RCW [82.02.020](#) 's limitation on fees to the costs of processing applications, inspecting and reviewing plans, or preparing detailed statements required by SEPA as the basis of the fees charged by various cities.

¶26 The trial court also heard testimony from the City's director of finance and administrative services that the fees collected by the City under RCW [82.02.020](#) do not cover the costs the City incurs to process the permit applications or review the plans submitted with the applications. A financial and management consultant for local governments confirmed that the City complied with guidelines for cost accounting and cost allocation for government agencies. But neither the director nor the consultant testified that the City addressed the specific costs listed in RCW [82.02.020](#) in calculating the fees it charges permit applicants.

¶27 We reject the City's and the trial court's expansion of RCW [82.02.020](#) 's exception beyond the costs of processing applications, inspecting and reviewing plans, or preparing SEPA statements to include a portion of all costs allowed by accounting and cost allocation guidelines for government agencies. If the legislature meant to allow such a broad exception for the basis of fees charged permit applicants, it was capable of so stating. We are constrained to interpret the statute according to its clear meaning and we leave any expansion of this narrow exception to those charged with the duty to create laws. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.* , [146 Wn.2d 1](#) , 11-12, 43 P.3d 4 (2002); *Dean v. McFarland* , [81 Wn.2d 215](#) , 222, 500 P.2d 1244 (1972).

¶28 Thus, the trial court erred when it reached its decision on the reasonableness of the City's permit fees based on general accounting and cost allocation principles and the City's costs of regulation, instead of focusing on evidence of costs the legislature specifically allowed in RCW [82.02.020](#) .

V. REASONABLENESS STANDARD

[12]¶29 Home Builders also argue that the trial court relied on the wrong standard to determine if the City's fees were reasonable. Because this issue may also arise on retrial, we address it. The trial court concluded that the City's fees were not "grossly disproportionate" to the City's cost of regulation. CP at 1182. RCW [82.02.020](#) does not mention the phrase "grossly disproportionate." Home Builders assert that the "grossly disproportionate" standard is only used if there is no statutory language regarding the excessiveness of the fees. Br. of Appellant at 27. It argues that statutory language of RCW [82.02.020](#) specifically limits the fees permitted by RCW [82.02.020](#) and only allows a city to collect fees for processing building permit applications, inspecting and reviewing building plans, and preparing detailed statements. The City argues that the trial court properly focused on the reasonableness of the fees and that any error did not result in prejudice and cannot be grounds for reversal.

¶30 The legislature established that the proper measure of fees imposed as an exception to the general prohibition of fees on construction is that they be "reasonable." RCW [82.02.020](#) . Reasonable is defined as "being or remaining within the bounds of reason: not extreme: not excessive." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1892 (2002). Therefore, the trial court erred in imposing the burden on Home Builders to prove that the City's fees are "grossly disproportionate." Br. of Appellant at 27.

¶31 We have held that the burden is on the City to show that the fees it imposes are fully within the statutory exceptions and are reasonable and remand the matter for retrial. During that process, evidence of the specific costs

included in the fees will be before the court. If the trial court is persuaded that the City is in compliance with the legislature's limitations on these costs and fees, the City may present evidence relating to the reasonableness of the calculations and the resulting fees.

VI. SCOPE OF JUDICIAL REVIEW

[13]¶32 Home Builders also argue that the trial court erred by concluding that the reasonableness of the City's costs was a political judgment and beyond the scope of judicial review. They argue that the trial court's ruling renders the reasonableness of RCW [82.02.020](#) judicially unreviewable. The City counters that the trial court did review the reasonableness of the City's fees and that it concluded that the City's choice of where to house its offices was a political judgment beyond the scope of judicial review. We agree with the City.

¶33 The trial court's finding that the City's choice of office space and its legal costs are political judgments by elected City officials is correct, but it is not determinative of whether those costs are properly included in the cost calculation for the specific statutory exceptions to a prohibition on fees imposed on development. We reject Home Builders' suggestion that the trial court concluded that "the reasonableness or excessiveness of the costs [the City]

incurs and passes on to fee applicants is an unreviewable 'political judgment.' " Br. of Appellant at 34. Clearly, the trial court concluded that reasonableness of the fees was judicially reviewable because it denied summary judgment on the issue and held a four-day trial on the issue of reasonableness. Thus, we hold that the trial court did not err in this conclusion.

¶34 We reverse and remand for further proceedings consistence with this opinion.\

HOUGHTON , C.J., and QUINN-BRINTNALL , J., concur.

Tiger Mountain, LLC and P & L Associates vs. King County

ORIGINAL

FILED
2004 MAY 24 PM 3:14
PAUL D. WIELS
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

TIGER MOUNTAIN, LLC and P & L
ASSOCIATES, a Washington general
partnership, for themselves and all others
similarly situated,
Plaintiffs,

NO. 03-2-05287-4

ORDER ON MOTIONS FOR
PARTIAL SUMMARY JUDGMENT

v.

KING COUNTY, a political subdivision
for the State of Washington,
Defendant.



03-2-05287-4

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This matter came before the above-entitled Court on April 30, 2004 upon Plaintiff's Motion for Partial Summary Judgment, and upon Defendant's Cross Motion for Partial Summary Judgment. The Court reviewed memoranda of authority submitted by attorneys representing the parties, together with the following Declarations and all attachments thereto:

For Plaintiff:

- Declaration of Dana Mower, January 19, 2004
- Supplemental Declaration of Dana Mower, March 15, 2004
- Declaration of Bill H. Williamson, July 10, 2003
- Declaration of Bill H. Williamson, January 30, 2004
- Supplemental Declaration of Bill H. Williamson, March 19, 2004
- Declaration of Raymon Holmdahl, March 19, 2004

ORDER ON MOTIONS FOR PARTIAL
SUMMARY JUDGMENT

- 1 -

Superior Court
Snohomish County Courthouse
Everett, WA 98201
(425) 388-3421

1 For Defendant:

- 2 ▪ Declaration of Michael Frawley, February, 2004
- 3 ▪ Second Declaration of Michael Frawley, April 2, 2004
- 4 ▪ Declaration of Robert V. Cowen, Jr., February 26, 2004
- 5 ▪ Declaration of Jim Schaber, February 26, 2004
- 6 ▪ Second Declaration of Jim Schaber, April 2, 2004
- 7 ▪ Declaration of Craig Soper, February 26, 2004
- 8 ▪ Declaration of Stephanie Warden, February 26, 2004
- 9 ▪ Declaration of Howard P. Schneiderman, February 26, 2004

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11 MOTIONS TO STRIKE

12 Plaintiff's Motion to Strike dated March 19, 2004 is DENIED, except for the
13 following paragraphs of Defendant's declarations which are hereby stricken:

14 First Declaration of Michael Frawley:

15 paragraphs 71, 96 and 269 (2nd sentence).

16 Declaration of Robert V. Cowen, Jr.:

17 paragraphs 10, 11, 28, 29 and 30.

18 Plaintiff's Motion to Strike dated April 9, 2004 is DENIED.

19 Defendant's Motion to Strike dated April 2, 2004 is DENIED, except for the
20 following paragraphs of the Declaration of Raymon Holmdahl which are hereby stricken:
21 13, 14, 19 and 20.

22 MOTIONS FOR SUMMARY JUDGMENT

23 1. Strict Interpretation.

24 RCW 82.02.020 is to be strictly interpreted as prohibiting any tax, fee or
25 charge, either direct or indirect, which does not fall within one of the exceptions
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1 enumerated in said statute. R/L Associates v. Seattle, 113 Wn.2d 402 (1989); Trimen
2 Dev. v. King County, 124 Wn.2d 261 (1994); Isla Verde Int'l v. City of Camas, 146
3 Wn.2d 740 (2002).

4 The exception relevant to this case is found in the fourth paragraph of the
5 statute, allowing (but not requiring) municipalities, through their own legislative
6 enactments, to collect reasonable fees from applicants for development permits to
7 cover the cost to the municipality of "processing applications, inspecting and
8 reviewing plans, or preparing detailed statements required under [SEPA]."

9 "When construing a statute, the Court must ascertain and give effect to the
10 Legislature's intent. ... Furthermore, where a statute designates a list of things
11 whereupon the statute operates, the inference arises that the Legislature intended to
12 omit other things not listed; specific inclusions exclude implications. In re Eaton, 110
13 Wn.2d 892, 898 (1988). This principle of statutory construction was approved in the
14 context of RCW 82.02.020 in R/L Associates, 113 Wn.2d at 408.

15 King County enacted Title 27 of the King County Code to implement the
16 permit fee exception found in RCW 82.02.020. Section 27.04.040 defines "permit
17 fee" as follows:

18 'Permit fee' means a payment of money imposed upon
19 development as a condition of application for or approval of
20 development to cover the cost of processing applications,
21 inspecting and reviewing plans or other information required to
be submitted for purpose of evaluation of an application, or
inspecting or monitoring development activity.

22 More specifics relating to permit fees are found in Chapter 27.10 KCC.

23 To determine whether King County's permit fees strictly comply with RCW
24 82.02.020, it is unnecessary to engage in a tax/regulation analysis (known as a
25 "Covell analysis"). See R/L Associates, 113 Wn.2d at 409; Margola Associates v.
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Seattle, 121 Wn.2d 625, 637 n. 2 (1993); Cobb v. Snohomish County, 64 Wn.App. 451 (1992). As noted below, however, a Covell analysis may be helpful in interpreting legislative intent, as applied to particular elements of King County's fee structure.

2. Constitutional challenge.

In addition to their statutory challenge to King County's permit fees under RCW 82.02.020, Plaintiffs also present a State and Federal Constitutional challenge, alleging an unlawful "taking." Because the instant case is totally resolvable on statutory grounds, this court declines to reach constitutional issues. *See Isla Verde Int'l*, 146 Wn.2d at 752; *R/L Associates*, 113 Wn.2d at 409, 410. Defendant's motion for partial summary judgment dismissing all constitutional claims is hereby GRANTED.

3. Direct or Indirect Costs (a facial analysis).

A "facial" analysis of the permit fee exception to RCW 82.02.020 (subject to an "as applied" analysis in section 4 below) leads the Court to conclude that permit fees authorized by the statute may cover direct and indirect costs incurred by a municipality in administering the development permit process. Moreover, indirect costs are inclusive of operating and administrative overhead expenses attributable to said permit process. Defendant's motion for Partial Summary Judgment on this issue is GRANTED. The Court's conclusion is based upon the following analysis:

3.1 RCW 82.02.020 uses the words "direct" and "indirect" as terms of significance. The underlying prohibition of the statute relates to any tax, fee or charge, "direct or indirect," on construction activity. Exception number one, however, relates to land dedications which are reasonably necessary as a "direct" result of a proposed development. Exception number two relates to

1 voluntary agreements to mitigate "direct" impacts resulting from a proposed
2 development. By contrast, exception number three (which is the subject of the
3 instant case), relates to reasonable fees to cover the cost of the permit process,
4 without any limitation that such costs must be "direct." This omission
5 suggests legislative intent to construe "costs" inclusively.

6 **3.2** Both RCW 82.02.020 and KCC 27.04.040 expressly state legislative
7 intent that permit fees are to "cover the cost." This expansive phrase, without
8 express limitation, suggests an inclusive interpretation.

9 **3.3** The usual, ordinary and commonly accepted meaning of these terms
10 may be ascertained from Black's Law Dictionary (7th ed., 1999).

11 **cost:** "The amount paid or charged for something; price or
12 expenditure. Cf. Expense."

13 **expense:** "An expenditure of money, time, labor, or resources to
14 accomplish a result; esp., a business expenditure chargeable against
revenue for a specific period."

15 **general administrative expense:** "An expense incurred in running a
16 business, as distinguished from an expense incurred in manufacturing
17 or selling; overhead. Examples include executive and clerical salaries,
rent, utilities, and legal and accounting services."

18 **direct cost:** "The amount of money for material labor and overhead to
19 produce a product."

20 **indirect cost:** "A cost that is not specific to the production of a
21 particular good or service, but that arises from production activity in
22 general, such as overhead allocations for general and administrative
activities. — Also termed common cost."

23 **3.4** Legislative history for RCW 82.02.020, found in the 1982 Final
24 Legislative Report, SB 4972, explains that the permit fee exception was
25 intended to: "cover governmental expenses" in processing development
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applications. See also AGO 1988 No. 7, where legislative intent for this statute is interpreted as authorizing permit fees which have the "primary purpose of reimbursement of the actual costs of a regulatory program..."

3.5 King County's legislative history with respect to its current generation of permit fees (effective March 4, 1999), shows an intent to implement dual County policies that fees should equal the County's actual costs of processing permits, and to avoid imbalances in fees so that one applicant does not subsidize another to the maximum extent possible. Further, since 1989 the County has been gradually implementing a policy of withdrawing the general tax subsidy of the permitting division of DDES which had previously been provided through the County Current Expense Fund. Frawley Declaration, §§ 95, 132 and 133.

3.6 Dana Mower, the principal owner of Tiger Mountain, LLC, Plaintiff herein, states in his Supplemental Declaration, at page 5, lines 11-15, that he, in effect, has no quarrel with a municipality which charges permit fees which cover "direct labor costs, benefits and office overhead" for the permitting process.

3.7 Raymon Holmdahl, CPA, Plaintiff's expert witness, states in his Declaration at ¶ 15:
I agree that direct costs and even appropriate indirect operating costs for the permit processing entities (Building Services Division and Land Use Services Division) should be included in the hourly rates charged for building and land use permits.

3.8 The measure of whether a fee is serving a regulatory function or a fiscal (taxing) function is not determined by whether it is covering a direct cost associated with an individual applicant, or whether it is covering an indirect

1 cost associated with the operating overhead of the permitting agency. Case
2 law has adopted a measure which does not require that charges be
3 "individualized" according to the benefit accruing to each fee payer, but
4 instead focuses on the relationship of the charges to the goal of alleviating the
5 shared burden of all persons participating in the permitting system. See Teter
6 v. Clark County, 104 Wn.2d 227 (1985); Covell v. City of Seattle, 127 Wn.2d
7 874 (1995); Samis Land Co. v. City of Soap Lake, 143 Wn.2d 798 (2001).

8 3.9 In many other analogous contexts the Legislature and the Courts have
9 found regulatory fees to appropriately include indirect costs of administrative
10 overhead. See Lakewood v. Pierce County, 106 Wn.App. 63 (2001); Smith v.
11 Spokane County, 89 Wn.App. 340 (1997).

12 In Merrelli v. City of St. Clair Shores, 355 Mich. 575, 96 N.W.2d 144
13 (1959), a building permit fee was disallowed as being a subterfuge for raising
14 revenue to finance the general cost of government. However, the Court
15 stated:

16 We would not, of course, be construed as holding
17 that only the direct costs (e.g., the salaries of
18 inspectors) are chargeable to the new
19 construction. The indirect costs, as well, of
20 administering and enforcing the police regulation
21 are recoverable, but they must in fact be such
22 indirect costs, as distinguished from the costs of
23 expanded government services, and they must be
24 established by reasonably accurate accounting
25 procedures....

26 *Id.* at 150.

23 **4. Permissible Costs (an "as-applied" analysis).**

24 The Court's analysis of each of the several elements of King County's permit
25 fee structure involves applying the following criteria:

- 26 a. A strict interpretation of RCW 82.02.020 (4th paragraph)

- 1 b. Inclusion of indirect costs per Section 3 above.
- 2 c. Consideration of the three prongs of the Covell analysis.
- 3 d. Rejection of costs associated with general governmental services or which are
- 4 a response to the impacts of growth and development generally.
- 5 e. Rejection of costs which are disproportionately high compared to the expense
- 6 of services provided to a permit applicant, or compared to the expense of
- 7 alleviating the shared burden of all permit applicants.
- 8 f. Rejection of the "but for" test for determining a relationship between a permit
- 9 program and a governmental expense.

10 **4.1** Except as provided in the subsections below, those discrete elements of
11 DDES overhead which are being assigned to the permitting function of DDES
12 (comprising approximately 85% of DDES departmental overhead), and those
13 discrete elements of the County's Current Expense Fund which are being
14 assigned to the permitting function of DDES (comprising approximately 5.5%
15 of the DDES budget), are hereby approved as appropriate factors in calculating
16 permit fees under RCW 82.02.020. Partial summary judgment is GRANTED
17 for Defendant in this regard.

18 **4.2** Exception must be taken, however, to the portion of Current Expense
19 Fund (CX Fund) reimbursements by DDES which relate to County Council
20 expenses. The County Council is the legislative branch of government, and is
21 separate and distinct from DDES and other departments performing executive
22 functions. Its policy making role serves general governmental purposes and
23 cannot be rationally characterized as a mere element of the DDES permitting
24 process. There may be some limited role of the Council as a "permitting
25 authority" for subdivisions (see RCW 58.17.110), which may be further
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1 explained and quantified at later hearings in this case. However, Plaintiff's
2 Motion for Partial Summary Judgment is GRANTED to the extent that the
3 Council's expenses are related to its legislative role.

4 **4.3** Exception must also be taken to the portion of CX Fund
5 reimbursements by DDES which relate to the Ombudsman. Although fuller
6 explanation may be appropriate before the Court grants another partial
7 summary judgment, it appears that this office is part of the legislative branch
8 of government, and that its role is to facilitate communication and problem
9 solving between members of the general public (not permit applicants) and
10 government offices. That would not qualify as a cost of permit processing
11 which should be assessed to applicants.

12 **4.4** Exception must also be taken to the portion of CX Fund
13 reimbursements by DDES which relate to the prosecuting attorney's office.
14 Although fuller explanation may be appropriate before the Court grants
15 another partial summary judgment, it appears that no distinction is being made
16 between legal consultation with DDES on specific permit applications (which
17 is an appropriate cost), and legal representation of the County in DDES
18 related litigation (which would not be an appropriate cost).

19 **4.5** KCC 27.04.040 supplements the language of RCW 82.02.020 by adding
20 a permit cost category described as: "monitoring development activity." This
21 needs fuller explanation. If this includes enforcement of development codes
22 by finding violations in the field which are unrelated to a pending permit
23 application, for example, it is beyond the scope of state law and cannot be
24 charged to permit applicants.
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1 4.6 The "undesignated fund balance" (or "surplus revenue") accumulated
2 by DDES from permit fees has now reached approximately \$1.14 million.
3 The County persuasively describes this as "working capital." For this purpose
4 said amount is proportionate to the overall size of the current DDES budget
5 relating to permit processing. Therefore, it is not evidence of inappropriate
6 fees being charged to permit applicants. Partial summary judgment is
7 GRANTED for Defendant in this regard. This surplus revenue is, however,
8 subject to abuse, and this Court's conclusion would change if the surplus
9 increased to a disproportionate level and assumed the character of being a
10 revenue source rather than a necessary adjunct to the efficient processing of
11 permits.

12 4.7 The five Reserve Accounts of DDES which are funded by permit fees
13 (currently totaling some \$3.4 million) are a stretch of the criteria being applied
14 in this case. The County persuasively argues, however, that it is a prudent
15 financial strategy to establish reserves in anticipation of future capital
16 expenses and in anticipation of variable market trends when permit activity
17 (and revenue) temporarily declines. Without these reserves, the permitting
18 divisions of DDES are likely to experience occasional deficit years, which
19 will result in increased permit fees thereafter to pay off the shortfall (as was
20 done prior to 1999).

21 The Court concludes that this financial strategy, being so widely
22 accepted in the commercial world, and being consistent with generally
23 accepted accounting principles, is in harmony with the legislative intent of
24 RCW 82.02.020 and KCC 27.04.040 to "cover the cost" of the permitting
25 process. As the Court stated in Section 3.8 above, a cost analysis must focus
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1 on the relationship of the permit fees to the goal of alleviating the shared
2 burden of all persons participating in the permitting system (now and in the
3 foreseeable future).

4 The Reserve Account concept is, however, subject to abuse and the
5 issue of proportionality will be reserved for trial, or for future summary
6 judgment proceedings.

7
8 **5. Are King County's Permit Fees "Reasonable"?**

9 The exception to RCW 82.02.020 authorizing municipalities to cover the cost
10 of development permits requires that permit fees be "reasonable." This has resulted
11 in the following issues being raised in this case:

12 5.1 Are the permit fees charged by DDES proportionate to covering the cost
13 of the development permit system; or are they disproportionately high,
14 suggesting that they are subterfuge for raising revenues to finance the general
15 cost of government? The Court would be prepared to enter summary
16 judgment in favor of the Defendant on this issue, except for the reservations
17 expressed in section 4.7 above. Because of those reservations, this issue must
18 be held over for trial, or for future summary judgment proceedings.

19 5.2 Are the permit fees charged by DDES unreasonably high (i.e.,
20 "gouging," in the terminology of Dana Mower) as a result of inefficiencies or
21 policies at DDES which encourage unfair billing practices? This issue has not
22 yet been presented to the Court for summary judgment. When it is, however,
23 the following must be addressed:

24 a. The presumption that legislatively established fees are reasonable. See
25 Teter v. Clark County, 104 Wn.2d at 237.

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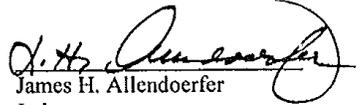
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- b. The Court's deference to the County Council and DDES on policy, administrative and personnel issues such as alleged mismanagement, excessive overhead, inefficiencies, failure to impose caps on fees, billable hour quotas, etc.
- c. The relevance/admissibility of permit fee schedules used by neighboring jurisdictions for similar development projects. *See* McQuillen, The Law of Municipal Corporations, § 26.32c (3rd ed.). *Cf. Braam v. State*, 150 Wn.2d 689, 707-708 (2003).
- d. The availability of an administrative remedy through KCC 27.02.040 for allegations of unreasonable fees.

6. All aspects of Plaintiff's Motion for Partial Summary Judgment are DENIED, except for that which was GRANTED in section 4.2 above.

DONE IN OPEN COURT

This 24th day of May, 2004.


James H. Allendoerfer
Judge



RCW 43.09.416

Auditing services revolving account - Allocation of costs to funds, accounts, and agencies - Billing rate.

The state auditor shall keep such records as are necessary to facilitate proper allocation of costs to funds and accounts and state agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and accounts and state agencies served. The billing rate shall be established based on costs incurred in the prior biennium and anticipated costs in the new biennium. Those expenses related to training, maintenance of working capital including reserves for late and uncollectible accounts, and necessary adjustments to billings, shall be considered as expenses of auditing public accounts. Working capital shall not exceed five percent of the auditing services revolving account appropriation.

[1995 c 301 § 28; 1987 c 165 § 2; 1981 c 336 § 4.]

Notes:

Effective date -- 1981 c 336: See note following RCW [43.09.410](#).