

July 20, 1994
HEAREXAM.720
9/26/94 clerk

Jane Hague
Pete von Reichbauer
Cynthia Sullivan
Introduced by: Chris Vance

Proposed No: 94-324

ORDINANCE NO. **11502**

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AN ORDINANCE relating to the Zoning and Subdivision Examiner, modifying requirements for hearings and appeals, amending Ordinance No. 263, Sections 2, 12 and 13, as amended, Ordinance No. 4461, Sections 2-5, 12 and 15, as amended, K.C.C. 20.24.020, 20.24.070, 20.24.090, 20.24.130, 20.24.140, 20.24.160, 20.24.170, 20.24.220 and 20.24.240, and adding new Sections to K.C.C. 20.24.

FINDINGS OF FACT:

1. The county has a strong interest in regulatory reform and efficient permitting to achieve affordable housing, economic vitality and other county goals.
2. The examiner system is an important part of the county's permitting and approval process.
3. The council desires to eliminate delays to the fullest extent possible arising from lengthy and continued hearings and decisions.
4. The council desires the hearing examiner to use active case management techniques.
5. The county should provide the opportunity for a mediation process to facilitate the expeditious resolution of land use and environmental disputes in a less adversarial manner than the traditional public hearing process.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance No. 263, Section 2 and K.C.C.

20.24.020 are hereby amended to read as follows:

Office created. The office of (~~zoning and subdivision~~) Hearing Examiner is created. The examiner shall act (~~in~~) on behalf of the council in considering and applying adopted county policies and regulations (~~regulatory enactments to the land~~) as provided herein.

SECTION 2. K.C.C. 20.24.070, is hereby amended to read as follows:

Recommendations to the council. A. The examiner shall receive and examine available information, conduct public hearings and prepare records and reports thereof and issue recommendations, including findings and conclusions to the

1 council based on the issues and evidence in the record (~~upon~~
2 ~~findings and conclusions~~) in the following cases:

- 3 1. Applications for reclassifications of property;
- 4 2. Applications for unclassified use permits;
- 5 3. Applications for planned unit developments;
- 6 4. Applications for preliminary plats; including those
7 variance decisions made by the road engineer pursuant to K.C.C.
8 14.42.060 with regard to road circulation in the subject
9 preliminary plat proposal;
- 10 5. Applications for shoreline environment redesignations;
- 11 6. Applications for boundary adjustments or local sewer
12 service areas in accordance with the county sewerage general
13 plan, Ordinance 4035, Chapter 6, required for development
14 proposals including but not limited to short subdivisions and
15 building permits, which seek or need sewer service but are
16 located outside of existing designated local sewer service
17 areas;
- 18 7. Applications for agricultural land variances;
- 19 8. Applications for review of designations of
20 agricultural lands of county significance of King County
21 agricultural districts;
- 22 9. Applications to revise the boundaries of agricultural
23 lands of county significance;
- 24 10. Applications for public benefit rating system
25 assessed valuation on open space land and current use
26 assessment on timber lands except as provided in Section
27 20.36.090;
- 28 11. Appeals from denials by the county assessor of
29 applications for current use assessments on farm and
30 agricultural lands;
- 31 12. Appeals from decisions regarding residential
32 condominium binding site plan applications pursuant to Section
33 19.34.050;

1 13. Applications for a public agency exception pursuant
2 to K.C.C. 21.54.050;

3 14. Applications for the vacation of county roads;

4 15. Appeals of a recommendation by the department of
5 public works to deny the petition for vacation of a county
6 road;

7 16. Appeals of a recommendation by the department of
8 public works of the compensation amount to be paid for vacation
9 of a county road;

10 17. Other applications or appeals which the council may
11 prescribe by ordinance.

12 B. The examiner's recommendation may be to grant or deny
13 the application or appeal, or the examiner may recommend that
14 the council adopt the application or appeal with such
15 conditions, modifications and restrictions as the examiner
16 finds necessary to make the application reasonably compatible
17 with the environment and carry out applicable state laws and
18 regulations and the regulations, policies, objectives and goals
19 of the comprehensive plan, the community plans, the sewerage
20 general plan, the zoning code, the subdivision code and other
21 official laws, policies and objectives of King County.

22 SECTION 3. Ordinance No. 4461, Section 2 as amended and
23 K.C.C. 20.24.080, are hereby amended to read as follows:

24 Final decisions by the examiner. A. The examiner shall
25 receive and examine available information, conduct public
26 hearings and prepare records and reports thereof, and issue
27 final decisions, including findings and conclusions, based
28 ((upon findings and conclusions)) on the issues and evidence in
29 the record, which shall be appealable to superior court as
30 provided by Section 20.24.240, or to other designated authority
31 in the following cases:

32 1. Appeals from the decisions of the administrator for
33 short subdivisions, including those variance decisions of the

- 1 road engineer made pursuant to K.C.C. 14.42.060 with regard to
2 road circulation in the subject short divisions;
- 3 2. Appeals of threshold determinations;
- 4 3. Appeals from notices and orders issued pursuant to
5 Title 23 of this code or the Rules and Regulations VII of the
6 King County department of public health;
- 7 4. Appeals from decisions to require sensitive areas
8 studies or to condition or deny pursuant to chapter 21.54
9 development proposals which do not otherwise have an appeal
10 process available;
- 11 5. Appeals from conditions imposed on final approvals of
12 subdivisions receiving extensions pursuant to Section
13 19.28.050.E. or F.;
- 14 6. Appeals from decisions of the zoning adjustor on
15 administrative conditional use permits, conditional use permits
16 or variances;
- 17 7. Appeals from decisions regarding site plan approvals
18 pursuant to Section 21.46.180 and pursuant to Ordinance 4122;
- 19 8. Appeals from decisions regarding the abatement of
20 nonconforming uses;
- 21 9. Applications for shoreline substantial development
22 permits when combined with other land use applications pursuant
23 to Section 25.32.080;
- 24 10. Appeals from decisions regarding modification of
25 landscaping requirements pursuant to Section 21.51.050;
- 26 11. Appeals from decisions of the director of the
27 department of public works on requests for rate adjustments to
28 surface and storm management rates and charges;
- 29 12. Appeals from decisions regarding the reuse of public
30 schools pursuant to Section 21.08.040.H;
- 31 13. Appeals from decisions to condition or deny
32 applications pursuant to RCW 43.21C.060, as provided in Section
33 20.44.120 ~~((2.C.))~~ C.2.;

1 14. Appeals from department of public safety seizures and
2 intended forfeitures, when properly designated by the chief law
3 enforcement officer of that department as provided in RCW
4 69.50.505;

5 15. Appeals from decisions of the manager of building and
6 land development division on variances;

7 16. Appeals from notices and certifications of junk
8 vehicles to be removed as a public nuisance as provided in
9 Chapter 23.10;

10 17. Applications for a reasonable use exception pursuant
11 to K.C.C. 21.54.050;

12 18. Appeals from denials under K.C.C. 23.08.120;

13 19. Appeals from decisions of the director of the
14 department of development and environmental services on
15 commercial site development permits;

16 20. Other applications or appeals which the council may
17 prescribe by ordinance.

18 B. The examiner's decision may be to grant or deny the
19 application or appeal, or the examiner may grant the
20 application or appeal with such conditions, modifications and
21 restrictions as the examiner finds necessary to make the
22 application or appeal compatible with the environment and carry
23 out applicable state and federal laws and regulations and the
24 regulations, policies, objectives and goals of the
25 comprehensive plan, the community plans, the sewerage general
26 plan, the zoning code, the subdivision code and other official
27 laws, policies and objectives of King County.

28 SECTION 4. Ordinance No. 4461, Section 3 as amended and
29 K.C.C. 20.24.090, are hereby amended to read as follows:

30 Notice of appeal to examiner - Filing ((Contents)).
31 Except as otherwise provided, ((A))all notices of appeal
32 ~~((regarding any decision being appealed))~~ to the ~~((zoning and~~
33 ~~subdivision))~~ examiner ~~((pursuant to this chapter))~~ shall be
34 filed with the county department or division issuing the

1 original decision with a copy provided to the office of the
2 Hearing Examiner. Notice of appeal, together with the required
3 appeal fee, shall be filed within ten calendar days from the
4 date of issuance of such decisions except as follows:

5 A. Notices of appeal of State Environmental Policy Act
6 threshold determinations shall be filed within fifteen days of
7 the lead agency determination; and

8 B. Notices of appeal of the recommendation to deny
9 vacation of a county road by the department of public works,
10 shall be filed along with the required two hundred dollar
11 administrative fee with the clerk of the county council within
12 thirty days of an issuance of said denial.

13 C. Statements of Appeal - appeal arguments. If a notice
14 of appeal has been filed, the appellant shall file a ((All
15 notices))statement of appeal with the county department or
16 division issuing the original decision or action within 15
17 calendar days from the date of issuance of such decision or
18 action. Department or division staff shall: 1) be available
19 within a reasonable time to persons wishing to file a statement
20 of appeal subsequent to an agency ruling, and to respond to
21 queries concerning the facts and process of the agency
22 decision; and 2) make available within a reasonable time a
23 complete set of files detailing the facts of the department or
24 division ruling in question to persons wishing to file a
25 statement of appeal, subsequent to an agency ruling. If a
26 department or division is unable to comply with these
27 provisions, the hearing examiner may authorize amendments to a
28 statement of appeal to reflect information not made available
29 to an appellant within a reasonable time due to a failure by a
30 county agency to meet the foregoing requirements. The
31 statement of appeal shall ((state with specificity the decision
32 being appealed and the reasons why the appealed decision should
33 be reversed or modified)) identify the decision being appealed
34 and the alleged errors in that decision. Further, the

1 statement of appeal shall state: 1) specific reasons why the
2 decision should be reversed or modified; and 2) the harm
3 suffered or anticipated by the appellant, and the relief
4 sought. The scope of an appeal shall be based principally on
5 matters or issues raised in the statement of appeal. Failure
6 to timely file a notice of appeal, appeal fee or statement of
7 appeal deprives the examiner of jurisdiction to consider the
8 appeal.

9 SECTION 5. Ordinance 4461, Section 4 and K.C.C. 20.24.130
10 are hereby amended to read as follows:

11 Public Hearing. When it is found that an application
12 meets the filing requirements of the responsible county
13 department, or an appeal meets the filing rules (~~of the~~
14 ~~examiner~~), it shall be accepted and a date assigned for public
15 hearing. If for any reason testimony on any matter set for
16 public hearing, or being heard, cannot be completed on the date
17 set for such hearing, the matter shall be continued to the
18 soonest available date. A matter should be heard, to the
19 extent practicable, on consecutive days until it is concluded.

20 For purposes of proceedings identified in Section 20.24.070,
21 the public hearing by the examiner shall constitute the hearing
22 by the council. Before rendering a recommendation or decision
23 on any application or appeal, the examiner shall hold at least
24 one public hearing thereon; provided, that the examiner's
25 review of appeals regarding variances and conditional use
26 permits shall be based upon the record before zoning adjustor
27 as provided by Section 21.58.070.

28 SECTION 6. Ordinance 4461, Section 5 and K.C.C. 20.24.140
29 are hereby amended to read as follows:

30 Consolidation of hearings. Whenever a project requires
31 more than one county permit or approval ~~(,)~~ for which a public
32 hearing is required, the hearings and any appeals of procedural
33 or preliminary determinations shall be consolidated to the
34 extent feasible into a single proceeding using the hearing

1 officer and processes applicable to the primary permit or
 2 appeal. The examiner's decision concerning consolidation of
 3 hearings shall be final. ((the hearing examiner may in his
 4 discretion order a consolidation of and conduct the required
 5 public hearings to avoid unnecessary costs or delays.
 6 Decisions of the examiner to order and conduct consolidated
 7 hearings shall be final in all cases.))

8 SECTION 7. Ordinance 263, Section 12 as amended and
 9 K.C.C. 20.24.160 are hereby amended to read as follows:

10 Notice. Unless otherwise provided by ordinance, the
 11 responsible county department shall cause notice of the receipt
 12 of completed applications for the cases identified in K.C.C.
 13 20.24.070A.1-5 to be posted not more than 10 days after the
 14 applicant has been advised by certified mail that the
 15 application is determined to be complete, and notice of the
 16 time and place of the public hearing to be mailed to all
 17 persons of record at least fourteen calendar days prior to the
 18 scheduled hearing. The applicant shall not be held responsible
 19 for a failure to post the site in the absence of the
 20 department's certified notice to the applicant that the
 21 application has been determined to be complete. Additional
 22 notice shall be given as provided in the ordinance governing
 23 the particular type of application or appeal.

24 SECTION 8. Ordinance 263, Section 13 as amended and
 25 K.C.C. 20.24.170 are hereby amended to read as follows:

26 Rules and ((regulations)) conduct of hearings. The
 27 examiner shall ((have the power to prescribe)) adopt rules
 28 ((and regulations)) for the conduct of hearings and for any
 29 mediation process ((before him)) consistent with this chapter,
 30 within 90 days of the effective date of this ordinance. The
 31 rules shall be reviewed by the council, and remain in effect
 32 during this review. Any modifications made by the council by
 33 motion shall be incorporated by the hearing examiner, and shall
 34 become effective 10 days after adoption of the motion ((subject

1 ~~to confirmation of the council, and also)).~~ Such rules shall
2 be published and available upon request to all interested
3 parties. The examiner shall have the power to issue summons
4 and subpoena to compel the appearance of witnesses and
5 production of documents and materials, to order discovery, to
6 administer oaths and to preserve order. ((The privilege of
7 cross examination of witnesses shall be accorded all interested
8 parties or their counsel in accordance with the rules of the
9 examiner.))

10 To avoid unnecessary delay and to promote efficiency of
11 the hearing process, the examiner shall limit testimony,
12 including cross examination, to that which is relevant to the
13 matter being heard, in light of adopted county policies and
14 regulations, and shall exclude evidence and cross examination
15 that is irrelevant, cumulative or unduly repetitious. The
16 examiner may establish reasonable time limits for the
17 presentation of direct oral testimony, cross examination and
18 argument. Any written submittals will be admitted only when
19 authorized by the examiner under pertinent and promulgated
20 administrative rules.

21 SECTION 9. Ordinance 4461, Section 12 and K.C.C. 20.24.220
22 are hereby amended to read as follows:

23 Appeal to Council. If an appeal has been filed pursuant
24 to Section 20.24.210 B, the appellant shall file with the
25 office of the Clerk of the County Council within twenty-one
26 calendar days of the date of the examiner's written
27 recommendation a written appeal statement specifying the basis
28 for the appeal and any arguments in support of the appeal. If
29 no written appeal statement or arguments are filed within the
30 twenty-one calendar days, the clerk of the council shall place
31 a proposed ordinance which implements the examiner's
32 recommended action on the agenda of the next available council
33 meeting. The clerk of the council shall cause notice to be
34 given to other parties of record that a notice of appeal and

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1 appeal and statements have been filed and that written appeal
2 statements or arguments in response thereto may be submitted to
3 the clerk within fourteen calendar days of the date of such
4 notification by the clerk.

5 Consideration by the council of the appeal shall be based
6 upon the record as presented to the examiner at the public
7 hearing and upon written appeal statements based upon the
8 record; provided, the council also may allow parties a period
9 of time for oral argument based on the record. The examiner
10 may conduct a conference with all parties to the appeal for the
11 purpose of clarifying or attempting to resolve certain issues
12 on appeal, provided, that the individual ((deputy)) examiner
13 who conducted the public hearing ((~~on the proposal~~)) may not
14 conduct the conference. Such conference shall be informal and
15 shall not be part of the public record.

16 If, after consideration of the record, written appeal
17 statements and any oral argument the council determines that:

18 A. An error in fact or procedure may exist or additional
19 information or clarification is desired, the council shall
20 remand the matter to the examiner; or

21 B. The recommendation of the examiner is based on an
22 error in judgment or conclusion, the council may modify or
23 reverse the recommendation of the examiner; provided, the
24 council's land use appeal committee may retain the matter,
25 refer it to other council committee or remand to the examiner
26 for the purpose of further hearing, receipt of additional
27 information or further consideration when determined necessary
28 prior to the council's taking final action thereon.

29 SECTION 10. Ordinance 4461, Section 15 and K.C.C.
30 20.24.240 are hereby amended to read as follows:

31 Review of final decisions. A. Decisions of the council
32 in cases identified in Section 20.24.070 shall be final and
33 conclusive action unless within twenty calendar days, or within
34 thirty calendar days for decisions approving or denying plats,

1 from the date of the council's adoption of an ordinance an
2 aggrieved person applies for a writ of certiorari from the
3 Superior Court in and for the county of King, state of
4 Washington, for the purpose of review of the action taken;
5 provided, no development or related action may occur during
6 said twenty-day, or thirty-day for plat approvals, appeal
7 period.

8 B. Decisions of the examiner in cases identified in
9 Section 20.24.080 shall be a final and conclusive action unless
10 within twenty calendar days from the date of issuance of the
11 examiner's decision an aggrieved person applies for a writ of
12 certiorari from the Superior Court in and for the county of
13 King, state of Washington, for the purpose of review of the
14 action taken; provided, no development or related action may
15 occur during said twenty-day appeal period; provided further,
16 that examiner decisions on appeals of threshold determinations
17 are not appealable to Superior Court prior to final action on
18 the underlying proposal.

19 NEW SECTION. SECTION 11. There is added to K.C.C. 20.24
20 a new section to read as follows:

21 Pre-Hearing Conference. A pre-hearing conference may be
22 called by the Examiner pursuant to Section 20.24.070 upon the
23 request of a party, or on the Examiner's own motion. A pre-
24 hearing conference shall be held in every appeal brought
25 pursuant to Section 20.24.080 if timely requested by any party.
26 The pre-hearing conference shall be held at such time as
27 ordered by the examiner, but not less than fourteen (14) days
28 prior to the scheduled hearing on not less than fourteen (14)
29 days notice to those who are then parties of record to the
30 proceeding. The purpose of a pre-hearing conference shall be
31 to identify to the extent possible, the facts in dispute,
32 issues, laws, parties and witnesses in the case. In addition
33 the pre-hearing conference is intended to establish a timeline

1 for the presentation of the case. The examiner shall establish
2 rules for the conduct of pre-hearing conferences.

3 Any party who does not attend the pre-hearing conference,
4 or anyone who becomes a party of record after notice of the
5 pre-hearing conference has been sent to the parties, shall
6 nevertheless be entitled to present testimony and evidence to
7 the examiner at the hearing.

8 NEW SECTION. SECTION 12. There is added to K.C.C. 20.24 a
9 new section to read as follows:

10 On its own motion, or on the motion of a party, the
11 examiner shall dismiss an appeal for untimeliness or lack of
12 jurisdiction.

13 NEW SECTION. SECTION 13. There is added to K.C.C. 20.24 a
14 new section to read as follows:

15 In all matters heard by the examiner, the examiner shall
16 use case management techniques to the extent reasonable
17 including: 1) Limiting testimony and argument to relevant
18 issues and to matters identified in the pre-hearing order (if
19 applicable); 2) pre-hearing identification and submission of
20 exhibits (if applicable); 3) stipulated testimony or facts; 4)
21 pre-hearing dispositive motions (if applicable); 5) use of pro
22 tempore examiners; and 6) other methods to promote efficiency
23 and to avoid delay.

24 NEW SECTION. SECTION 14. There is added to K.C.C. 20.24 a
25 new section to read as follows:

26 Appeals shall be processed by the examiner as
27 expeditiously as possible, giving appropriate consideration to
28 the procedural due process rights of the parties. Unless a
29 longer period is agreed to by the parties, or the examiner
30 determines that the size and scope of the project is so
31 compelling that a longer period is required, a pre-hearing
32 conference or a public hearing shall occur within 45 days from
33 the date the office of the Hearing Examiner is notified that a
34 complete statement of appeal has been filed. In such cases

1 where the examiner has determined that the size and scope
2 warrant such an extension, the reason for the deferral shall be
3 stated in the examiner's recommendation or decision. The time
4 period may be extended by the examiner at the examiner's
5 discretion for no more than 30 days.

6 NEW SECTION. SECTION 15. There is added to K.C.C. 20.24
7 a new section to read as follows:

8 Time limits. In all matters where the examiner holds a
9 hearing on applications under K.C.C. 20.24.070, the hearing
10 shall be completed and the examiner's written report and
11 recommendations issued within thirty (30) days from the date
12 the hearing opens. In every appeal heard by the examiner
13 pursuant to K.C.C. 20.24.080, the appeal process including a
14 written decision, shall be completed within ninety (90) days
15 from the date the examiner's office is notified of the filing
16 of a notice of appeal pursuant to K.C.C. 20.24.090. When
17 reasonably required to enable the attendance of all necessary
18 parties at the hearing, or the production of evidence, or to
19 otherwise assure that due process is afforded and the
20 objectives of this chapter are met, these time periods may be
21 extended by the examiner at the examiner's discretion for an
22 additional 30 days. With the consent of all parties, the time
23 periods may be extended indefinitely. In all such cases, the
24 reason for such deferral shall be stated in the examiner's
25 recommendation or decision. Failure to complete the hearing
26 process within the stated time shall not terminate the
27 jurisdiction of the examiner.

28 NEW SECTION. SECTION 16. There is added to K.C.C. 20.24
29 a new section to read as follows:

30 The chief examiner may hire qualified persons to serve as
31 examiner pro tempore, as needed, to expeditiously hear pending
32 applications and appeals.

33 NEW SECTION. SECTION 17. There is added to K.C.C. 20.24
34 a new section to read as follows:

1 Digest of decisions. The examiner shall maintain and
2 publish on a quarterly basis a digest of all decisions and
3 recommendations of the examiner. Decisions reported in the
4 digest shall not be construed to establish any legal precedent.

5 NEW SECTION. SECTION 18. There is added to K.C.C. 20.24
6 a new section to read as follows:

7 Citizens Guide. The examiner shall issue a citizen's
8 guide on the office of hearing examiner including making an
9 appeal or participating in a hearing.

10 NEW SECTION. SECTION 19. There is added to K.C.C. 20.24
11 a new section to read as follows:

12 Semi-annual report. The chief examiner shall prepare a
13 semi-annual report to the King County council detailing the
14 length of time required for hearings in the previous six
15 months, categorized both on average and by type of proceeding.
16 The report shall provide commentary on examiner operations and
17 identify any need for clarification of county policy or
18 development regulations. The semi-annual report shall be
19 presented to the council by March 1st and September 1st of each
20 year.

21 NEW SECTION. SECTION 20. There is added to K.C.C. 20.24
22 a new section to read as follows:

23 Voluntary mediation. As to any application or appeal
24 pursuant to K.C.C. 20.24 which is or could become the subject
25 of a public hearing, the responsible county department, the
26 council or the hearing examiner, may at their own discretion or
27 at the request of the applicant or any person with standing to
28 the application or appeal, at any stage of the proceedings on
29 the application or appeal, initiate a mediation process to
30 resolve disputes as to such application or appeal. The
31 mediation process shall be voluntarily agreed to by all
32 participants to the hearing process, and conducted by an
33 independent impartial mediator who shall not be a county
34 employee or any person who will have any role in making any

1 recommendation or decision on the application or appeal. The
2 mediation shall be conducted in accordance with rules of
3 mediation prepared by the hearing examiner.

4 NEW SECTION. SECTION 21. There is added to K.C.C. 20.24
5 a new section to read as follows:

6 Effective date. This ordinance shall become effective
7 January 1, 1995. No later than January 1, 1997, the County
8 Council shall analyze the results of the ordinance, and prior
9 to March 1, 1997 shall either re-enact this chapter with, or
10 without modifications. Unless re-enacted, except for complete
11 applications filed before March 1, 1997, this ordinance shall
12 expire March 1, 1997.

13 INTRODUCED AND READ for the first time this 31st day
14 of May, 1994.

15 PASSED by a vote of 12 to 0 this 26th day of
16 September, 1994.

17 KING COUNTY COUNCIL
18 KING COUNTY, WASHINGTON

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20
21 Kent Pullen
22 Chair

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25 ATTEST:

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28 Janet Masuo
29 ~~Deputy~~ Clerk of the Council

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31 APPROVED this 6th day of October, 1994.

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36 Ray Lode
37 King County Executive

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40 Attachments: