

RESOLUTION NO. 3041

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH SOUND LAW CENTER, LLC, TO PROVIDE HEARING EXAMINER SERVICES.

WHEREAS, Chapter 2.18 of the Bonney Lake Municipal Code establishes the Office of the Hearing Examiner; and

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Bonney Lake, Washington, does hereby authorize the Mayor to sign the attached agreement with Sound Law Center, LLC to provide hearing examiner services.

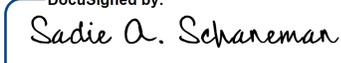
BE IT FURTHER RESOLVED, as required BLMC 2.18.020, the City Council confirms the appointment of Andrew Reeves as the Bonney Lake Hearing Examiner and Lee Raaen as the Bonney Lake Hearing Examiner Pro-Tem.

PASSED by the City Council this 17th day of May 2022.

DocuSigned by:

3AAD1DED8A424D6...
Michael McCullough, Mayor

AUTHENTICATED:

DocuSigned by:

E0B5EFCF37394F8...

Sadie Schaneman, CMC, City Clerk

City of Bonney Lake, Washington
City Council Agenda Bill (AB)

Department/Staff Contact: Public Services Department Jason Sullivan – Planning & Building Supervisor	Meeting/Workshop Date: May 17, 2022	Agenda Bill Number: AB22-65
Agenda Item Type: Resolution	Ordinance/Resolution Number: 3041	Councilmember Sponsor:

Agenda Subject: Hearing Examiner Services

Full Title/Motion: A Resolution of the City Council of the City of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign A Contract With Sound Law Center, LLC., To Provide Hearing Examiner Services.

Administrative Recommendation: Approve

Background Summary: In December of 2021, the City’s long time hearing examiner retired, and the City needs to select a new hearing examiner to consider and act on quasi-judicial land use actions, appeals of administrative decisions, code enforcement cases, and hearings related to uninhabitable structures under the provision of Chapter 35.80 RCW on behalf of the City as further discussed in the Scope of Work. Sound Law Center (SLC) has been selected as the most qualified firm to provide hearing examiner services for the City of Bonney Lake. SLC currently provides hearing examiner services for nearly fifty jurisdictions within the state to include Pierce County.

Attachments: Resolution 3041, Sound Law Center Contract, RFP Response (excluding writing samples and rules)

BUDGET INFORMATION				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	
\$6,000	\$6,000	\$6,600	-\$600	
<p>Budget Explanation: The required expenditure amount shown above is the \$825 retainer cost that will be charged each month for the remainder of the year. There will be additional cost based on the type of hearings that are required to be conducted as detailed in the rate structure. The plan is to adjust the fees associated with the different permits that are heard by the hearing examiner so that the applicant is covering those cost as a part of the application fee.</p>				

COMMITTEE, BOARD & COMMISSION REVIEW											
Council Committee Review:	CDC Date: May 3, 2022	Approvals: Chair/Councilmember Dan Swatman Councilmember Tom Watson Councilmember Kelly McClimans	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center; padding: 2px;">Yes</th> <th style="text-align: center; padding: 2px;">No</th> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="text-align: center; padding: 2px;"></td> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="text-align: center; padding: 2px;"></td> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="text-align: center; padding: 2px;"></td> </tr> </table>	Yes	No	X		X		X	
Yes	No										
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Forward to:	Consent Agenda: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No										
Commission/Board Review:											
Hearing Examiner Review:											

COUNCIL ACTION	
Workshop Date(s): May 3, 2022	Public Hearing Date(s):
Meeting Date(s): May 17 2022	Tabled to Date:

APPROVALS		
Director: <i>Ryan Johnstone, P.E.</i>	Mayor: <i>Michael McCullough</i>	Date Reviewed by City Attorney: (if applicable):

PROFESSIONAL SERVICES AGREEMENT
for
CONSULTANT SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 17th day of May, 2022, by and between the City of Bonney Lake (“City”) and Sound Law Center (“SLC”), LLC. (“Consultant”).

The parties hereby agree as follows:

1. **Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in **Exhibit A** attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, unless otherwise agreed to as part of this agreement, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.
2. **Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.
3. **Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit A, attached hereto and incorporated herein by this reference. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in **Exhibit B**.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before the expiration of the three-year retention period, the records shall be retained

until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under the specified scope of work as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees and/or independent contractors of Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees/contractors of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees'/contractors' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees/contractors, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory

to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate after one (1) year of the effective date of this Agreement.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City's obligation to pay Consultant in accordance with subsections A and B below.

A. In the event this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.

12. **Indemnification / Hold Harmless**

Consultant shall indemnify and hold the City, its officers, officials, and employees harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, and employees, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

13. **Insurance**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles (as applicable). Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. The Consultant affirms that each of its Independent Contractors serving the City will maintain appropriate individual automobile insurance coverage throughout the course of the contract term between the parties. Both parties acknowledge that the work the Consultant performs under this contract does not involve driving or the operation of a vehicle on behalf of, or for, the City.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

14. **Subletting or Assigning.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

15. **Entire Agreement.** This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

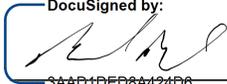
16. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

17. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

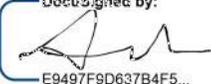
18. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE

By:  _____
SAAD1DED8A424D6...
Michael McCullough, Mayor

CONSULTANT

By:  _____
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Andrew Reeves
Managing Attorney for SLC, LLC.

Attachments:

Exhibit A: Scope of Work

Exhibit B: Rates

EXHIBIT A SCOPE OF WORK

1. General

Rules

The Consultant will establish the rules for hearings, which provides for the cross-examination of witnesses, and procedural matters related to the duties of the Consultant consistent with Chapter 2.18 BLMC and Chapter 14.60 BLMC. Any rule(s) or procedure(s) prepared by the Consultant shall be made in writing and provided to the City.

Hearings

Hearings may be held in-person or virtually as mutually agreed to by the City and the Consultant. The Consultant shall provide adequate technology and equipment required for successful audio and video connection capabilities. The Consultant shall reserve 3rd Monday of each month from 1:00 PM to 4:00 PM for Bonney Lake hearings. Hearings may occur outside of this timeframe upon mutual agreement between the City and the Consultant.

Electronic Documents

The Consultant shall have adequate technology and equipment to receive large volumes of records in digital format. No paper copies of permit files, hearing records, staff reports, or submitted exhibits will be provided to the Consultant by the City.

Annual Report

The Consultant shall prepare an Annual Report, in writing, detailing the matters heard by the Consultant and recommendations on improvements to the hearing examiner process and/or municipal code. Such report shall include a summary of the examiner's decisions and costs since the last report. The report shall be provided by January 31st of each year.

Annual Training Session

The Consultant shall provide one annual training session on a mutually agreed upon land use or code enforcement topic.

2. Quasi-Judicial Land Use Action Decisions

The Consultant shall conduct open public hearings and render a decision in writing, supported by findings of fact on all quasi-judicial permit applications identified as Type 3A and 3B permits in BLMC 14.30.010 which includes but is not limited to shoreline conditional use

permits, shoreline variances, preliminary plats, zoning variances, conditional use permits, and critical area reasonable use exceptions.

3. Zoning Reclassification Recommendation

The Consultant shall conduct open record hearings for proposed zoning reclassification and issue a recommendation to the City Council in writing, supported by findings of fact, as to the proposal's compliance with Chapter 14.90 BLMC.

4. Administrative Decision Appeals

The Consultant shall conduct open record appeal hearings of administrative decisions and render a decision in writing, supported by findings of fact.

5. Code Enforcement

The Consultant shall hear and render decisions on code enforcement related items discussed further in this section, including but not limited to:

Notice of Violation Appeals

The Consultant shall conduct open record appeal hearings of notice of violations issued by the City and issue a written decision, supported by findings of fact, as to whether the violation occurred and/or is still occurring and determination to support or modify the corrective action ordered by the City consistent with the provisions of BLMC 14.130.120.

Civil Penalty Appeals

The Consultant shall conduct open record appeal hearings related to the imposition of civil penalties issued by the City and issue a written decision, supported by findings of fact, affirming, vacating, or modifying the assessment and/or amount of the civil penalties consistent with the provisions of BLMC 14.130.120.

Unfit Building Hearings and Decisions

The Consultant shall serve as the public officer as defined in RCW 35.80.020 and have the powers granted to the office in RCW 35.80.030, except that the City shall provide all administrative functions such as preliminary investigations and the serving of notices. In this role the Consultant shall conduct required hearings, issue written decisions, supported by findings of fact, as to the habitability of structures/premises within the City, and determine if the structure/premise should be repaired, altered, demolished, or vacated consistent with the provisions of RCW 35.80.030 and BLMC 14.13.160.

**EXHIBIT B
RATES**

- \$825 monthly retainer covering the cost of Item 1 labeled General in the Scope of Work – Exhibit A
- Permit application hearings shall be billed at the following flat rates:

\$ 1,750	\$3,000	\$3,850
Single-Family Residential and Duplex Variances	Nonresidential Variances and Conditional Use Permits	Consolidated hearings on permit applications not including any appeals
Single-Family Residential and Duplex Conditional Use Permits	Multifamily Variances and Conditional Use Permits	Preliminary Plats
Zoning Reclassifications	Reasonable Use Exemption	Shoreline Variances and Shoreline Conditional Use Permits

- Appeals of Administrative Decisions shall be billed at a rate of \$225 per hour.
- Code Enforcement Hearings shall be billed at a rate of \$225 per hour.
- Permit Applications and other hearing not specifically provided for shall be billed at a rate of \$225 per hour.

**Sound Law Center Response to
City of Bonney Lake RFP
for Hearing Examiner Services**

To: City of Bonney Lake
Attn: Jason Sullivan, RFP Coordinator
RE: Hearing Examiner RFP
Via email to sullivanj@cobl.us

We propose that Andrew Reeves (WSBA #47116), of Sound Law Center (SLC), be selected to serve as the Hearing Examiner for the City of Bonney Lake, to provide land use application hearings, administrative appeal hearings, code enforcement hearings, and other quasi-judicial hearings at the City's request, using remote meeting technology except as otherwise required under the municipal code.

We provide in the attachments a summary of our qualifications and experience with providing hearings and other quasi-judicial services to cities and counties in Washington, including our experience with the State Environmental Policy Act, the Shoreline Management Act, and the Growth Management Act; our method and approach to the role of the Hearing Examiner in working with and interpreting regulations in different jurisdictions; two samples of written decisions; sample rules of procedures; professional references; and a fee proposal.

Andrew Reeves, who received a B.A. from New York University in 2004 and a J.D. from the University of Arizona in 2011, would serve as the primary hearing officer working with the City but, as detailed below, SLC has several qualified hearing officers able to provide services on a pro-tempore basis, if needed.

Thank you for considering Sound Law Center to provide Hearing Examiner services for the City of Bonney Lake. We look forward to hearing from you.

Sincerely,



Andrew Reeves, Managing Attorney for SLC

Sound Law Center, LLC Offices
4500 9th Avenue NE, Suite 300
Seattle, WA 98105
916-541-3543 (cell phone)
andrew@soundlawcenter.com

A. QUALIFICATIONS, EXPERIENCE, & AVAILABILITY

Qualifications of Individual Hearing Officers

The member of Sound Law Center who would be dedicated to serving the City of Bonney Lake, as its primary hearing officer, is Andrew Reeves, with support provided by additional SLC members as needed. Each has extensive experience with the courts and administrative law systems involving land use and environmental law decisions, including SEPA appeals. Perhaps most importantly, of the several thousand decisions our hearing officers have produced in the last 25+ years, less than one percent have been appealed and—of the few that have been—we are unaware of any published decision reversing one of our decisions by the state’s appellate courts or, for that matter, any decision that resulted in significant costs, resources, penalties, fines, etc. for any of our client jurisdictions. Put simply... while appeals are inevitable with the types of contentious matters that our hearing officers regularly preside over, SLC’s hearing officers and the team that supports them have the knowledge, expertise, and skill to minimize the potential for appeals (especially successful ones), a *significant* cost-savings for the jurisdictions we serve.

Mr. Reeves

Andrew Reeves joined Sound Law Center as a Hearing Examiner and its Chief Legal Writer after serving as a judicial clerk at the Washington State Court of Appeals. In his years at the Court, Mr. Reeves worked on over 100 appellate decisions, including complex decisions on SEPA appeals, LID appeals, tax appeals, and Growth Management Hearings Board appeals. Prior to that, he was the Sol Resnick Water Resources Fellow at the University of Arizona, where he graduated from law school with honors. He is experienced in land use and environmental law and regularly publishes and teaches on these subjects. Since joining SLC, Mr. Reeves has held hearings and/or written decisions on over 1,500 land use, environmental, and administrative law matters. During the last five years, he has also served as the primary Hearing Examiner in over 35 jurisdictions, including: Anacortes, Arlington, Bainbridge Island, Bremerton, Burien, Burlington, Clallam County, Coupeville, Des Moines, Hunts Point, Island County, Issaquah, Kent, Kitsap County, Lacey, Lake Stevens, Langley, Medina, Normandy Park, Oak Harbor, Ocean Shores, Pierce County, Port Angeles, Port Orchard, Puyallup, Sedro-Woolley, Skagit County, Snohomish, Tukwila, and Tumwater. Mr. Reeves has also appeared as a Hearing Examiner or Pro-Temp Hearing Examiner in over a dozen other jurisdictions during this time, served as Sound Transit’s appointed Hearing Examiner for appeals concerning relocation assistance matters associated with development of the region’s light rail system, and provided pro bono appellate expertise on a range of other non-land use matters for various non-profit organizations in the Tacoma area (where he resides).

Mr. Raaen

Lee Raaen has worked with SLC as a Hearing Examiner since it was founded nearly ten years ago. Since graduating from the University of Oregon Law School in 1978, he has spent thirty years representing clients as an attorney on land use, real property, and environmental issues, appearing before numerous hearing examiners, the Shoreline Hearings Board, all levels of the Washington courts, the federal district courts, and the Ninth Circuit Court of Appeals. Mr. Raaen has also served as a Hearing Examiner in several jurisdictions, including Des Moines, Hunts Point, Kent, Lacey, Medina, and Tumwater. He would be available to serve the City of Bonney Lake, as a pro-temp hearing officer, on an as-needed basis.

Information on Support Staff

Mr. Ortman

Attorney David Ortman provides support services for the hearing officers of SLC, including coordinating hearing schedules, prepping files for hearings, writing assistance, and delivering decisions on time. He is our designated contact person for scheduling hearings which ensures that no ex parte contacts occur between our hearing officers, the jurisdictions in which we work, and the parties to any appeals. He also ensures that all procedural communications are addressed in a timely manner. As discussed elsewhere in this proposal, SLC produces over 150 decisions a year on land use applications, appeals, and code enforcement matters. Mr. Ortman ensures that all decisions are delivered in a timely manner, consistent with state law and municipal code requirements. Mr. Ortman graduated from Bethel College, with honors, in 1978 and passed the Washington State Bar Exam in 2006.

Mr. Sorter

Attorney Peregrin Sorter joined Sound Law Center as its Chief Legal Writer after working as a staff attorney for over ten years at Division II of the Washington State Court of Appeals. He has also argued appeals in all three divisions of the Washington State Court of Appeals. Peregrin graduated in 2008 from Rutgers School of Law, where he received the Blaine E. Capehart Award for Legal Writing Excellence and was honored to teach Constitutional Law to high school students as a Marshall Brennan Fellow. As SLC's Chief Legal Writer, Mr. Sorter ensures that all decisions produced by SLC are clear, cogent, well-organized and—perhaps most critically—legally defensible. Very few of SLC's decisions are appealed. We believe Mr. Sorter's appellate experience (along with the similar experience of Mr. Reeves) contributes, significantly, to our negligible appeal rates.

Mr. Savage

Neil Savage serves as SLC's legal editor. Mr. Savage reviews all of our decisions prior to delivery to ensure consistency, professionalism, and readability. We recognize that many Hearing Examiners do not employ the services of a legal editor. In our view, Mr. Savage's role is vital. Few things frustrate those involved in the land use application process or appeal process more than being left with the feeling that the process was either ad hoc or unprofessional. Final decisions or orders riddled with mistakes contribute to this feeling. Using Mr. Savage's services helps SLC ensure that, no matter the outcome of any particular hearing, all those involved are left with the impression that the process was carried out with the utmost professionalism. Mr. Savage graduated from Lewis and Clark Law School in 1989 and also works as a freelance editor and back-of-the-book indexer for legal publishers across the country.

Representative List of Experience
in Serving Municipalities
(Specific to Mr. Reeves)

<i>City/County</i>	<i>Years</i>	<i>Decisions, Total & Type</i>
Bremerton	2016 – Present	Approximately 20 Land Use Matters, and 250 Code Enforcement Hearings
Burien	2016 – Present	Approximately 10 Land Use Hearings, 10 Administrative Appeals, and 15 Code Enforcement Appeals
Clallam County	2016 – Present	Approximately 50 Land Use Hearings, 10 Administrative Appeals, and 25 Code Enforcement Hearings
Hunts Point	2016 – Present	Approximately 10 Land Use Hearings, 20 Shoreline Hearings, and 2 SEPA Appeals
Issaquah	2016 – Present	Approximately 20 Land Use Hearings, 5 SEPA Appeals, and 20 Administrative Appeals
Kent	2016 – Present	Approximately 20 Land Use Matters and 75 Code Enforcement Hearings
Lake Stevens	2016 – Present	Approximately 50 Land Use Matters and 2 SEPA Appeals
Medina	2016 – Present	Approximately 30 Land Use Matters and 50 Shoreline Hearings
Port Orchard	2016 – Present	Approximately 25 Land Use Matters
Tumwater	2016 – Present	Approximately 30 Land Use Matters and 3 SEPA Appeals

Firm Expertise & Experience

We currently serve approximately 50 jurisdictions in Washington, including: Anacortes, Arlington, Bainbridge Island, Beaux Arts, Bremerton, Burien, Burlington, Clallam County, Coupeville, Des Moines, Edgewood, Hunts Point, Island County, Issaquah, Kent, Kitsap County, Lacey, Lake Stevens, Langley, Medina, Montesano, Mukilteo, Normandy Park, Oak Harbor, Ocean Shores, Orting, Pierce County, Port Angeles, Port Orchard, Puyallup, SeaTac, Sedro-Woolley, Shoreline, Snohomish, Skagit County, Tukwila, Tumwater, Woodinville, and Yarrow Point.

Sound Law Center is a hearing examiner and land use dispute resolution services company focused on serving Western Washington. For over ten years, “SLC” has been providing its municipal clients with exceptional hearing examiner and land use dispute resolution services. Our hearing examiners are recognized as experts in the legal fields of land use, environmental, and administrative law. Our decisions are informative, cogent, and legally defensible. We pride ourselves on our professionalism, the poise of our hearing examiners, and the thoroughness and timeliness of our readable and legally defensible decisions.

We hold, on average, over 200 land use application hearings a year. As a result, Sound Law Center’s hearing examiners have extensive knowledge of the land use and environmental regulations and administrative laws governing development in Washington. Our hearing examiners are well-versed on the details of the Growth Management Act, the Regulatory Reform Act, the Shoreline Management Act, the State Environmental Policy Act, and Washington’s Administrative Procedure Act.

We regularly review and interpret rules adopted by the Department of Ecology, the Department of Fish and Wildlife, and the Army Corps of Engineers that impact development applications and our hearing officers often teach planners and attorneys about these developments. We also have extensive experience with hearings under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, which involves wireless communication facility applications. Finally, we understand the importance of procedural due process and the appearance of fairness to all proceedings and have methods in place to ensure that all of our hearings satisfy due process requirements.

In addition to holding over 200 land use application hearings a year, we preside over administrative appeal hearings in all of our jurisdictions. We have developed specific strategies—including the use of pre-hearing orders and witness and document lists—to ensure that such hearings are run efficiently. We know the Rules of Evidence and how to rule on objections. We take pride in how our hearing officers conduct hearings with efficiency, civility, and respect for all parties.

Finally, SLC has extensive experience related to code enforcement matters and holds regular code enforcement hearings in several of its jurisdictions, including Bremerton, Burien, Kent, Clallam County, and Pierce County. This includes appeals of violations, civil penalty appeals, and appeals of uninhabitable structure/premises determinations under Chapter 35.80 RCW (and other appeals under the International Building Code).

Availability

We understand from the RFP, and from a review of the Bonney Lake Municipal Code (including Chapters 2.18 and 14.60), that the Hearing Examiner would be primarily responsible for holding land use application hearings on a variety of matters, appeal hearings of administrative decisions, and code enforcement hearings/appeals. As noted above, Sound Law Center has extensive experience holding these types of hearings. Moreover, because SLC has a “stable” of attorneys trained to perform land use hearings, we avoid the kinds of scheduling conflicts or interest conflicts that occur when a municipality contracts with an individual hearing examiner.

In addition, we note that we propose holding hearings using remote meeting technology. When the State of Washington first entered “lockdown” in April 2020, in light of the COVID-19 pandemic, Mr. Reeves spent considerable time (at no cost to SLC’s jurisdictions) familiarizing himself with the various remote meeting platforms available so that he would be able to move forward, and help our client jurisdictions do the same, with remote hearings. In addition, in many jurisdictions Mr. Reeves ran “test” hearings with remote meeting technology, again at no cost to SLC’s jurisdictions. Since then, we have held over 300 hearings using remote meeting technology and are confident in our ability to continue to do so in the future. Moreover, in our experience, this method of providing hearings is preferred by the public and allows for a broader range of public participation than previously occurred. Staff from our client jurisdictions have generally expressed the same view.

B. METHODS AND APPROACH

Approach to Hearings

The purpose of the Hearing Examiner system is to provide an objective review of the facts of a land use application or appeal through an expeditious process that affords procedural due process and fundamental fairness. In order to develop the record necessary to make a decision, it is imperative that all interested persons be encouraged to present all relevant facts at hearings through oral or written testimony. The Hearing Examiner facilitates this process by creating an atmosphere that is courteous to witnesses and acknowledges their opinions. A “good result” from the process occurs when all parties believe that they have had the opportunity to present information and, whether they agree with the ultimate decision or not, are left with the feeling that the process was conducted in an efficient, respectful, and fair manner.

We at SLC are successful in meeting the goals of the Hearing Examiner system. We are unbiased, fair, and respectful while being acutely aware of the exposure of municipalities to legal liability in all land use decision-making. Recent court decisions have made it clear that damages will be assessed if a jurisdiction does not follow appropriate decision-making procedures. We adhere to legal requirements of procedural due process and help prevent exposure to liability.

Outline of Tasks

For application hearings, our Hearing Examiners generally adhere to the following format:

- The Hearing Examiner provides introductory remarks, briefly explaining the application, applicable laws related to the application (including the Hearing Examiner’s jurisdiction and authority to decide the matter), how presentation of evidence will occur, and the order in which public testimony and comment will be received.
- Unless requested otherwise, the Hearing Examiner then receives testimony from the Planner or other City Official primarily responsible for the application and any City witnesses. The Planner typically explains the City’s recommendation on the application at this time.
- Following presentation of the City’s witnesses, the Hearing Examiner receives testimony from the Applicant and any witnesses the Applicant calls in support of the proposal.
- Next, the Hearing Examiner allows public testimony.
- Following the conclusion of public testimony, the Examiner allows the Applicant and (if necessary) the County to respond to public comments.
- After determining that all public testimony has been received and ensuring that procedural due process has been strictly adhered to, the Hearing Examiner closes the hearing, thanks all present for attending, and explains that a decision shall be forthcoming within 10 business days.
- The Hearing Examiner then produces and issues a decision on the application within 10 business days.

Appeal hearings are also common and, often, provide the greatest challenges for balancing due process with the need for expediency. Despite handling numerous complex appeal cases every year, SLC is proud that our appeal hearings rarely require more than one day of testimony. We accomplish this by having our Hearing Officers adhere to the following hearing format:

- The Hearing Examiner issues a pre-hearing order (prior to the appeal) that clearly delineates what the appeal issues are. This order also requires all parties to submit witness and exhibit lists by a date certain.
- The Hearing Examiner provides introductory remarks, briefly explaining the appeal, applicable laws related to the appeal (including the Hearing Examiner’s jurisdiction and authority to decide the matter), how presentation of evidence will occur, and the order in which public testimony and comment will be received.
- The Hearing Examiner facilitates presentation of Appellant witnesses, and cross-examination of those witnesses by the City and Applicant.
- Next, the Examiner facilitates presentation of the City’s witnesses, and cross-examination of those witnesses by the Appellant and Applicant.
- Following this, the Examiner facilitates presentation of the Applicant’s witnesses, and cross-examination of those witnesses by the City and Appellant.
- Following presentation of all witnesses, the Hearing Examiner allows closing remarks (if requested) from each party.
- After determining that all public testimony has been received and ensuring that procedural due process has been strictly adhered to, the Hearing Examiner closes the hearing, thanks all present for attending, and explains that a decision shall be forthcoming within 10 business days, unless the parties have agreed to a different decision date.
- The Hearing Examiner then produces and issues the decision.

As can be seen above, the steps involved in a ‘typical’ hearing remain consistent for each hearing and with each hearing officer. SLC uses a checklist approach for each step in the hearing process. For example, we prepare for each hearing by checking our pre-hearing checklist to see that all information needed at the hearing is or will be made available. We conduct the hearing by checking our hearing checklist to make certain all information needed to make a decision is gathered during the hearing and that we have adhered to the requirements of procedural due process and the appearance of fairness doctrine. We write our decisions by checking our decision checklist to make certain all decisions are understandable, legally defensible, and consistent with applicable laws.

Finally, because SLC has a “stable” of attorneys trained to perform land use hearings, we avoid the kinds of scheduling conflicts or interest conflicts that occur when a municipality contracts with an individual hearing examiner.

C. EXAMPLES OF WRITTEN WORK

[Sample decisions are being provided as separate attachments.]

D. EXAMPLE RULES OF PROCEDURE

[Sample “Rules of Procedure” are being provided as a separate attachment.]

E. PROFESSIONAL REFERENCES

Professional References

The following individuals familiar with all aspects of our work as Hearing Examiners and serve as a representative sample of our clients:

Kylie J. Finnell
City Attorney
City of Bremerton
360-473-2345
legal@ci.bremerton.wa.us

Russ Wright
Planning Director
City of Lake Stevens
425-212-3315
rwright@lakestevenswa.gov

Rick Walk
Planning Director
City of Lacey
360-473-2345
rwalk@ci.lacey.wa.us

Emma Bolin
Community Development Manager
City of Port Angeles
360-417-4752
ebolin@cityofpa.us

F. FEE PROPOSAL

Fee Proposal

We appreciate the opportunity to potentially work with the City of Bonney Lake to meet its needs for high-quality, professional hearing examiner services. SLC has recently seen a significant increase in demand for our services across Washington and, accordingly, we are in the process of restructuring our fee system.

To provide the timely, informative, and legally sound decisions that are the hallmark of our work, we propose the following fee structure:

Per month retainer of \$825. This amount covers our administrative costs and ensures that SLC is available to conduct hearings for the City of Bonney Lake on land use and other quasi-judicial matters assigned to the Hearing Examiner. As part of the retainer:

- The City will be able to select one regular, three-hour monthly time slot (in consultation with SLC) wherein a hearing officer will always be available to serve the City.
- SLC will prepare Hearing Examiner Rules of Procedure specific to the City and update them, as needed.
- SLC will produce an Annual Report detailing the matters it has heard along with recommendations on improvements to the hearing examiner process and/or municipal code.
- SLC will provide one annual training session for City staff on a mutually agreed upon topic.

The monthly retainer does not cover fees associated with specific hearings. Our contract rate for hearing examiner services is \$225/hr. All appeal hearings would involve this hourly rate. We are willing to negotiate an alternative rate based upon a flat fee per decision, for certain land use application decision types, if more acceptable to the City.

The following is a suggested “flat fee per decision” matrix that allows for lower costs for single-family residential development:

\$1,750	\$3,000	\$3,850
Single-Family Residential Variances	Commercial/Industrial Variances and CUPs	Multi-Permit Applications
Single-Family Residential Conditional Use Permits	Multi-Family Residential Variances and CUPs	Preliminary Plats
	Single-Family Residential Reasonable Use Permits	Shoreline Permits
		Special Use Permits

We are willing to work with the City to produce a fee structure that is viewed as fair and sensible. No mileage or other travel expense would be involved (as we propose conducting hearings remotely) and no additional out-of-pocket expenses are anticipated.