



KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

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On Monday night, June 22, 2009, the Board of County Commissioners enacted an Ordinance amending the Kitsap County Hearing Examiner's Rules of Procedure for Applications and Appeals, which now allows opportunities for reconsideration of hearing examiner final decisions. The language in the adopted Ordinance begins the process that will eventually give opportunities for pre-hearing and post-hearing mediation. The final language will require additional public process prior to adoption of the mediation process. The Kitsap County Board of Commissioners, together with the Department of Community Development, support transparent procedures for hearing examiner practices, and it is their hope that the new policies will provide a better service for our citizens and clients. The newly adopted rules will be reviewed and evaluated by the Board in two years.

KITSAP COUNTY OFFICE OF THE HEARING EXAMINER

RULES OF PROCEDURE

For Applications & Appeals

Adopted June 22, 2009
BOCC Resolution No 116-2009

Note: Res No 116-2009 specifies these Rules of Procedure are scheduled for evaluation beginning June 23, 2011. The evaluation may cause these Rules to be altered and re-adopted by the BCC.

Prepared by Sound Law Center, LLC
Hearing Examiners for Kitsap County

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RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARING EXAMINER OF KITSAP COUNTY, WASHINGTON

CHAPTER I: RULES OF HEARINGS ON PERMIT APPLICATIONS

Application of Rules

These Hearing Examiner Rules supplement the Kitsap County Code and other applicable law for matters within the Hearing Examiner's jurisdiction, and govern the administrative practice and procedure before the Hearing Examiner for open record hearings. Chapter I applies to land use applications; Chapter II applies to appeals of administrative decisions. In case of conflict between a Hearing Examiner Rule and the Kitsap County Code or other applicable law, the Kitsap County Code or other applicable law controls.

The County and the Hearing Examiner encourage the use of mediation to resolve any disputes that arise at any time during the processing of a land use application or appeal.

SECTION 1.1: DEFINITIONS

1.1.1 **“Aggrieved Person”** means:

- a. The Applicant and the Owner of property to which the land use decision is directed;
or
- b. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 1. The land use decision has prejudiced or is likely to prejudice that person;
 2. That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision; and
 3. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision.

1.1.2 **“Appeal”** means to seek review of a decision or determination from the Department by the Hearing Examiner in accordance with the rules of KCC 21.04.

1.1.3 **“Appellant”** means the person who files an appeal.

1.1.4 **“Applicant”** means the property owner, or his or her designated agent, applying to the County for a permit or other regulatory approval under the provisions of the Kitsap County Code.

1.1.5 “**Board**” or "Board of Commissioners" means the Kitsap County board of county commissioners.

1.1.6 “**Business Day**” or “**Working Day**” means any day for which the County's offices are open for normal business matters.

1.1.7 “**Calendar Day**” means each day of the calendar month. Unless stated otherwise in these rules, a reference to a number of days means calendar days.

1.1.8 “**Clerk of the Hearing Examiner**” means a person designated by the County to assist the Hearing Examiner in his/her duties.

1.1.9 “**Comprehensive Plan**” means the generalized coordinated land use policy statement, including the land use map, adopted by the County pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW.

1.1.10 “**County**” means Kitsap County, Washington.

1.1.11 “**Director**” means the Director of the Department of Community Development.

1.1.12 “**Department**” means the Department of Community Development.

1.1.13 “**Ex parte Communication**” means written or oral communications to the Hearing Examiner about a matter pending before the Hearing Examiner, not included in the record and made outside of a hearing.

1.1.14 “**Hearing**” means the proceeding at which a Party has the opportunity to provide written and oral testimony and the testimony becomes part of the record. The hearing creates the record through testimony and submission of documents. An agenda for each hearing date shall be prepared by the County, including the time set for hearing and identification of the hearing as contested or uncontested. An uncontested agenda item may become a contested agenda item, at the discretion of the Hearing Examiner.

- a. **Contested Hearing** means an application hearing where any of the following circumstances apply: 1) the Applicant does not agree to all conditions; or 2) the Applicant does not agree with the criteria, standards, and other applicable law set forth in the County Staff Report on the request; or 3) a Party of Record states at a hearing that the application should not be approved or should be modified prior to approval.
- b. **Uncontested Hearing** means an application hearing where all the following circumstances apply: 1) the Applicant has read, understands, and agrees to all conditions, as proposed at the time of the hearing; 2) the Applicant agrees that the criteria, standards, and other applicable law set forth in the County Staff Report on the request are the criteria, standards and law by which the request shall be reviewed; and 3) no Party of Record states that the application should not be approved or should be modified prior to approval.

1.1.15 **“Hearing Examiner” or “Examiner”** means the Administrative Hearing Examiner or the Pro Tem Hearing Examiner of Kitsap County.

1.1.16 **“KCC”** means the Kitsap County Code.

1.1.17 **“Mediation”** means efforts to resolve disputes with the assistance of an impartial third-party.

1.1.18 **“Motion”** means an oral request during the course of a hearing or a written request made to the Hearing Examiner for an order or other ruling.

1.1.19 **“Notice of Decision”** means the written document of the Hearing Examiner that communicates a decision on an action before the Hearing Examiner.

1.1.20 **“Official Record”** means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the Hearing Examiner. An electronic recording or transcript certified as a true and correct transcript of an electronic recording of the hearing is a part of the official record.

1.1.21 **“Open Record Hearing”** means a hearing held under Chapter 36.70B RCW and conducted by the Hearing Examiner that creates the County’s official record through testimony and submission of evidence and information under the procedures prescribed in Title 21 KCC.

1.1.22 **“Order”** means a written determination of the Hearing Examiner, which directs a Party to the proceedings to act or to refrain from acting.

1.1.23 **“Person”** means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or any local governmental unit however designated.

1.1.24 **“Party” or “Party of Record”** means:

- a. The applicant or applicant’s representative;
- b. The property owner as identified by the records available from the County Assessor’s Office;
- c. A person submitting written testimony about a matter pending before the Hearing Examiner or who has testified as part of the official record of a land use action (excluding persons who have only signed petitions or mechanically produced form letters);
- d. County Staff involved in review of the application.

1.1.25 **“Staff Report”** means the document prepared by County Staff pursuant to KCC 21.04 and these Rules of Procedure.

SECTION 1.2: EX PARTE COMMUNICATION

1.2.1 Ex Parte Communication with Hearing Examiner

No person, nor his or her agent, employee, or representative, who is interested in a particular application currently pending before the Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a related petition or application. Any communication submitted in this manner shall not be considered a part of the record established on the petition or application. This rule shall not prohibit ex parte communication concerning procedural matters.

1.2.2 Ex Parte Communication from Hearing Examiner

The Hearing Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee, or representative, with regard to the merits of an application that is pending before the Hearing Examiner, or a factually related application.

1.2.3 Disclosure

If prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be disclosed by the Hearing Examiner at the outset of the open record hearing, and proper discretion shall be exercised by the Hearing Examiner on whether to disqualify himself or herself as Hearing Examiner for that particular hearing.

SECTION 1.3: NATURE OF PROCEEDINGS

1.3.1 Appearance of Fairness

All proceedings before the Hearing Examiner are subject to the appearance of fairness doctrine and RCW 42.36.

1.3.2. Expeditious Proceedings

It is the policy of the Hearing Examiner to conduct hearings expeditiously to the extent practicable and consistent with requirements of law.

1.3.3 Frequency

Hearings will be scheduled through County Staff in coordination with the Hearing Examiner. In no event shall hearings be scheduled by County Staff or public notice of the hearing be published until State Environmental Policy Act (SEPA) determination appeal deadlines have passed, except if the County, as lead agency, elects to use the optional Determination of Non-Significance (DNS) public notice and comment process set forth in WAC 197-11-355. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Examiner shall have discretion in setting the agenda.

1.3.4 Format

The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding become available to the Hearing

Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

1.3.5 Record of Hearing

a. The County shall make an electronic recording of all hearings in an audio or audio visual format and such recordings shall be a part of the record. Copies of written materials and electronic recordings of a particular proceeding shall be made available to the public upon request. The requester shall comply with KCC 3.76 and shall pay the reasonable cost of such copying.

1.3.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of Kitsap County, and laws of the State of Washington shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050. Unless otherwise stated, when the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

SECTION 1.4: RIGHTS AND RESPONSIBILITIES OF PARTIES

1.4.1 Rights of County

County Staff shall have the right to present evidence and testimony, object, and make motions, arguments, recommendations, and all other rights essential to a fair hearing. The County shall also have the right to appeal any final decision.

1.4.2 Rights of Applicant

Every applicant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Further, the applicant shall have the right to timely access to the County Staff Report.

1.4.3 Rights of Parties of Record

Every Party of Record shall have the right to present evidence and testimony at hearings. The right of persons to cross-examine, object, and submit motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the nature and length of their testimony.

1.4.4 Responsibilities of County Staff

County Staff shall provide a Staff Report consistent with the provisions of Section 1.6.6, provide notice of hearings in accord with the provisions of Section 1.6.1 and County ordinances, present materials at the hearings, and provide documentation relevant to the case. Staff Reports shall be filed with the Hearing Examiner and copies shall be sent to the applicant and made available for public inspection at least seven (7) calendar days before the scheduled hearing, unless a different date has been established by the Hearing Examiner. Copies shall be provided to all interested parties upon payment of reproduction costs.

To promote due process and efficiency, all material County Staff wishes to be admitted as an exhibit by the Hearing Examiner and material submitted by the Applicant shall be submitted to the Hearing Examiner no later than seven calendar (7) days prior to the hearing. Material from County Staff or Applicant submitted to the Hearing Examiner within seven (7) calendar days prior to the hearing shall be considered at the discretion of the Hearing Examiner.

1.4.5 Responsibilities of Applicant

The Applicant shall provide to the County Staff all material prior to the issuance of the Staff Report that shows the application meets code criteria, be prepared for questions by the Hearing Examiner during the hearing on the application, and treat all who participate in these proceedings courteously.

To promote due process and efficiency, all material the applicant wishes to be admitted as an exhibit by the Hearing Examiner shall be submitted to the Hearing Examiner no later than seven (7) calendar days prior to the hearing, with copies to County Staff if not previously provided. Material submitted to the Hearing Examiner later than seven (7) calendar days prior to the hearing shall be considered at the discretion of the Hearing Examiner. Further, any newly submitted material that proposes major substantive changes to the project shall result in a continuation of the hearing to provide time for additional review.

1.4.6 Responsibilities of Interested Persons

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so may result in removal from the hearing at the discretion of the Hearing Examiner.

SECTION 1.5: PRESIDING OFFICIALS

1.5.1 Presiding Officials

- a. The Hearing Examiner shall preside over the hearings.
- b. The Hearing Examiner shall have all of the authority and duties granted to him or her in state statutes, the KCC, and other local ordinances. Hearing Examiner duties include the responsibility to prescribe rules for procedural matters, to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end, including the following:
 1. To hold pre-hearing conferences;
 2. To regulate the scheduling and conduct of hearings;
 3. To rule upon legal motions;
 4. To require briefs on legal issues;
 5. To rule upon offers of proof and receive evidence;
 6. To rule upon issues relating to settlement;
 7. To consider and rule upon all procedural and other motions appropriate to the proceedings; and

8. To make and file recommendations or decisions.
 - c. In the performance of his or her adjudicative functions, the Hearing Examiner shall not be subject to the direction of any elected official, officer, employee or agent of any County department.
- 1.5.2 Presence of Legal Counsel at Hearings or Public Meetings
- a. All parties participating in the hearings may be represented at the hearings by legal counsel of their choice.
 - b. Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.
 - c. All forms of legal authority including briefs, County Staff Reports, and other legal memoranda upon which a Party of Record will be relying or presenting at the hearing must be submitted to the Hearing Examiner's office at least seven (7) calendar days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public at least seven (7) calendar days in advance of the scheduled hearing date.

SECTION 1.6: CONDUCT OF HEARINGS

- 1.6.1 Notice Requirements of Hearings and Filings
- a. All notice, time requirements, and methods of notification shall be consistent with the provisions as set forth in KCC 21.04, in addition to the provisions of this Section.
 - b. Affidavit of Notice: An affidavit attesting to the notice given of a hearing (including dates and places of publication, posting on the property if required, and list of addressees) shall be part of each record.
- 1.6.2 Request for Reconsideration
Within five (5) days from the effective date the Hearing Examiner's decision, a motion for Reconsideration may be filed. Such motion shall state the reasons why a motion for reconsideration should be granted based on grounds stated in Section 1.9.
- 1.6.3 Oath or Affirmation
All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.
- An interpreter acting on behalf of any interested person shall take an oath that a true interpretation of the interested person's testimony shall be made.
- 1.6.4 Content of the Record
The record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- a. The Application;
- b. The Staff Report;
- c. All evidence received, which shall include oral testimony given at the hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- d. A statement of all materials officially noticed;
- e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. Recordings made on electronic equipment or a transcript of those recordings; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971, Chapter 43.21C RCW, (if applicable).

The Hearing Examiner shall not close the record of a hearing until the Hearing Examiner receives all exhibits.

1.6.5 Development of Record

A hearing usually will include, but not be limited to, the following elements in the following order, unless otherwise directed by the Hearing Examiner:

- a. A brief introductory statement by the Hearing Examiner of the Hearing Examiner's process;
- b. A report by the County Staff that may include introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
- c. Testimony by the Applicant and cross-examination of the witnesses;
- d. Testimony of Interested Parties;
- e. Opportunity for cross-examination and rebuttal; and
- f. An opportunity for questions by the Hearing Examiner.

1.6.6 Content and Form of Staff Reports

The Staff Report on a land use application should include the following, if relevant to the application:

- a. A list of the names and addresses of the Owner and Applicant of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the ordinance by which the request is reviewed by the Hearing Examiner.

- c. The date of application and the date the County deemed the application complete.
- d. A common description of the subject property and a legal description of the subject property.
- e. A statement identifying applicable Kitsap County Zoning Code regulations.
- f. A technical data summary of the Comprehensive Plan designation and Zoning designation of the subject property with citations to the Zoning Code and Comprehensive Plan; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and any other relevant scientific, environmental or engineering information with citations to documents in the file.
- g. The current access to the subject property and the proposed access to the subject property; as well as a summary of any transportation issues with citations to documents in the file.
- h. An analysis of the proposed project, with citations to documents in the file. The analysis shall address the Kitsap County Code criteria and any other applicable law by which the request is reviewed by the Hearing Examiner. This analysis may include, but not be limited to, the following elements of review:
 - 1. Natural features, including critical areas such as wetlands and steep slopes;
 - 2. Stormwater and drainage;
 - 3. Character and design, including population figures;
 - 4. Human Resources;
 - 5. Housing;
 - 6. Economic Development;
 - 7. Transportation, including streets and sidewalks;
 - 8. Community facilities, services and institutions, including schools;
 - 9. Government jurisdiction boundaries;
 - 10. Neighborhoods;
 - 11. Land use plans; and
 - 12. Land use regulations.
- i. A history of the requested action and a history of the development in the surrounding properties. In making the analysis, the County Staff shall refer to applicable ordinances as often as possible.
- j. A summary of any other requested land use permits in the area.
- k. A description of the compatibility and impact of the proposal on the existing development and the probable character of the proposal.
- l. A summary of the reports or recommendations of any other agencies consulted.

- m. Appropriate maps of the subject property and a vicinity map. If photographs of the site are available the applicant is encouraged to provide color reproductions that shall be part of the Staff Report.
- n. The result of the determination pursuant to the State Environmental Policy Act.
- o. County Staff's conclusions and recommendations.
- p. The names and titles of the County Staff who prepared the Staff Report.
- q. A list of proposed exhibits.

1.6.7 Continuances of Hearings

a. At the Request of a Party

1. If a Party of Record requests a continuance before official notice of the hearing is issued, the Party shall notify the County in writing of the request and it must include a statement of reasonable grounds. If the request is made by any Party of Record other than the Applicant or Applicant's Representative, the request shall also be sent to the Applicant and the Applicant's Representative shall submit a response within five (5) calendar days. The request shall be granted or denied at the sole discretion of the Director who shall have authority to impose conditions thereon.
2. If a request for a continuance is made after official notice is issued, it should be made a least five (5) calendar days prior to the hearing and must be in writing in the form of a motion to the Hearing Examiner, with a copy to the County and other parties of record, and state reasonable grounds for a continuance. Responses to requests for continuances shall be filed within two days of the request, or as otherwise directed by the Hearing Examiner. If the request is made orally at the hearing it must be based on reasonable grounds and that there is no undue prejudice to the other parties or County Staff. The Hearing Examiner shall have discretion to grant or deny the request for continuance and may impose conditions as may be warranted.

b. By the Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a decision, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued to a specific date, time, and place, such shall be announced at the hearing and notice shall be posted on the door of the hearing room, no further notice of the hearing need be given.

1.6.8 Evidence

- a. In each proceeding, the applicant shall have the burden of proof to show, by a preponderance of the evidence, compliance with applicable laws and regulations of Washington State and Kitsap County.

- b. The hearing generally will not be conducted in strict adherence to Rules of Evidence. Only relevant evidence may be admitted. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall have discretion on the admissibility of all evidence, including models or oversized exhibits that could present record storage problems.
- c. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. It is advisable to provide an extra copy of all documents to the Hearing Examiner.
- d. The Hearing Examiner may request a document to be filed after the close of public testimony. Only those documents referred to at the hearing may be submitted and only those specifically requested by the Hearing Examiner. All parties of record shall be allowed opportunity to submit written comment on the document submitted after the close of public testimony.
- e. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.
- f. All witnesses for the County that may be necessary to address issues that may arise on an application – including fire, health, and engineering personnel shall be available to testify on the day of the hearing by attendance at the hearing or by being on call to the planner who has reviewed the application to appear when called.

1.6.9 Presentation of Motions

A Party to the proceeding may present a motion to the Hearing Examiner. Written motions must be clearly noted as a motion, and be filed seven (7) business days prior to the hearing, with notice to all other parties. Responses to motions shall be filed five (5) business days prior to the hearing, or as otherwise directed by the Hearing Examiner. Motions and responses to motions are not to exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner. Motions for continuances shall be governed by Section 1.6.7.

SECTION 1.7: WITHDRAWAL OR DISMISSAL

1.7.1 Applications

a. Withdrawal Prior to Service of Notice

If a withdrawal request is made before official notice of the hearing is given, the applicant shall notify the County in writing of the withdrawal request and the withdrawal shall be automatically permitted. A request for withdrawal of the application is final. No further action will be taken by Community Development on a withdrawn application.

b. Withdrawal Made Any Other Time

Withdrawal requests made at any other time than prior to the service of notice shall be granted at the sole discretion of the Hearing Examiner. Such a request must be made in writing to the Hearing Examiner.

SECTION 1.8: DECISIONS

1.8.1 Written Decisions

For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be made and forwarded to all parties of record. The Hearing Examiner's decision shall be submitted within ten (10) business days following the conclusion of all testimony and hearings, unless a longer period is mutually agreed to by the Applicant and Hearing Examiner.

1.8.2 Content of Decision

A decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. A statement of criteria and standards and other law applicable to the request.
- c. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. Oral and written comments will be given equal consideration by the Hearing Examiner. The findings shall consist of a statement of each fact that the Hearing Examiner found showed the request does or does not comply with each applicable approval criterion and standards and shall include citations to the record. For an uncontested decision, findings may be those agreed to by the parties of record and reference to that agreement may provide the necessary support for the findings. A statement of any threshold determination made under Chapter 43.21 RCW may be included. A decision on a proposed preliminary plat (subdivision) and dedications shall include the findings set out in RCW 58.17.110.
- d. Conclusions. Conclusions shall include a resolution of any issue(s) and the determination of the Hearing Examiner on the compliance of the request with the criteria, standards, and other law by which the Hearing Examiner reviews the request. The conclusions may reference legal criteria, if applicable. The conclusions may make reference to the Comprehensive Plan, as well as to the effect of both approval and denial on property in the vicinity, on businesses, if relevant, and on the general public. The conclusions shall articulate the basis for the Hearing Examiner decision on the request. For an uncontested decision, conclusions may be those agreed to by the parties of record and reference to that agreement may provide the necessary support for the conclusions.
- e. The appropriate rule, order, or relief. The decision shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence. All decisions may include conditions of approval, including the time limit after which any approval shall expire if not utilized. For an uncontested decision, a decision shall be that agreed to by the parties of record and reference to that agreement will provide the necessary support for the decision and any conditions of approval.

- f. Not later than seven (7) days following the date of the Hearing Examiner's decision, the County shall send copies to the applicant, the applicant's representative and to all parties of record and to any person who requested a copy of the decision.

1.8.3 Procedure for Reopening Hearing

At any time prior to the filing of the final decision, the Hearing Examiner may reopen the hearing for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file responses.

1.8.4 Clarification

Any Party of Record may request at any time clarification of the decision upon notice to the parties. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision.

SECTION 1.9: REQUEST FOR RECONSIDERATION

1.9.1 Request for Reconsideration

a. Within five (5) business days of the Hearing Examiner's recommendation or decision, a Party may file a motion for Request for Reconsideration. The motion shall explicitly set forth alleged errors of law or fact, or the discovery of new evidence which was not available at time of the hearing.

b. The Hearing Examiner shall respond to the Request for Reconsideration, in writing, within five (5) business days, by either denying the request or approving the request. If the Hearing Examiner approves the request, the Hearing Examiner shall issue a response to the request within ten (10) business days of the date of the response unless additional information is required.

SECTION 1.10: APPEALS OF DECISIONS

1.10.1 Appeals of Decisions

When the Hearing Examiner has issued a notice of final decision the decision shall be final and may be appealed according to applicable law.

SECTION 1.11: CONFLICTS

1.11.1 Conflicts of Rules

These Rules of Procedure are adopted to supplement the requirements set forth in the KCC. Any conflict between the rules and the provisions of the KCC will be decided consistent with the provisions of the KCC.

CHAPTER II:
RULES OF APPEAL OF ADMINISTRATIVE DECISIONS

Application of Rules

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application. See *Chapter 2.10 KCC & Chapter KCC 21.04*.

The County and the Hearing Examiner encourage the use of mediation to resolve any disputes that arise at any time during the processing of a land use application or appeal.

SECTION 2.1: DEFINITIONS

2.1.1 “**Aggrieved person**” means:

- a. The Applicant and the Owner of property to which the land use decision is directed;
or
- b. Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:
 - 1) The land use decision has prejudiced or is likely to prejudice that person;
 - 2) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
 - 3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

2.1.2 “**Appeal**” means to seek review of a decision or determination from a higher authority. An appeal may be from a County Staff decision or determination to the Hearing Examiner; or from a Hearing Examiner decision to the Kitsap County Board of Commissioners; or from a Kitsap County Board of Commissioners’ decision to the Superior Court or other court of competent jurisdiction.

2.1.3 “**Appellant**” means the person who files an appeal from a decision of an administrative official, the Hearing Examiner; or the Kitsap County Board of Commissioners. Only a “Party,” “Party of Record,” or “aggrieved person” as defined herein has standing to become an appellant.

2.1.4 “**Board**” or “**Board of Commissioners**” means the Kitsap County Board of County Commissioners.

2.1.5 “**Business Day**” or “**Working Day**” means any day for which the County’s offices are open for normal business matters.

2.1.6 “**Calendar Day**” means each day of the calendar month. Unless stated otherwise in these rules, a reference to a number of days means calendar days.

2.1.7 “**Clerk of the Hearing Examiner**” means a person designated by the County to assist the Hearing Examiner in his/her duties.

2.1.8 “**Comprehensive Plan**” means the generalized coordinated land use policy statement, including the land use map, adopted by the County pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW.

2.1.9 “**County**” means Kitsap County, Washington.

2.1.10 “**Ex parte Communication**” means written or oral communications to the Hearing Examiner about a matter pending before the Hearing Examiner, not included in the record and made outside of a hearing.

2.1.11 “**Hearing**” means the proceeding at which a Party has the opportunity to provide written and oral testimony and the testimony becomes part of the record. The hearing creates the record through testimony and submission of documents.

2.1.12 “**Hearing Examiner**” or “**Examiner**” means the Administrative Hearing Examiner or the Pro Tem Hearing Examiner of Kitsap County.

2.1.13 “**KCC**” means the Kitsap County Code.

2.1.14 “**Mediation**” means efforts to resolve disputes with the assistance of an impartial third-party.

2.1.15 “**Motion**” means an oral request during the course of a hearing or a written request made to the Hearing Examiner for an order or other ruling.

2.1.16 “**Notice of Decision**” means the written document of the Hearing Examiner that communicates a decision on an action before the Hearing Examiner.

2.1.17 “**Official Record**” means the written and oral information, exhibits, reports, testimony and other evidence submitted in a timely manner and accepted by the Hearing Examiner. An electronic recording or transcript certified as a true and correct transcript of an electronic recording of the hearing is a part of the official record.

2.1.18 “**Open Record Hearing**” or “**Open Record Appeal Hearing**” means a hearing held under Chapter 36.70B RCW and conducted by the Hearing Examiner that creates the County’s official record through testimony and submission of evidence and information under the procedures prescribed in Title 21 KCC.

2.1.19 “**Order**” means a written determination of the Hearing Examiner, which directs a Party to the proceedings to act or to refrain from acting.

2.1.20 “**Person**” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or any local governmental entity however designated.

2.1.21 **“Party” or “Party of Record”** means:

- a. The Appellant, or Appellant’s Representative;
- b. The Property Owner as identified by the records available from the Kitsap County Assessor’s office;
- c. The Applicant if other than the Appellant;
- d. County Staff involved in the appeal.

SECTION 2.2: FILING

2.2.1 **Compliance with Rules**

All appeals must comply with the Rules and with the requirements established in the applicable KCC ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed.

2.2.2 **Contents**

All appeals shall be filed in accordance with KCC 21.04.120. An appeal must be in writing and contain the following:

- a. The case number designated by the County and the name of the Applicant;
- b. A brief statement as to how the Appellant is aggrieved by the decision being appealed;
- c. A specific and understandable statement of the Appellant’s issues on appeal, noting Appellant’s specific exceptions and objections to the decision or action being appealed and the reasons why each is an error of fact or law, and the evidence relied upon to prove the error;
- d. The specific relief requested, such as reversal or modification;
- e. Signature, address, and phone and fax number of each Appellant, and name and address of a contact Representative, if there are multiple Appellants; and
- f. The appeal fee adopted by the Kitsap County Board of Commissioners.

2.2.3 **Briefs**

Briefs or other memoranda of law may be submitted by the parties in support of or in response to an appeal. Each Party is permitted one (1) primary brief not exceeding fifteen (15) double-spaced pages in length. In addition, the Appellant may submit a reply brief not exceeding ten (10) pages in length. The Hearing Examiner may, at his or her discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues. Briefs must be limited to the specific issues set forth in the appellant’s statement of appeal.

2.2.4 **Motions**

A Party to the proceeding may present a motion to the Hearing Examiner. Written motions must be clearly noted as a motion, and be filed no later than seven calendar

days prior the hearing, with notice to all other parties. Responses to motions shall be filed prior to the hearing, or as otherwise directed by the Hearing Examiner. Motions and responses to motions are not to exceed five (5) double-spaced pages in length without prior approval of the Hearing Examiner.

2.2.5 Proposed Findings and Conclusions

The Hearing Examiner may request proposed Findings and Conclusions to be submitted by the parties.

SECTION 2.3: DISMISSAL

2.3.1 Dismissal

An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

2.3.2 Notice to Parties

Any Party may request dismissal of all or part of an appeal at any time with notice to all parties. The Hearing Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

2.3.3 Failure to Comply

Failure to comply with any term of a pre-hearing order, including timely filing of document and witness lists, may result in dismissal of an appeal upon request by the opposing Party.

2.3.4 Withdrawal of Dismissal

When the decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and shall be dismissed.

SECTION 2.4: PREHEARING CONFERENCE AND PREHEARING ORDER

2.4.1 Prehearing Conference

The Hearing Examiner may, on his or her own order, or at the request of a Party, hold a conference prior to the hearing to consider:

- a. Identification, clarification, and simplification of the issues;
- b. Disclosure of witnesses to be called and exhibits to be presented;
- c. Motions;
- d. Opportunities for mediation; and
- e. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

2.4.2 Tele-conferencing

Pre-hearing conferences may be held by telephone conference call.

2.4.3 Notice

The Hearing Examiner shall give written or oral notice to all parties of any pre-hearing conference.

2.4.4 Representation

All parties of record have the right to be represented at any pre-hearing conference. Representation is not required.

2.4.5 Prehearing Order

Following the prehearing conference, the Hearing Examiner may issue a pre-hearing order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants.

2.4.6 Record

At the hearing the Hearing Examiner shall develop for the record the time, purpose and result of the conference. If any orders have been issued they will be part of the record.

2.4.7 Prehearing Procedural Information

In the event that a pre-hearing conference is not held, the Hearing Examiner may issue a pre-hearing order with procedural information including identification of the parties; date and time by which pre-hearing mediation should occur; date and time of the hearing appeal; issues identified in the appeal statement; a request and date for submission of lists of witnesses and documents; cross-examination of witnesses; and an order of presentation.

2.4.8 Appeal

Pre-hearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

SECTION 2.5: WITHDRAWAL

2.5.1 Withdrawal

Only the Appellant may withdraw an appeal.

2.5.2 Withdrawal by Party Representative

Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who had been designated as the Party representative.

2.5.3 Right to Withdraw

An appellant's Request to Withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 2.6: PARTY REPRESENTATIVE

2.6.1 Party Representative

When a Party consists of more than one individual, or is a group, organization, corporation, or other entity, the Party shall designate an individual to be its contact representative as part of the appeal. The rights of such an Appellant shall be exercised by the person designated as the contact representative. Notice or other communication to the contact representative is considered to be notice or communication to Party.

SECTION 2.7: NOTICE OF HEARING

2.7.1 Notice

Only parties to the appeal are entitled to receive notice of the open record appeal hearing. The appeal hearing shall be open to the public, but the public does not have a right to testify at an appeal hearing unless identified as a witness by a Party to the appeal.

SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES

2.8.1 Right to Representation

Although Appellants and Applicants have the right to be represented by an attorney, representation by an attorney is not required.

2.8.2 Representation and Rights of the Party

Where a Party has designated a representative, the representative shall exercise the rights of the Party.

2.8.3 Conduct

Parties, witnesses, and observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner.

SECTION 2.9: CONTINUANCES OF HEARINGS

2.9.1 Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a decision or recommendation, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of the KCC but shall be granted for a period of no longer than thirty (30) calendar days.

2.9.2 At the Request of a Party or Parties

Any Party of Record may request continuance of a hearing.

- a. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance.
- b. The request for continuance must be submitted to the Hearing Examiner and all parties of record a minimum of two (2) weeks prior to the date of the hearing. Other parties may submit a response to the request for continuance a minimum of one (1) week prior to the date of hearing.
- c. The parties may submit a joint request for continuance to the Hearing Examiner a minimum of three (3) calendar days prior to the date of the hearing.
- d. More than one request for continuance per Party is disfavored.
- e. If the request is made orally at the hearing it must be based on reasonable grounds.
- f. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

SECTION 2.10: DEFAULT

2.10.1 Dismissal

The Hearing Examiner may dismiss an appeal by an Order of Default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

SECTION 2.11: HEARING FORMAT

2.11.1 Format

Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Hearing Examiner to make the relevant evidence most readily and efficiently available to the Hearing Examiner.

2.11.2 Order of Appeal

The order of an appeal hearing will generally be as follows:

- a. Examiner's introductory statement;
- b. Background presentation by County Staff or representative;
- c. Appellant's argument;
- d. County Staff or County representative's presentation;
- e. Applicant's presentation;
- f. Rebuttal; and
- g. Closing argument of parties.

2.11.3 Order Modified

Notwithstanding the provisions of the KCC, the order of hearing may be modified or a different order established as the Hearing Examiner deems necessary for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Hearing Examiner's approval.

2.11.4 Witnesses

All witnesses for the County that may be necessary to address issues that may arise on an appeal – including fire, health, and engineering personnel- shall be available to testify on the day of the hearing by attendance at the hearing or by being on call to the County representative at the appeal to appear when called.

2.11.5 Order of Presentation

The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

SECTION 2.12: HEARING EXAMINER'S DECISION

2.12.1 Decision

A decision of the Hearing Examiner on an appeal shall include, but not be limited to, a statement regarding the following:

- a. Background. The nature and background of the proceeding, including identification of Party representatives participating in the hearing, prehearing determinations, and other similar information.
- b. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings.
- d. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm, deny, modify, or reverse) based upon a consideration of the whole record and supported by substantial evidence in the record.
- e. Request for Reconsideration. Within five (5) business days of the Hearing Examiner's recommendation or decision, a Party may file a motion for Request for Reconsideration. The motion shall explicitly set forth alleged errors of law or fact, or the discovery of new evidence which was not available at the time of the hearing.
- f. Response to Request for Reconsideration. The Hearing Examiner shall respond to the Request for Reconsideration, in writing, within five (5) business days, by either denying the request or approving the request. If the Hearing Examiner approves the request, the Hearing Examiner shall issue a response to the request within ten (10) business days of the date of the response unless additional information is required.

SECTION 2.13: RECORD

2.13.1 Record of an Appeal

The record of an appeal shall include:

- a. The application;
- b. The decision being appealed;
- c. The appeal;
- d. The County Staff Reports;
- e. All evidence received, which shall include oral testimony given at the hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- f. A statement of all materials officially noticed;
- g. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- h. Recordings made on electronic equipment or a transcript of those recordings; and
- i. An environmental determination made pursuant to the State Environmental Policy Act of 1971, Chapter 43.21C RCW, (if applicable).

SECTION 2.14: REOPENING HEARING

2.14.1 Procedure for Reopening Hearing

At any time prior to the filing of the final decision, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participated at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

SECTION 2.15: CLARIFICATION

2.15.1 Procedure for Clarification

Any Party of Record may request at any time clarification of the appeal decision upon notice to other parties. The Hearing Examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the Hearing Examiner's decision.

SECTION 2.16: CONFLICTS

2.16.1 Procedure for Conflicts

These Rules of Procedure are adopted to supplement the requirements set forth in the KCC. Any conflict between the rules and the provisions of the KCC will be decided consistent with the provisions of the KCC.