

**SKAMANIA COUNTY
OFFICE OF THE HEARING EXAMINER
RULES OF PROCEDURE FOR OPEN RECORD HEARINGS ON
LAND USE PERMIT APPLICATIONS AND APPEALS**

1. APPLICABILITY

- 1.1 These procedures shall apply to open record hearings on land use permit applications and appeals of administrative decisions that come before the Hearing Examiner.

2. DEFINITIONS

- 2.1 "Administrative decision" means a decision issued by the Director of the Skamania County Community Development Department or his or her designee, or a threshold determination issued by the Responsible Official under the State Environmental Policy Act (SEPA).

"Appellant" means a person, organization, or other similar group who files a complete and timely appeal of an administrative decision or other appealable action.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property who has applied for a land use permit.

"Burden of proof" means the responsibility of a party to present sufficient, credible evidence to support his or her position.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the Skamania County.

"Board" means the Skamania County Board of County Commissioners.

"County" means Skamania County, Washington.

"Ex parte communication" means written or oral communication to the Hearing Examiner about a matter pending before the Hearing Examiner that is not included in the public record and/or is made outside of a public hearing.

"Hearing" means the open record public proceeding at which testimony and exhibits of evidence are presented to the Hearing Examiner on a given land use permit application or appeal.

"Hearing Examiner" or "Examiner" means the Hearing Examiner of Skamania County.

"Interested Party" means any individual, partnership, corporation, association, or public or private organization of any character that may be affected by proceedings before the Hearing Examiner. Any party in a contested case is an interested party.

"Motion" means a written request made to the Hearing Examiner for an order or other ruling.

"Notice of Decision" means the written document that communicates a decision on an action before the Hearing Examiner.

"Party of record" or "Party" means:

- a. Any person who testifies at a hearing,
- b. An Appellant,
- b. The Applicant or his/her agents,
- c. Persons submitting written testimony about a matter prior to the close of the record, and
- d. Skamania County.

"Community Development Department" means the Skamania County Community Development Department.

"Record" means the oral testimony and written exhibits admitted at the hearing. The audio recording of the proceeding shall be included as part of the record.

"Staff" means the staff member of the Community Development Department assigned to present a case before the Hearing Examiner.

"Subject property" means the real property that is subject of the land use permit application or appeal.

"SCC" means Skamania County Code.

3. JURISDICTION

- 3.1 The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to make a decision or issue an order pursuant to SCC 2.80.060 or other sections of the SCC.
- 3.2 Timely filing of an appeal is required for the Examiner to acquire jurisdiction over any appeal.
- 3.3 Any party may challenge the Examiner's ability to hear an appeal/matter on jurisdictional grounds, or the Examiner may independently raise the jurisdictional issue. If the Examiner determines that he/she does not have jurisdiction, the appeal/matter will be dismissed.

4. EX PARTE COMMUNICATION

- 4.1 a. No person, nor agent, employee, or representative of any person, who is an interested party in an application currently pending before the Examiner shall

communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of any pending application/appeal or any factually related application/appeal. Communications on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis; however, all allowed ex parte procedural communications should be directed to the Hearing Examiner in care of the Community Development Department.

- b. The Examiner shall not communicate ex parte directly or indirectly with any person, agent, employee, or representative of any person who is an interested party in an application currently pending before the Examiner concerning the merits of the pending application or any factually related application, unless he/she provides notice and opportunity for all parties to participate.
- c. If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed at hearing. The Examiner shall exercise proper discretion as to whether to disqualify him/herself as Examiner for that particular hearing.

5. NATURE OF PROCEEDINGS

5.1 Expeditious Proceedings

It is the policy of the Hearing Examiner that, to the extent practicable and consistent with the requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings, the Hearing Examiner, County staff, and all parties, agents, and witnesses shall make every effort at each stage of a proceeding to avoid delay.

5.2 Record of Hearing

- a. Hearings shall be audio recorded and such recordings shall be a part of the official case record.
- b. The County shall make copies of the audio recording of a particular hearing and the written materials within the official case record available to individuals who request them. The requester shall pay the reasonable cost of copying.

5.3 Computation of Time

Unless otherwise provided in the SCC or state law, the computation of any period of time prescribed or allowed by these rules shall begin with the first day following the day on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or holiday, the period shall run until the end of the next business day.

6. RIGHTS AND RESPONSIBILITIES OF PARTIES

6.1 Rights of County

County staff shall have the right to present evidence, testimony, objections, motions, arguments, recommendations, and all other rights essential to a fair hearing.

6.2 Rights of Applicant and Appellant

Every Applicant and Appellant shall have the right to adequate notice, cross-examination, presentation of evidence, objection, motions, argument, and all other rights essential to a fair hearing. The Applicant shall have the right of timely access to the County's staff report.

6.3 Rights of Interested Parties

Every interested party shall have the right to present evidence and testimony at hearings on permit applications. The right of interested parties to cross-examine, object, 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 witnesses' testimony.

6.4 Responsibilities of County Staff

County Staff shall provide notice of the hearing consistent with County Code, provide a staff report consistent with the provisions of Rule 8.5 and SCC 2.80.110, present materials at the hearing, and provide the Hearing Examiner with documentation relevant to the case. In addition, County staff shall be responsible for audio recording the proceedings and maintaining possession of the official record in each matter.

6.5 Responsibilities of Applicant

The Applicant or his/her representative shall familiarize him/herself with the criteria for review prior to the hearing; provide the Hearing Examiner with any material that supports his/her case; and be prepared to present his/her case and answer questions from the Hearing Examiner, County staff, and the public.

6.6 Responsibilities of Appellant

Appellants have the same responsibilities as Applicants, and in addition shall be required to provide a specific and comprehensible written statement of the issues on appeal prior to the hearing.

6.7 Responsibilities of All Parties

Parties, witnesses, and observers shall conduct themselves with civility and deal courteously with all persons involved in the proceedings. Failure to do so will result in removal from the hearing.

6.8 Time Limits on Witness Testimony

Where the Hearing Examiner finds that testimony would be repetitious or irrelevant to the matters before him or her, the Examiner may impose reasonable limitations on the nature and length of witnesses' testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross-examination.

7. **PRESIDING OFFICIALS**

7.1 Presiding Officials

- a. The Hearing Examiner shall preside over all hearings.
- b. The Hearing Examiner shall have the authority and duties granted to him/her in state statutes, the SCC, and other County ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings;

to take all necessary action to avoid delay in the disposition of proceedings; and to maintain order. He/she shall have all powers necessary to that end, including the following:
 1. to administer oaths and affirmations;
 2. to rule upon offers of proof and receive evidence;
 3. to regulate the course of the Hearing and the conduct of the parties and their agents;
 4. to question any party presenting testimony at the hearing;
 5. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
 6. to require briefs on legal issues;
 7. to consider and rule upon all procedural and other motions appropriate to the proceedings; and,
 8. to make and file recommendations or decisions, consistent with County Code.
- c. Interference. In the performance of his/her adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any County department.

8. **CONDUCT OF OPEN RECORD HEARINGS ON PERMITS AND APPEALS**

8.1 Notice Requirements of Hearing and Filings

- a. All notice and time requirements and methods of notification shall be consistent with the SCC.

- b. Affidavit of Notice. An affidavit attesting to the notice given of a public hearing (including dates and places of publication and mailing list) should be part of each official case record.

8.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.

8.3 Order of Presentation at the Permit Application Hearing

A permit application hearing generally includes, but is not limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a presentation by County staff, including a summary of the proposal, identification of applicable SCC criteria and development standards, and staff's recommendation; a presentation by the Applicant; public testimony; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner. The Hearing Examiner has discretion to set the order of presentation in any given case.

8.4 Content of the Record of a Permit Application Hearing

The record of a permit application hearing conducted by the Hearing Examiner shall include, at a minimum, the following materials:

- a. The application for permit;
- b. Appropriate departmental staff reports;
- c. All evidence received, including oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- d. A statement of all matters officially noticed;
- e. A recommendation by Community Development Department Staff as to the outcome;
- f. Audio recordings of the proceedings; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA), as applicable.

8.5 Content and Form of Staff Reports on Permit Applications

The staff report shall be distributed to the Hearing Examiner and to the Applicant, and made available for public review at least ten days prior to the scheduled hearing. The staff report shall include the following, as appropriate:

- a. Name and address of the Applicant 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 controlling the request;
- c. The following descriptive information about the subject property:
 - (1) The address and legal description of the subject property,
 - (2) A statement of the zoning and Comprehensive Plan designations applicable to the subject property,
 - (3) A description of existing development on the subject property,
 - (4) A description of surrounding land uses,
 - (5) Any scientific, environmental, or engineering information germane to the case, and
 - (6) A description of critical areas identified or suspected to exist on site;
- d. An analysis of the project's consistency with the criteria for approval. In making the analysis, staff shall refer to applicable ordinances as often as possible.
- e. A summary of the reports or recommendations of any other agencies consulted;
- f. Appropriate maps of the subject property;
- g. The environmental review process under the State Environmental Policy Act; and
- h. Staff's conclusions and recommendations, including recommended conditions of approval.

8.6 Order of Presentation at an Appeal Hearing

Open record appeal hearings generally include, but are not limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a brief background of the decision appealed by departmental staff; a detailed presentation of the appeal (including presentation of witnesses, if any) by the Appellant; a response to the appeal (including presentation of witnesses, if any) by the County; a response to the appeal (including presentation of witnesses, if any) by the Applicant, if different from the Appellant; cross-examination of parties and witnesses; opportunity for rebuttal; and, opportunity for questions by the Hearing Examiner. Unless otherwise provided in the SCC, only witnesses called by the parties to an appeal are permitted to testify at an appeal hearing. The Hearing Examiner has discretion to set the order of presentation in any given case.

8.7 Continuances of Hearing

- a) Hearing Examiner. If the Hearing Examiner determines that more information is necessary in order to make a decision, or he/she is unable to hear all of the

evidence on the matter during the scheduled open record hearing, the hearing may be continued to a specified date and time.

- b) At the Request of a Party. Any party of record may request continuance of a hearing. However, the hearing may not be continued over the objection of a party unless good cause is shown. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

8.8 Evidence

- a. Burden of Proof. In each proceeding on a permit application, the Applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and the Skamania County. In each proceeding on an appeal, the Appellant shall have the burden of proof.
- b. Admissibility. Relevant evidence, including hearsay, shall be admitted if:
 - (1) it possesses probative value such as would be commonly accepted by reasonably prudent persons in the conduct of their affairs, and
 - (2) in the opinion of the Hearing Examiner, it is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.
- c. Hearing Examiner Discretion. The Hearing Examiner shall have discretion to admit or deny evidence offered at the hearing. Objections to evidence will be noted for the record. In ruling on the admissibility of evidence, the Examiner shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings before the superior courts in the state of Washington. 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.
- d. Copies. Documentary evidence may be received in the form of copies if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Parties bringing documentary evidence to hearings are advised to bring at least three extra copies, one for the Hearing Examiner to use as a "working copy", one for Community Development Department Staff and the other for the opposing party.
- e. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts; applicable federal, state, and county laws; and general, technical, or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts.
- f. Record held open for submission of relevant evidence. The Hearing Examiner may request documents to be filed after the close of public testimony. In such cases, only those documents specifically requested by the Hearing Examiner on

the record during the public hearing may be admitted.

8.9 Presence of Legal Counsel at Public Hearings

Although representation by legal counsel is not required at the hearing, all parties participating in the hearing may be represented by legal counsel of their choice.

9. **ADDITIONAL RULES FOR APPEALS**

9.1 Pre-hearing Conference

- a. The Hearing Examiner may, on his/her own order or at the request of a party, hold a conference prior to the hearing to consider:
 - (1) Identification, clarification, and simplification of the issues;
 - (2) Disclosure of witnesses to be called and exhibits to be presented;
 - (3) Motions; and
 - (4) Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.
- b. Pre-hearing conferences may be held telephonically.
- c. The Community Development Department shall give timely notice to all parties of any pre-hearing conference order by the Hearing Examiner. Notice may be written or oral.
- d. All parties shall participate in any pre-hearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner not to attend.
- d. Following the pre-hearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.
- e. Pre-hearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

9.2 Timeliness

To be considered timely filed, an appeal must be received no later than close of business on the last day of the appeal period. All appeals received after this time shall be considered untimely and shall be dismissed by the Hearing Examiner.

9.3 Fee

Any filing fee as required by Skamania County Code shall accompany an appeal.

9.4 Contents

An appeal must be in writing, identify the decision being appealed, and contain a concise statement of the basis for appeal and the relief requested.

9.5 Briefs

Briefs or other memoranda of law, limited to the specific issues set forth in the Appellant's statement of appeal, may be submitted by the parties in support of or in response to an appeal. Each party is permitted one primary brief not exceeding 50 double-spaced pages in length, and one reply brief not exceeding 25 pages in length. The Hearing Examiner may, at his/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.

9.6 Motions

Motions and responses to motions are not to exceed 20 double-spaced pages in length without prior approval of the Hearing Examiner.

9.7 Party Representative

Where an appeal is filed by several individuals or a group, the party shall designate one individual to be its representative, who shall be made known to the Hearing Examiner. Notice or other communication to the party representative is considered notice to the party.

9.8 Withdrawal of Appeal

- a. An appeal may be withdrawn only by the Appellant. Where the appeal is filed by several persons or a group, withdrawal shall be made by the person designated as the party representative.
- b. The Hearing Examiner may dismiss an appeal by an order of default where the Appellant, without requesting a continuance, fails to appear at a scheduled and properly noticed hearing.

10. DECISIONS

10.1 Written Decisions

The Hearing Examiner shall issue a written report of findings, conclusions, and decision within the time allowed by SCC 2.80.130. The findings, conclusions, and decision shall

indicate how the decision carries out the policies and regulations of the Comprehensive Plan, the County Code, and other relevant laws and plans.

10.2 Content of Decision

At a minimum, each decision shall include the following:

- a. The nature and background of the proceeding.
- b. Findings. The findings shall be a statement of the facts that are the basis of the conclusions and decision of the Examiner, and shall be based exclusively on the evidence entered into the record and any matters officially noticed. The source of each finding shall be identified.
- c. Conclusions. Whenever practical, the conclusions shall reference specific provisions of the law, and shall include the reasons and precedents relied upon to make the conclusions.
- d. A decision or order. 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.
- e. Statement of appeal process for that particular decision.

10.3 Procedure for Reopening Hearing

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

11. APPEALS OF HEARING EXAMINER DECISIONS

The decision of the Hearing Examiner shall be final and conclusive unless an appeal is timely filed with the appropriate decision making body (superior court, per RCW 36.70C; the Shorelines Hearings Board, per RCW 90.58; or the Columbia River Gorge Commission). Only a party of record may file an appeal of the Hearing Examiner's decision. Additional information can be found in SCC 2.80.140 and the applicable statutes.

12. CONFLICTS

These rules of procedure are adopted to supplement the requirements set forth in the SCC. Any conflicts between these rules and the provisions of the SCC shall be decided in favor of the SCC.