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HEARING EXAMINER ON HEARINGS ON PERMIT
APPLICATIONS AND OTHER HEARING MATTERS
Policy & Procedure 921**

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HEARINGS ON PERMIT APPLICATIONS AND OTHER HEARING MATTERS

.1 APPLICATION OF RULES

This Chapter applies to open record hearings on local land use decisions and other hearing matters as otherwise provided within the County Code.

.2 DEFINITIONS (SEE POLICY & PROCEDURE 101, PP. 1-11 FOR GENERAL DEFINITIONS)

"Appellant" means a person(s), organization, association, or other similar group who files a complete and timely appeal of a decision or other appealable action in accordance with Clallam County Code.

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

"Clerk to the Hearing Examiner" means the Clallam County Planning Director or his representative who shall serve as secretary to the Hearing Examiner.

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

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of Clallam County.

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character that may be affected by proceedings before the Hearing Examiner and shall include any party in a contested case.

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

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

"Open Record Hearing" means a hearing that creates the record through testimony and submission of documents.

"Party of Record" means:

- a. A person who testifies at a hearing;
- b. The applicant;
- c. The County; or

- d. A person submitting written testimony about a matter pending before the Examiner.

"Public Meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file.

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

"Staff to the Hearing Examiner" means the Clallam County Department of Community Development who shall serve as staff to the Hearing Examiner.

.3 JURISDICTION

The Hearing Examiner's jurisdiction is granted to those issues where ordinance or other appropriate regulation grants the Hearing Examiner the authority to make a decision, recommendation, or issue an order pursuant to CCC 26.04.060, as a land use decision, as that term is defined under RCW 36.70C.020, or as otherwise provided for within the County Code, including but not limited to Titles 19, 20, 26, 27, 29, 33, and 35.

.4 EX PARTE COMMUNICATION

No person shall communicate ex parte, directly or indirectly, with the Hearing Examiner with regard to the merits of a matter before the Examiner for a decision. All communication shall be directed to the Hearing Examiner's Clerk at 223 East 4th Street, Suite 5, Port Angeles, WA 98362.

The Examiner shall not communicate ex parte, directly or indirectly, with any person concerning a matter that is pending before the Examiner with regard to the merits of that, or a factually related petition or application.

If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed and proper discretion shall be exercised by the Examiner on whether to disqualify himself as Examiner for that particular hearing.

.5 NATURE OF PROCEEDINGS

5.1 Expeditious Proceedings

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

5.2 Frequency

Hearings with the Hearing Examiner will normally be scheduled twice per month at the discretion of the Hearing Examiner. The Hearing Examiner shall have discretion in setting the order in which cases on the agenda will be heard.

5.3 Format

The format for a hearing will be informal in nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

5.4 Site Visit

The Hearing Examiner may inspect, at his discretion, a site prior or subsequent to the hearing. The site visit is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

5.5 Record of Hearing

Hearings shall be electronically recorded and such recordings shall be part of the record. Copies of the electronic recordings of a particular proceeding and/or any written materials in the record shall be made available to the public consistent with requirements for release of public records. Transcripts are not public record and therefore are not provided in public record requests. Requests for transcripts are considered Custom Work by the County and may be approved in accordance with the County's policy on release of Public Records. No minutes of hearings will be kept.

5.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of Clallam County, and the State of Washington shall begin with the first day following the act or event initiating such period of time occurred. When the last day of the period so computed is a Saturday, Sunday, or a County, National, or State holiday, the period shall run until the end of the following business day.

.6 RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES

6.1 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of parties of record 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 number of witnesses heard and the nature and length of their testimony.

At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded or bypassed.

6.2 Responsibilities of County Staff

County staff shall provide a staff report consistent with the provisions of Section 9.6, provide notice of hearings, present materials at the hearings, and provide testimony and documentation relevant to the case.

6.3 Responsibilities of Applicant

Whenever possible, the applicant shall provide the Hearing Examiner with material prior to the hearing that supports his case. Applicants shall be prepared for questions by the Hearing Examiner, and be courteous to all who participate in the proceedings at all times.

An appellant shall be required to provide a specific and understandable written statement of the issues of appeal, which shall be submitted prior to the hearing.

6.4 Responsibilities of All Involved Parties, Witnesses, and Observers

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

.7 PRESIDING OFFICIALS

The Hearing Examiner shall preside over the hearings. The Hearing Examiner shall have all of the authority and duties as granted to him in state statutes and Clallam County Code. The Hearing Examiner shall have all powers necessary to that end, including the following:

- a. To administer oaths and affirmations;
- b. To issue subpoenas;
- c. To rule upon offers of proof and receive evidence;
- d. To regulate the course of the hearings, and the conduct of the parties and their agents;
- e. To question any party presenting testimony at the hearing;
- f. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
- g. To require briefs on legal issues;
- h. To consider and rule upon all procedural and other motions appropriate to the proceedings;
- i. To make and file recommendations or decisions; and
- j. To avoid unnecessary delays and to maintain order.

In the performance of his adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any County Official, employee, or agent of any municipal department.

.8 PRESENCE OF LEGAL COUNSEL AT HEARINGS OR PUBLIC MEETINGS

All parties participating in the hearings have the right to be represented at the hearings by legal counsel of their choice.

At the request of the County, a representative of the Clallam County Prosecuting Attorney's Office may be present at the hearings or public meetings to advise on matters of law and procedure.

All forms of legal authority including briefs, staff reports, and other legal memoranda upon which a party of record will be relying or presenting at the hearing must be submitted in both writing and electronic format, to the Hearing Examiner's Office, at least seven (7) business days in advance of the scheduled hearing date. To the extent possible, other materials such as letters, exhibits, scientific information, etc., shall be submitted in both written and electronic format. The above mentioned documents shall be available to the public at least five (5) business days in advance of the scheduled hearing date.

.9 CONDUCT OF HEARINGS

9.1 Notice Requirements of Hearings and Filings

All notice, time requirements, and methods of notification shall be consistent with the provisions set forth in CCC 26.10, in addition to the provisions of this section.

An affidavit attesting to the notice given of a hearing, including dates and places of publication and list of addressees for adjacent property owners as defined in CCC 26.10.410, shall be part of each case record.

9.2 Pre-hearing Conference

The Hearing Examiner may, on his 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; and
- d. Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.

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

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

All parties may be represented by legal counsel at any pre-hearing conference.

Following the pre-hearing conference, the Hearing Examiner shall issue an order reciting the actions taken or ruling on motions made at the conference.

9.3 Oath or Affirmation

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

9.4 Content of the Record

The record of a hearing conducted by the Hearing Examiner shall include, but is not limited to the following materials:

- a. The application or petition;
- b. The 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 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; and
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

9.5 Development of Record

A hearing may include, but is not limited to:

- a. A brief introductory statement of the Hearing Examiner process;
- b. A report by department staff including introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
- c. Testimony by the applicant or petitioner and other parties of record, and cross-examination of the witnesses;
- d. Support testimony of opposing parties;
- e. Opportunity for cross-examination and rebuttal; and
- f. An opportunity for questions by the Hearing Examiner.

9.6 Content and Form of Staff Reports

If the staff report is on a land use application, that report shall include the following, if relevant to the application:

- a. Names and addresses of the owner(s) and applicant(s) of the subject property and their interest in it;
- b. A brief summary of the requested action and the citation of the ordinance controlling the request;
- c. A common description and legal description of the subject property;
- d. A statement as to which Clallam County Code sections apply to the request;

- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; 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 germane to the case;
- f. The current access and proposed access to the subject property;
- g. An in-depth analysis of the proposed project including but not limited to the following elements of review:
 - Natural features;
 - Character and design, including population on figures;
 - Human resources;
 - Housing;
 - Economic development;
 - Transportation;
 - Community facilities, services, and institutions;
 - Government jurisdiction boundaries;
 - Neighborhoods;
 - Land use plans; and
 - Land use regulations.
- h. A history of the requested action and of the development on surrounding properties; in making the analysis, staff shall refer to applicable ordinances as often as possible.
- i. A summary of any other requested land use permits in the area.
- j. The compatibility and impact of the proposal on the existing development and the probable character of the proposal;
- k. A summary of the reports or recommendations of any consulting agencies;
- l. Appropriate maps of the subject property. If photographs of the site are available, the applicant is encouraged to provide color reproductions that will be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. Staff's analysis and recommendations.

The staff report shall be distributed to the Hearing Examiner, the applicant, and the public in advance of the hearing.

9.7 Continuances of Hearings

(1) By the Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a recommendation or decision, or he 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, and notice is posted on the door of the hearing room, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of CCC 26.10.

(2) At the request of a party

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. It shall be the policy of the Hearing Examiner that a maximum of two (2) continuances be granted in a matter.

9.8 Evidence

(1) Burden of proof

In each proceeding, the applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and Clallam County.

(2) Admissibility

The hearing generally will not be conducted in strict adherence to Rules of Evidence. Any relevant evidence shall be admitted if it is the type that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. 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.

(3) Copies

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 extra copies of all documents to the Hearing Examiner.

(4) Judicial notice

The Hearing Examiner may take judicial notice of judicially cognizable facts and may take notice of general, technical, or scientific facts within his specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

(5) Filing after closure of testimony

Occasionally, the Hearing Examiner may request a document 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.

(6) Record of evidence

All parties will be allowed an opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

.10 WITHDRAWAL OF APPLICATION OR PETITION

10.1 Withdrawal Prior to Service of Notice

If a withdrawal request is made before notice of the hearing is given, the applicant or petitioner shall notify the County of the withdrawal request and the withdrawal shall be automatically permitted.

10.2 Withdrawal Made Any Other Time

Withdrawal requests made at any time other than that mentioned in Section 10.1 shall be granted at the sole discretion of the Hearing Examiner.

.11 RECOMMENDATIONS/DECISIONS

11.1 Proposed Findings and Conclusions

The Hearing Examiner may request proposed findings and conclusions be submitted by the prevailing party.

11.2 Written Recommendations

For permits that require Board of Clallam County Commissioners' approval, a written report of findings, conclusions, and recommendations shall be forwarded to the Board and the parties of record. The Hearing Examiner's submittal shall be within the time allowed by law or agreed to by the Applicant and Clallam County. The findings, conclusions, and recommendations shall indicate how the recommendation carries out the goals, policies, plans, and requirements of Clallam County Code and other policies and objectives of the County.

11.3 Written Decisions

For permits where 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 and the County Assessor as required by CCC. The Hearing Examiner's decision shall be within the time allowed by law or agreed to by the Applicant and Clallam County. The findings, conclusions, and decision shall indicate how the decision carries out the goals, policies, plans, and requirements of Clallam County Code, and other policies and objectives of the County.

11.4 Content of Recommendation or Decision

A recommendation or decision shall include:

- a. A statement of the nature and background of the proceeding.
- b. Findings of fact including the ultimate facts and the basic facts leading up to the ultimate questions; they shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of each fact found upon each contested issue of fact.
- c. Conclusions, whenever practical, shall be referenced to specific provisions of the law and regulations, or both, together with reasons and precedents relied upon to support the same. The conclusions shall refer to the effect of the recommendation with reference to the Comprehensive Plan, the effect of both approval and denial on property in the vicinity; on business or commercial aspects (if relevant), and on the public.
- d. Appropriate rule, order, or relief – The recommendation or decision shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence in the record. All decisions and recommendations may include conditions of approval.

11.5 Procedure for Reopening Hearing

At any time prior to the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceeding for the receipt 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 rebuttal arguments.

If within five (5) working days after the hearing, any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that, with reasonable diligence, was unavailable at the time of the hearing.

11.6 Procedure for Reconsideration

Any party of record may file a written request for reconsideration with the Hearing Examiner within ten (10) calendar days of the mailing of the Hearing Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of procedure or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's recommendation or decision.

The Hearing Examiner shall respond to the request for reconsideration at the next regularly scheduled meeting or within ten (10) calendar days after the date the request for reconsideration is filed, whichever is sooner. The Hearing Examiner shall respond by either denying the request or approving it, by modifying or amending the recommendation or decision based on the established record, or setting the matter for an additional hearing.

If an additional hearing is required, the notice of said hearing shall be mailed to all parties of record not less than five (5) working days from the date of the Order of Hearing Examiner.

If the reconsideration request is based on the submission of additional evidence that could not, with reasonable diligence, have been discovered and produced at the previous proceeding, the decision-maker may re-open the proceeding, such as an open record hearing, without creating any conflict with CCC 26.10 or violation of RCW 36.70B. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

11.7 Clarification

Any party of record may request, within fifteen (15) calendar days of the mailing of the Hearing Examiner's recommendation or decision, clarification of the decision upon notice to other parties of record. The primary purpose of clarification is to correct obvious errors or omissions. The request may be in letter form.

.12 APPEALS OF DECISIONS

When the Hearing Examiner issues a notice of decision and all reconsideration periods have expired, that decision may be appealed to the Clallam County Superior Court pursuant to RCW 36.70C or other appropriate tribunal consistent with applicable local, state and/or federal laws.

.13 CONFLICTS

The Rules of Procedure are adopted to supplement the requirements set forth in Clallam County Code. Any conflict between the rules and the provisions of the code will be decided consistent with the provisions of the code.