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**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
ON
APPEAL OF ADMINISTRATIVE DECISIONS
Policy & Procedure 922**

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APPEAL OF ADMINISTRATIVE DECISIONS

.1 APPLICATION OF RULES

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application.

.2 DEFINITIONS

See .2 DEFINITIONS in Policy & Procedure 921.

.3 FILING

3.1 Compliance with Rules

All appeals must comply with the rules and with the requirements established in the applicable sections of the Clallam County Code under which the appeal is filed.

3.2 Timeliness

To be considered timely, an appeal must be received no later than the close of the regular office hours on the last day of the appeal period. The appeal must be filed with the Clallam County Department of Community Development, 223 East 4th Street, Suite 5, Port Angeles, WA 98362.

3.3 Fee

Appeals shall be accompanied by the appropriate filing fee as required by the Clallam County Code.

3.4 Contents

All appeals shall be filed in accordance with the Clallam County Code. An appeal must be in writing and contain the following:

- a. A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the Appellant's issues on appeal, noting Appellant's specific exceptions and objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification; and
- d. Signature, address, and telephone phone number of the Appellant, and name and address of Appellant's designated representative, if any.

3.5 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 discretion, waive or modify the page limits at the request of either of the parties in order to accommodate complex legal and factual issues. Briefs or other memoranda of law shall be submitted in both written and electronic format. To the extent possible, other materials such as letters, exhibits, scientific information, etc., shall be submitted in both written and electronic format.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal.

3.6 Motions

Motions and responses to motions shall not exceed fifteen (15) double-spaced pages in length without prior approval of the Hearing Examiner.

3.7 Proposed Findings and Conclusions

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

.4 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 is without merit on its face, frivolous, or brought merely to secure delay.

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.

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

.5 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; or
- 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 shall be represented at any pre-hearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner.

Following the pre-hearing conference, the Hearing Examiner shall issue an order reciting the actions taken or ruling on motions made at the conference. All orders issued shall become a part of the record. Pre-hearing orders may not be appealed until after the Hearing Examiner issues a final decision.

Throughout the process, parties are encouraged to resolve issues using mediation where someone that is not a party to the appeal and agreed upon by the parties, serves as a mediator to attempt to resolve the issues.

.6 WITHDRAWAL

An appeal may be withdrawn only by the Appellant in the form of a written "Request for Withdrawal" submitted to the Clerk to the Hearing Examiner. 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. An Appellant's "Request for Withdrawal" shall be granted as a matter of right and the appeal dismissed.

.7 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 representative and inform the Hearing Examiner's Office of the name, address, and telephone number of the designated representative. The rights of such an Appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to party.

.8 NOTICE OF HEARING

8.1 Contents

The "Notice of Hearing" shall include:

- a. The time, place, and nature of the hearing;
- b. The legal authority and jurisdiction for the hearing;

- c. The file number, address, and other identifying information for the underlying decision or action being appealed;
- d. A brief statement as to the issue(s) to be considered;
- e. Reference to the applicable code section(s); and
- f. The name and telephone number of the County Official responsible for the decision being appealed.

8.2 Time

Notice of the hearing shall be given within the time required by the applicable section(s) of Clallam County Code. If the time for "Notice of Hearing" is not specified by the applicable section(s), or if they conflict, minimum notice shall be fifteen (15) calendar days.

8.3 Responsibility

The Department of Community Development shall be responsible for serving "Notice of Hearing" for appeals.

8.4 Record of Notice

A copy of the "Notice of Hearing" shall be made part of each record.

.9 PARTIES' RIGHTS AND RESPONSIBILITIES

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

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

Parties, witnesses, or 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.

.10 ORDER OF DISMISSAL

The Hearing Examiner may dismiss an appeal when the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

.11 HEARING 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 Examiner and to provide the parties a fair opportunity for hearing.

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

- a. Examiner's introductory statement;
- b. Background presentation by department staff;
- c. Appellant's argument;
- d. Department's presentation;
- e. Applicant's presentation;
- f. Rebuttal; and
- g. Closing argument by Appellant, Applicant and Department.

Notwithstanding the provisions of the Code, 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 presentation at the hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

.12 HEARING EXAMINER'S DECISION

A decision of the Hearing Examiner on appeal shall include, but is not 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, pre-hearing determinations and other similar information, and the decision being appealed.
- b. Findings – The individual facts that the Hearing 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 of fact.
- d. Decision – The Hearing Examiner's decision as to outcome of the appeal (affirm, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.

.13 RECORD

The record of an appeal shall include:

- a. The application or petition;
- b. The department staff reports and the decision being appealed;
- 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 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, if applicable.

The Hearing Examiner's administrative file on an appeal case may include other information or materials which are not part of the evidentiary record.

.14 RECONSIDERATION

Reconsideration of the appeal decision may be granted by the Hearing Examiner on a showing of one or more of the following:

- a. Irregularity in the proceedings by which any party of record was prevented from having a fair hearing;
- b. Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing; and
- c. Clear mistake as to a material fact.

A Motion for Reconsideration must be filed within ten (10) working days of the date of the Hearing Examiner's decision on the appeal. Unless otherwise specifically provided by applicable section(s) of the Code, the filing of a "Motion for Reconsideration" shall not stop the period provided to appeal the Hearing Examiner's decision.

No party may file a response to a "Motion for Reconsideration" except at the request of the Hearing Examiner.

.15 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 appeal decision upon notice to the other party.