

# **RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARING EXAMINER OF ISLAND COUNTY, WASHINGTON**

## Purpose

These Rules of Procedure exist to facilitate orderly open record hearings related to land use applications and appeals. They should be read in conjunction with the Chapter 16.13 Island County Code (ICC), which established the Hearing Examiner system. As noted in Section 1.10, any conflict between the Rules of Procedure and the provisions of the ICC will be resolved in favor of the ICC. These rules exist to provide guidance. The provisions in these rules may, at the discretion of the Hearing Examiner, be waived in order to promote hearing fairness and efficiency. This Chapter applies to open record hearings on land use applications.

## **CHAPTER I: HEARINGS ON PERMIT APPLICATIONS**

### **SECTION 1.1: DEFINITIONS**

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

"Aggrieved person" means a person is aggrieved or adversely affected within the meaning of this chapter only when all of the following conditions are present:

- a. The land use decision or determination has prejudiced or is likely to prejudice that person;
- b. That person's asserted interests are among those that the county was required to consider when it made the land use decision or determination; and
- c. 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 or determination.

"Applicant" means a person applying for permission for a land use or development regulated by the Island County Code.

"Calendar Day" means each day of the calendar week. When the last day of a stated period should fall on a Saturday, Sunday, or National, State, or Island County holiday, the stated period shall run until the end of the following working day.

"County" means Island County.

"Clerk of the Hearing Examiner" means a person designated by Island County to assist the Hearing Examiner in his/her duties.

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

"County" means Island County, Washington.

"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.

"Hearing" means a hearing open to the public at which testimony and exhibits of evidence are presented to the Hearing Examiner.

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

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

"Open Record Appeal Hearing" means an open record hearing held on an appeal.

"Open Record Predecision Hearing" means an open record hearing held prior to a county decision on a project permit.

"Order" means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

"Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

"Party of record" means

- a. The applicant and any person, agency or organization who specifically requests in writing a notice of decision or by signing a register provided for such purpose at an open record predecision or appeal hearing.
- b. A person submitting written testimony about a matter pending before the Hearing Examiner, excluding persons who have only signed petitions or mechanically produced form letters; or
- c. The Island County's administrative staff.

"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.

"RCW" means the Revised Code of Washington.

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

### **SECTION 1.2: JURISDICTION**

The scope of the Hearing Examiner's jurisdiction is defined by the Board of County Commissioners in an ordinance or other authority. The scope of this jurisdiction includes the power to issue orders and make a decision or recommendation on the application.

### **SECTION 1.3: EX PARTE COMMUNICATION**

- 1.3.1 No person, nor his or her agent, employee, or representative, shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of an application. This rule shall not prohibit ex parte communication concerning procedures.
- 1.3.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, with regard to the merits of a petition, application, or appeal. This rule shall not prohibit ex parte communication concerning procedures.
- 1.3.3 If prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, 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 1.4: NATURE OF PROCEEDINGS**

- 1.4.1 Expeditious Proceedings  
To the extent practicable and consistent with requirements of law, hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner, Island County staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.
- 1.4.2 Frequency  
Hearings will be scheduled through the Island County Clerk in coordination with the Hearing Examiner. 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.
- 1.4.3 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 will become available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.
- 1.4.4 Site Visit

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When necessary in the judgment of the Hearing Examiner, the Hearing Examiner may inspect a site prior or subsequent to the hearing. If the Hearing Examiner has made a site visit, the Hearing Examiner shall state the time, manner, and circumstances of any site visit prior to hearing evidence on the application. The site view is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

1.4.5 Record of Hearing

- a. Hearings shall be electronically recorded and such recordings shall be a part of the record. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three working days of a request. The requester shall pay the reasonable cost of such copying. No minutes of hearings will be kept.
- b. Copies of any written materials in the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, Island County ordinances, and 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. When the last day of the period so computed is a Saturday, Sunday, or national or state holiday, the period shall run until the end of the next following working day.

## **SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF PARTIES**

1.5.1 Rights of Island County

The Island 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.

1.5.2 Rights of Applicant

Every applicant shall have the right of notice, presentation of evidence and testimony, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony.

1.5.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and the nature and length of their testimony.

1.5.4 Responsibilities of Island County

The Island County Planning and Community Development Department shall provide a staff report, provide notice of hearings, be present at the hearings, and provide the Hearing

Examiner with materials relevant to the case. Staff reports should be available to the public a minimum of seven days before the hearing.

1.5.5 Responsibilities of Applicant

The applicant shall provide the Hearing Examiner with material that supports his/her case five working days prior to the hearing and be prepared for questions from the Hearing Examiner. All supporting materials shall be provided to the Clerk of the Hearing Examiner a minimum of seven days prior to the hearing.

1.5.6 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 will result in removal from the hearing at the discretion of the Hearing Examiner.

## SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Official

Hearings shall be presided over by the Hearing Examiner. The Hearing Examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter decisions. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes and Island 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; to maintain order; and to issue decisions in the form of recommendations or final decisions. He/she shall have all powers necessary to that end, including the following:

- a. To administer oaths and affirmations;
- b. To rule upon offers of proof and receive evidence;
- c. To conduct review trips;
- d. To hold conferences for the settlement or simplification of the issues, at the Hearing Examiner's discretion;
- e. To regulate the course of the hearing;
- f. To take judicial notice of judicially cognizable facts;
- g. To question any party presenting testimony on the at the hearing;
- h. To require briefs on legal issues;
- i. To consider and rule on procedural and other motions;
- j. To conduct public hearings in accordance with Chapter 42.32 RCW and all other applicable laws, and to prepare a record;
- k. To make and enter written findings and conclusions to support the decision;
- l. To take any other action authorized by or necessary to carry out Island County ordinances.

1.6.2 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 municipal department.

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1.6.3 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. At the request of any department and discretion of the Hearing Examiner, an Island County attorney may be present at the hearings to advise on matters of law and procedure.
- c. 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.
- d. 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 to the Hearing Examiner's office at least seven days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public at least seven days in advance of the scheduled hearing date.

**SECTION 1.7: CONDUCT OF HEARINGS**

1.7.1 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 the Island County ordinances.
- b. Affidavit of Notice. An affidavit attesting to the notice given of a hearing (including dates and places of publication, and list of addressees) shall be part of each case record.

1.7.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth and subject to penalties for perjury. Either the Hearing Examiner or the clerk shall administer the oath or affirmation.

1.7.3 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 or petition;
- b. The departmental staff report;

- c. An affidavit attesting to the written notice of a given public hearing and a statement of notices published, mailed or posted;
- d. All evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- e. A statement of all materials officially noticed;
- f. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- g. Recordings made on electronic equipment; and
- h. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

1.7.4 Development of Record

The order of a hearing will generally be as follows, with recognition that the Applicant has the burden of proof and may elect to present first, at the option of the county:

- a. Introductory remarks by the Hearing Examiner;
- b. Presentation by the County and Applicant;
- c. Public testimony;
- d. Response to public testimony by County and Applicant, if necessary.

1.7.5 Content and Form of Staff Reports

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

- a. A list of the names and addresses of the owner(s) and applicant(s) 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 controlling the request.
- c. A common description of the subject property and a legal description of the subject property.
- d. A statement identifying applicable Island County zoning code regulations.

- 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.
- f. The current access to the subject property and the proposed access to the subject property.
- g. An in-depth analysis of the proposed project. This analysis may include, but not be limited to, the following elements of review:
  - 1. natural features;
  - 2. character and design, including population figures;
  - 3. human resources;
  - 4. housing;
  - 5. economic development;
  - 6. transportation;
  - 7. community facilities, services and institutions;
  - 8. government jurisdiction boundaries;
  - 9. neighborhoods;
  - 10. land use plans; and
  - 11. land use regulations.
- h. A history of the requested action and a history of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as possible.
- i. A summary of any other requested land use permits in the area.
- j. A description of 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 other agencies consulted.
- l. Appropriate maps of the subject property. If photographs of the site are available the applicant is encouraged to provide color reproductions that shall be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. Staff's conclusions and recommendations.

The staff report shall be distributed to the Hearing Examiner, the applicant and the public.

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1.7.7 Continuances of Hearings

a. Hearing Examiner

If the Hearing Examiner finds that more information is necessary in order to make a recommendation or 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, 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 the Island County ordinances.

b. 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. Any party requesting a continuance should confer with the other parties to select a mutually agreeable date to resume the hearings; continuances will more likely be granted with the consent of all parties.

1.7.8 Re-Opening Hearings

- a. At any time prior to the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceedings for the reception of further evidence or testimony. 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.
- b. If within seven 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 was unavailable at the time of the hearing.

1.7.9 Evidence

- a. 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 the Island County ordinances.
- b. 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.

- c. 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.
- d. 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 or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- e. Occasionally, 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.
- f. 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.

### **SECTION 1.8: WITHDRAWAL OF APPLICATION OR PETITION**

- 1.8.1 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 Island County of the withdrawal request and the withdrawal shall be automatically permitted.
- 1.8.2 Withdrawal Made Any Other Time  
Withdrawal requests made at any time other than that mentioned in Sec. 1.8.1 shall be granted at the sole discretion of the Hearing Examiner.

### **SECTION 1.9: DECISIONS**

- 1.9.1 Written Recommendations  
For permits that require Island County Board of Commissioner approval, a written report of findings, conclusions and recommendations shall be forwarded to the Island County Board of Commissioners and the parties of record. The Hearing Examiner's recommendations shall be issued within ten working days from the record being closed or, a time agreed upon by the applicant and Island County. The findings, conclusions and recommendations shall indicate how the recommendation carries out the goals, policies, plans and requirements of the Island County ordinances and other policies and objectives of Island County.
- 1.9.2 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 issued within ten working days from the record

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being closed or, a time agreed upon by the applicant. The findings, conclusions and decision shall indicate how the decision carries out the goals, policies, plans and requirements of Island County ordinances and other policies and objectives of Island County.

1.9.3 Content of Decision

A recommendation/decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The findings shall consist of a concise statement of each fact found upon each contested issue of fact.
- c. Conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable.
- d. The recommendation or decision. The recommendation or decision shall be based upon a consideration of the whole record and supported by substantial evidence. All recommendations and decisions may include conditions of approval.
- e. A statement of any threshold determinations made under SEPA (RCW 43.21C).

1.9.5 Request For Clarification

Any party who participated at the hearing may request at any time a clarification of the decision. The Hearing Examiner shall have the discretion to provide clarification. A request for clarification shall not stay the effect of a decision or amend the conclusions of the Hearing Examiner's decision.

### **SECTION 1.10: CONFLICTS**

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

## **CHAPTER II: RULES OF APPEAL**

This chapter applies to appeals of administrative decisions.

### **SECTION 2.1: DEFINITIONS**

See DEFINITIONS, Chapter 1, Section 1.

### **SECTION 2.2: FILING**

#### **2.2.1 Timeliness**

To be considered timely, an appeal from any administrative decision to the Hearing Examiner must be received no later than 4:30 PM on the last day of the appeal period. An appeal must be filed with the Island County Clerk.

#### **2.2.2 Fee**

Appeals shall be accompanied by any appropriate filing fee as required by the Island County Ordinances or Island County Fee Schedule.

#### **2.2.3 Contents**

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

- a. A statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- b. A statement of the Appellant's issues on appeal, noting Appellant's specific objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification;
- d. Signature, address, phone and fax number, and email of the Appellant, and name and address of Appellant's designated representative, if any; and
- e. Statement that the Appellant has read the appeal and believes its contents to be true.

#### **2.2.4 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 primary brief not exceeding fifteen double-spaced pages in length. In addition, the Appellant may submit a response brief not exceeding ten pages in length. The Hearing Examiner may, at his or her 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 must be limited to the specific issues set forth in the Appellant's statement of appeal.

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2.2.5 Motions

- a. A party to the proceeding may present a motion to the Hearing Examiner in accord with the time frames given in a pre-hearing order. All motions must be presented in writing and clearly noted as such. Notice of the motion and a copy of it must be given to all other parties to the proceeding. Motions and responses to motions are not to exceed fifteen double-spaced pages in length without prior approval of the Hearing Examiner.
- b. A party to the proceeding may present a motion for continuance of a hearing. Any such motion should be made at least five working days 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. Any party requesting a continuance should confer with the other parties to select a mutually agreeable date to resume the hearings; continuances will more likely be granted with the consent of all parties.

**SECTION 2.3: DISMISSAL**

- 2.3.1 An appeal may be dismissed without a hearing in response to a motion to dismiss 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 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 When a decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and shall be dismissed.
- 2.3.4 An appellant may withdraw the appeal at any time, in which case it shall be dismissed.

**SECTION 2.4: PREHEARING ORDERS**

- 2.4.1 The Hearing Examiner may, on his/her own order, issue a prehearing order (PHO) to:
  - a. Identify, clarify, and simplify the issues;
  - b. Determine when motions may be presented and decide prehearing motions;
  - c. Establish a schedule for the hearing process, including orders for the exchange of briefs relating to the appeal; and

- d. Address other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.

2.4.2 The prehearing order may be circulated via e-mail or fax.

2.4.3 Prehearing orders may not be appealed.

2.4.4 The Hearing Examiner may, at his/her own discretion, hold a preconference hearing to facilitate the hearing process. Holding a preconference hearing is not required for the issuance of a PHO.

- a. All parties shall receive notice of the prehearing conference.
- b. The prehearing conference may take place via telephone or in person.
- c. All parties of record have the right to be represented at any prehearing conference, but such representation is not required.

#### **SECTION 2.5: WITHDRAWAL**

2.5.1 An appeal may be withdrawn only by the appellant.

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

#### **SECTION 2.6: 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 Clerk to the Hearing Examiner 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.

#### **SECTION 2.7: NOTICE OF HEARING**

2.7.1 Contents & Distribution  
The notice of hearing given to the parties shall conform to the provisions of the Island County ordinances. Notice need only be given to the parties involved in the appeal.

2.7.2 Time

Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for Notice of Hearing is not specified by the applicable ordinance(s), or applicable ordinances conflict, minimum notice shall be seven calendar days.

2.7.3 Responsibility

Island County shall be responsible for serving a Notice of Hearing for appeals.

**SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES**

- 2.8.1 Although appellants and applicants have the right to be represented by an attorney, representation by an attorney is not required.
- 2.8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 2.8.3 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.

**SECTION 2.9: DEFAULT**

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 2.10: HEARING FORMAT**

- 2.10.1 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.
- 2.10.2 The Hearing Examiner may establish time limits for initial or rebuttal evidence, may limit cross-examination of witnesses, and may limit the number of witnesses to be heard.
- 2.10.3 The order of an open record appeal hearing will generally be as follows:
  - a. Introductory remarks by the Hearing Examiner;
  - b. Presentation of Appellant witnesses, and cross-examination of those witnesses by (the Applicant and) the City;
  - c. (Presentation of Applicant witnesses, and cross-examination of those witnesses by the City and Appellant);
  - d. Presentation of City witnesses, and cross-examination of those witnesses by (the

Applicant) and the Appellant;

e. Closing arguments, if any, by (the Applicant), the City and Appellant.

2.10.4 Notwithstanding the provisions of the Island County ordinances, the order of hearing may be modified or a different order established as the 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 Examiner's approval.

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

#### **SECTION 2.11: HEARING EXAMINER'S DECISION**

2.11.1 A decision of the Hearing Examiner on appeal shall include 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.
- c. Conclusions. Legal conclusions based upon specific provisions of law and the findings.
- 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.

#### **SECTION 2.12: RECORD**

2.12.1 The record of an appeal shall include:

- a. The application or petition;
- b. The departmental staff report;
- c. A notarized affidavit attesting to the written notice of a given public hearing and a statement of notices published, mailed or posted;
- d. All evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- 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).

#### **SECTION 2.13: RECONSIDERATION**

2.13.1 Procedure for Reconsideration

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Certain decisions of the Director of Public Works may be appealed to the Hearing Examiner. Reconsideration of the decision of the Hearing Examiner on those appeals may be requested by any party to the appeal, if:

- a. new facts are discovered that could not have been presented during the appeal hearing; or

- b. There is an error of fact or law in the decision of the hearing examiner.

A request for reconsideration must be filed within 10 working days of the date of the decision and must specify the fact, or identify the error of fact or law that should be reconsidered.

The Hearing Examiner shall rule on whether or not to accept the request within 10 working days. If accepted, the hearing examiner shall take appropriate action, which may include re-opening the hearing or correcting an error or other appropriate action.

#### **SECTION 2.14: CLARIFICATION**

- 2.14.1 Any party of record may request at any time clarification of the appeal decision upon notice to the other party. Such clarification shall not stay the effect of a decision or amend the conclusions of the Hearing Examiner's decision.

#### **SECTION 2.15: EX PARTE COMMUNICATION**

- 2.15.1 No person, nor his or her agent, employee, or representative, shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of an appeal. This rule shall not prohibit ex parte communication concerning procedures.
- 2.15.2 The Hearing Examiner shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, with regard to the merits of an appeal.
- 2.15.3 If prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, 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 2.16: PRESIDING OFFICIALS**

- 2.16.1 Hearings shall be presided over by the Hearing Examiner. The Hearing Examiner shall receive and examine available information, conduct appeal hearings and prepare a record thereof, and enter decisions. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes and Island 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; to maintain order; and to issue decisions in the form of recommendations or final decisions. He/she shall have all powers necessary to that end, including the following:

- a. To administer oaths and affirmations;

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- b. To rule upon offers of proof and receive evidence;
- c. To conduct review trips;
- d. To hold conferences for the settlement or simplification of the issues, at the Hearing Examiner's discretion;
- e. To regulate the course of the hearing;
- f. To take judicial notice of judicially cognizable facts;
- g. To question any party presenting testimony on the at the hearing;
- h. To require briefs on legal issues;
- i. To consider and rule on procedural and other motions;
- j. To conduct public hearings in accordance with Chapter 42.32 RCW and all other applicable laws, and to prepare a record;
- k. To make and enter written findings and conclusions to support the decision;
- l. To take any other action authorized by or necessary to carry out Island County ordinances.

2.16.2 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 municipal department.

#### **SECTION 2.17: CONFLICTS**

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