



RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARINGS EXAMINER OF THURSTON COUNTY, WASHINGTON

CHAPTER I: PUBLIC HEARINGS ON PERMIT APPLICATIONS

Application of these Rules

This Chapter applies to open record hearings on land use applications. The procedures established in these rules shall apply to public hearings on land use permit applications and appeals of administrative decisions before the Hearing Examiner. The Hearing Examiner Rules of procedure are adopted to supplement the requirements set forth in the Thurston County Code. Any conflicts between these rules and the provisions of the TCC will be decided consistent with the provisions of the TCC.

SECTION 1: DEFINITIONS

- 1.1 "Administrative decision" means a decision issued by the Director of the Resource Stewardship Department or a threshold determination issued by the Responsible Official in the course of State Environmental Policy Act (SEPA) review.

"Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a 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, and who has applied for a land use permit or approval.

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

"Board" means the Board of Thurston County Commissioners

"County" means Thurston County, Washington.

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

"Hearing" means the proceeding at which testimony and exhibits of evidence are presented to the Hearings Examiner.

"Hearings Examiner" or "Examiner" means the Hearings Examiner or the Hearings Examiner Pro Tem of Thurston 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 Hearings Examiner and shall include any party in a contested case.

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

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

"Open record hearing" is a proceeding on a land use permit application or a hearing on an administrative appeal in which evidence is offered and the complete record on which the County's decision is based is created. An open record hearing may be held prior to a County decision on a project permit to be known as an "open record pre-decision hearing." An open record hearing may also be held on an appeal, known as an "open record appeal hearing," if no open record pre-decision hearing has been held on the project permit. This is contrasted with a "closed record appeal", which is a hearing on the record following an open record hearing on a project permit application with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

"Party" means the Applicant, and/or Appellant, and County representatives involved in a given matter before the Examiner.

"Party of record" means:

- a. A person who testifies at a hearing;
- b. the Applicant and/or Appellant;
- c. Persons submitting written testimony about a matter pending before the Examiner; and
- d. Persons who have signed the sign-up sheet at the hearing.

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

"Staff" means any staff member of Thurston County who participates in a hearing or the preparation of hearing before the Hearing Examiner.

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

"TCC" means Thurston County Code.

SECTION 2: JURISDICTION

The Hearings Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearings Examiner the authority to make a decision, recommendation, or issue an order pursuant to TCC 2.06.010.

Any party may challenge the Examiner's legal authority to hear any case on jurisdictional grounds, or the Examiner may independently raise the jurisdictional issue. If the Examiner lacks jurisdiction, the matter cannot be heard and decided by the Examiner.

SECTION 3: EX PARTE COMMUNICATION

- 3.1
- a. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Examiner shall communicate ex parte, directly or indirectly, with the Hearings Examiner concerning the merits of that or a factually related petition or application.
 - b. The Examiner shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular petition or application that is pending before the Examiner with regard to the merits of that, or a factually related, petition or application.
 - c. If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed on the record and proper discretion shall be exercised by the Examiner on whether to disqualify himself or herself as Examiner for that particular hearing.
 - d. This rule shall not prohibit ex parte communications concerning scheduling, logistics, pre-hearing motions, and similar procedural matters. Such permissible ex parte procedural communications should be directed to the Examiner's clerk at 2000 Lakeridge Drive SW, Building 1, Olympia, Washington 98502-6090. Email communications on procedural questions are permitted.

SECTION 4: NATURE OF PROCEEDINGS

4.1 Expeditious Proceedings

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

4.2 Frequency

Hearings will normally be scheduled on the first and third Mondays of every month. There may be more than one case scheduled to commence at the same time, and in such event the Hearings Examiner shall have discretion in setting the agenda.

4.3 Format

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

4.4 View Trip

When necessary, the Hearings Examiner may inspect the site prior or subsequent to the hearing. The view trip is not part of the record. Failure to inspect the site will not render the Hearings Examiner's recommendation or decision void. Ex parte communication shall be avoided during any view trips.

4.5 Record of Hearing

- a. Record. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the public within three business days of a request. The reasonable cost of such copying, if necessary, shall be paid by the requester. No minutes of the hearing 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.

4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of Thurston County, 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 a County, national or State holiday, the period shall run until the end of the next following business day.

SECTION 5: RIGHTS AND RESPONSIBILITIES OF PARTIES

5.1 Rights of County

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

5.2 Rights of Applicant

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

5.3 Rights of Parties of Interest

Every party of interest shall have the right to present evidence and testimony at hearings. The right of parties of interest to cross-examine, object, submit motions and arguments shall be at the discretion of the Hearings Examiner. The Hearings Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

5.4 Responsibilities of County Staff

The County Staff shall: provide a staff report consistent with the provisions of Rule 7.6; provide notice of hearings; present materials at the hearings; and, provide the Hearings Examiner with documentation relevant to the case.

5.5 Responsibilities of Applicant

Whenever possible the Applicant shall: prior to the hearing, provide the Hearings Examiner with material that supports his/her case; be prepared for questions by the Hearings Examiner; and, be courteous to all who participate in these proceedings.

5.6 Responsibilities of Interested Parties

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

SECTION 6: PRESIDING OFFICIAL

6.1 Presiding Official

- a. Hearings shall be presided over by the Hearings Examiner.
- b. The Hearings Examiner shall have all of the authority and duties as granted him/her in state statutes, TCC and other County ordinances. Included in the duties of the Hearings 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 conduct fair and impartial proceedings;
 3. to rule upon offers of proof and receive evidence;
 4. to regulate the course of the hearings and the conduct of the parties and their agents;
 5. to question any party presenting testimony at the hearing;
 6. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
 7. to require briefs on legal issues;
 8. to consider and rule upon all procedural and other motions appropriate to the proceedings; and,
 9. to make and file recommendations or decisions.
- c. Interference. In the performance of his/her adjudicative functions, the Hearings Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.
- d. Time Limits on Witness Testimony. If the Hearing Examiner determines that testimony is repetitious or irrelevant to the issues of the case, the Examiner may impose reasonable limitations on the number of witnesses and on the nature and length of testimony.
- e. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearings Examiner shall control the amount and style of cross-examination.

6.2 Presence of Legal Counsel at Public Hearings or Meetings

- a. Although representation by legal counsel is not required at the hearings, 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 Hearings Examiner, a representative of the Thurston County Prosecuting Attorney's Office may be present at the public hearings or meetings to advise on matters of law and procedure.
- c. 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 should be submitted to the Hearings Examiner's office at least one week in advance of the scheduled hearing date. To the extent possible, the above

mentioned documents shall be available to the public at least one week in advance of the scheduled hearing date.

SECTION 7: CONDUCT OF HEARINGS

7.1 Prehearing Conference

- a. The Hearings 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;
 - (4) Other matters deemed by the Hearings Examiner appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call or in person, at the Examiner's discretion.
- c. All parties shall receive notice of any prehearing conference. Notice may be written or oral.
- d. All parties shall be represented at any prehearing conference unless they waive the right to be present or represented, and are granted permission by the Hearings Examiner not to attend.
- e. Following the prehearing conference, the Hearings Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

7.2 Oath or Affirmation

All testimony before the Hearings Examiner shall be given under oath or affirmation to tell the truth. Either the Hearings Examiner or the clerk shall administer the oath or affirmation.

7.3 Content of the Record

The record of a hearing conducted by the Hearings Examiner shall include, but not be 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 matters officially noticed;
- e. an environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) where applicable;
- f. a decision or a recommended decision containing the findings and conclusions of the Hearings Examiner; and,
- g. audio recordings made on electronic equipment.

7.4 Development of Record at the Public Hearing

A public hearing usually will include, but not be limited to, the following elements: a brief introductory statement of the Hearings Examiner process by the Hearings Examiner; a report by the departmental staff that shall include introduction of the official file, reference to visual aids and a summary of the recommendation of the Department; testimony by the Applicant and cross examination of Applicant witnesses; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and, opportunity for questions by the Hearings Examiner.

7.5 Continuances of Hearings

a) Hearings Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a recommendation or decision, or he/she is unable to hear all testimony on the matter, the hearing may be continued. If continued to a specified time and place, no further notice of that hearing need be given. If the time and date of the continuance are not established on the record of the initial hearing, the continued hearing must be re-noticed consistent with County Code requirements. Continuances shall be consistent with the provisions of the TCC.

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. The request must be reasonable. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearings Examiner shall have discretion to grant or deny the request for continuance.

7.6 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 Thurston County.
- b. **Admissibility.** The hearing generally will not be conducted according to court rules relating to evidence and procedure. 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 Hearings Examiner shall exercise 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, and at the Examiner's discretion, parties shall be given an opportunity to compare the offered copy with the original. Parties are requested to bring enough copies of each exhibit such that there is at least one for the opposing party, one for the official record, and a working copy for the Examiner. All items submitted into evidence for the official record shall be in both paper and electronic format (.pdf) to the extent possible.
- d. If any hearing participant submits voluminous written material as evidence, the Hearing Examiner, at his/her discretion, can order the submitting party to provide an abbreviated summary statement of the documents with citations and/or table of contents.
- e. Judicial notice. The Hearings Examiner may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. The Hearings Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- f. Occasionally during a hearing the Hearings Examiner may hold the record open for documents to be submitted after the hearing has adjourned. Only those documents specifically identified by the Hearings Examiner on the record at the public hearing may be submitted. At the Examiner's discretion, other parties may be given the opportunity to respond to documents thus submitted after adjournment. The timelines for submitting all documents after adjournment of the hearing will be established on the record and may be memorialized in a post-hearing order.
- g. At any time prior to the filing of the final decision or recommendation, the Hearings Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file written comments in response.
- g. Objections to admissibility of evidence will be noted in the record. All parties will be allowed opportunity to make a record of evidence offered during the course of the hearing. This record shall include offers of proof.

SECTION 8: WITHDRAWAL OF APPLICATION OR PETITION

8.1 Withdrawal Prior to Issuance of Hearing Notice

Before the official notice of the public hearing is issued, the Applicant may notify the County of a withdrawal request to withdraw the application and withdrawal shall be automatically permitted.

8.2 Withdrawal After Issuance of Hearing Notice

If the Applicant requests to withdraw the matter after notice of hearing is issued, the Hearings Examiner shall use discretion in allowing or denying the request.

SECTION 9: RECOMMENDATIONS / DECISIONS

9.1 Written Recommendations

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

9.2 Written Decisions

For permits in which the Hearings Examiner has final approval authority, a written report of findings, conclusions and decision shall be made and forwarded to all parties of record. The Hearings Examiner decision shall be issued within the time allowed by law or agreed to by the Applicant and Thurston County. The findings, conclusions and decision shall indicate how the decision carries out the goals, policies, plans and requirements of the TCC and other policies and objectives of the County.

9.3 Content of Recommendation/Decision

A recommendation/decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall include not only the findings of the ultimate facts but also the basic facts leading up to the ultimate questions. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The findings shall consist of concise statements of each

fact found upon each contested issue. The source of each finding shall be identified.

- c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same.
- d. The recommendation/decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence. All decisions and recommendations may include conditions of approval.

9.4 Procedure for Reconsideration and Reopening Hearing

- a. If within five (5) working days after the Public Hearing any party of record petitions the Hearings Examiner for a reopening of the hearing, the Hearings Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.
- b. Reconsideration.
 - 1) Any party of record may file a written request with the Hearings Examiner for reconsideration within ten (10) days of the date of the Hearings 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 Hearings Examiner's recommendation or decision.
 - 2) Additional evidence may only be submitted upon a Request for Reconsideration if it is new evidence not available at the time of the public hearing, upon a showing of significant relevance and good cause for delay in its submission. At the Examiner's discretion, 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.
 - 3) The Hearings Examiner shall respond to the request for reconsideration by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an additional public hearing.
 - 4) If an additional hearing is required as a result of a reconsideration request, 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 Hearings Examiner.

SECTION 10: APPEALS OF DECISIONS TO BOARD

When all reconsideration periods have expired and the Hearings Examiner's decision is final, the decision may be appealed to the Board or to Superior Court as specified in the TCC. Appeals to the Board must be written and filed with the Resource Stewardship Department within the time required by Ordinance. All appeals must clearly state the alleged errors of fact or law and include a specific request for relief. The Board will conduct a closed record appeal hearing at which it will not receive any additional testimony or evidence and will only review the record developed at the Hearings Examiner hearing.

SECTION 11. CLARIFICATION

- 11.1 Prior to expiration of the reconsideration period, any party of record may request clarification of the appeal decision upon notice to the other party.

CHAPTER II: RULES OF APPEAL OF ADMINISTRATIVE DECISIONS

Application of these Rules

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

SECTION 1: DEFINITIONS

See DEFINITIONS, Chapter 1, Section 1.

SECTION 2: FILING

2.1 Compliance with Rules

All appeals must comply with the requirements established in the applicable Thurston County ordinance(s) under which the appeal is filed and with these Rules .

2.2 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. The appeal must be filed with the Thurston County Resource Stewardship Department, 2000 Lakeridge Drive SW, Olympia, Washington 98502-6090.

2.3 Fee

Any filing fee as required by Thurston County Fee Schedule shall accompany an appeal.

2.4 Contents

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;
- d. Signature, address, and phone number of the appellant, and name and address of appellant's designated representative, if any.

2.5 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 (8) pages in length. The Hearing Examiner may exercise discretion to waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

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

2.6 Motions

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

2.6 Proposed Findings and Conclusions

The Hearing Examiner may request proposed Findings and Conclusions to be submitted at the option of the parties.

SECTION 3: DISMISSAL

- 3.1 An appeal may be dismissed without a hearing if the Hearings 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.
- 3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Hearings Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.
- 3.3 When decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

SECTION 4: PREHEARING CONFERENCE

- 4.1
 - a. The Hearings Examiner may, on his/her own order or at the request of a party having standing, hold a conference prior to the hearing to structure the scope of the hearing. The Hearings Examiner may use the conference for:
 - 1. Identification, clarification, and simplification of the issues;
 - 2. Argument of motions based on law;
 - 3. Other matters deemed by the Hearings Examiner appropriate for the orderly and expeditious disposition of the proceedings.
 - b. Prehearing conferences may be held by telephone conference call.
 - c. All parties shall receive notice of any prehearing conference. Notice may be written or oral.
 - d. All parties of record have the right to be represented at any prehearing conference by legal counsel. Legal representation is not required. Groups shall be represented by the party representative(s) identified pursuant to Rule 6 (below).
 - e. Following the prehearing conference, the Hearings Examiner may issue an order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants.
 - f. At the hearing, the Hearings Examiner shall state for the record the time, purpose and result of the conference. Any pre-hearing orders issued will be made part of the record.
 - g. Prehearing orders and rulings on prehearing motions may not be appealed until the Hearing Examiner issues an appeal decision.

SECTION 5: WITHDRAWAL

- 5.1 An appeal may be withdrawn only by the Appellant.
- 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.
- 5.3 An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 6: PARTIES REPRESENTATIVE REQUIRED

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 Hearings Examiner's office of the name, address and telephone number of that designated representative. The rights of such an Appellant shall be exercised by the person(s) designated as the party representative(s). Notice or other communication to the party representative(s) is considered to be notice or communication to the party.

SECTION 7: NOTICE OF HEARING

7.1 Contents

The notice of hearing given to applicant and appellant 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, or 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);
- f. The name and phone number of the Department official responsible for the appeal.

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 10 days.

7.3 Responsibility

The Resource Stewardship Department shall be responsible for serving notice of hearing for appeals.

7.4 Record of Notice

A copy of the notice of hearing shall be made part of each official case record.

SECTION 8: PARTIES' RIGHTS AND RESPONSIBILITIES

- 8.1 Appellants shall be required to provide a specific and understandable written statement of the issues on appeal. Such statement shall be submitted prior to the hearing.
- 8.2 Although Appellants and Applicants have the right to be represented by an attorney, representation by an attorney is not required.
- 8.3 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 8.4 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

SECTION 9: DEFAULT

- 9.1 The Hearings 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 10: HEARING FORMAT

- 10.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Hearings Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.
- 10.2 The order of an appeal hearing will generally be as follows:
 - a. Examiner's introductory statement;

- b. Background presentation by Department;
 - c. Appellant's argument;
 - d. Department's presentation;
 - e. Applicant's presentation;
 - f. Rebuttal;
 - g. Closing argument of parties.
- 10.3 Notwithstanding the provisions of the Thurston County Code, 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.
- 10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).
- 10.5 Appeal hearings do not include public comment periods. Only persons called as witnesses by a party will be allowed to testify.

SECTION 11: HEARINGS EXAMINER'S DECISION

- 11.1 A decision of the Hearings Examiner on appeal shall include, but not be limited to, a statement regarding the following:
- a. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
 - b. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
 - c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
 - d. Decision. The Hearings Examiner's decision as to outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.

SECTION 12: RECORD

- 12.1 The record of an appeal shall include:
- a. The appeal application or petition and the relevant portions of the file of the decision appealed from;
 - b. The departmental staff reports;
 - c. All evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
 - d. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable);
 - e. A statement of all matters officially noticed;
 - f. A decision or a recommended decision containing the findings and conclusions of the Hearings Examiner; and,
- 12.2 The Hearings Examiner's administrative file on a given appeal may include other information or materials which are not admitted in the evidentiary record.

SECTION 13: RECONSIDERATION

- 13.1 Reconsideration of the appeal decision may be granted by the Hearings Examiner on a showing of one or more of the following:
- a. Irregularity in the proceedings by which the moving party 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;
 - c. Clear mistake as to a material fact.
- 13.2 Each party is limited to one (1) motion for reconsideration of the Examiner's initial decision on appeal.
- 13.3 Motions for reconsideration must be filed within ten (10) working days of the date of the Hearings Examiner's decision on the appeal. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop the period provided to appeal the Hearings Examiner's decision.
- 13.4 No party may file a response to a motion for reconsideration except at the request of the Hearing Examiner.

- 13.5 Reconsideration will not be granted to review prehearing orders or appeals of environmental threshold determinations.

SECTION 14. CLARIFICATION

- 14.1 Prior to expiration of the reconsideration period, any party of record may request clarification of the appeal decision upon notice to the other party.