

SNOHOMISH COUNTY  
HEARING EXAMINER  
RULES OF PROCEDURE ISSUED PURSUANT  
TO SECTION 2.02.090 of THE SNOHOMISH  
COUNTY CODE on September 6,1978  
  
REVISED effective February 1, 2003

These Rules supplement and shall be read together  
with Snohomish County Code Chapter 2.02

Copies of these Rules may be obtained  
from the Hearing Examiner's Office

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**PART 100**

**GENERAL**

104 Definitions.

The following definitions shall apply throughout these rules unless context or subject matter clearly indicates that another meaning is required:

- a) "Administrative appeal" means any appeal for which jurisdiction is assigned to the Examiner under county code.
- b) "Appellant" means the person, organization or authorized representative appealing an administrative decision to the Examiner pursuant to SCC 2.02.125 or appealing the Examiner's decision to a higher authority, depending upon the context.
- c) "Applicant" means the person, organization or authorized representative seeking county approval of one or more permits over which the Examiner has jurisdiction.
- d) "Council" means the County Council of Snohomish County.
- e) "Day(s)" means calendar days unless specifically stated otherwise herein.
- f) "Department" means the Department of Planning and Development Services in original jurisdiction land use cases or the department of county government with original jurisdiction over a matter in appellate cases.
- g) "Director" means the Director of the Department or her/his designee.
- h) "*Ex Parte* communication" means any communication between any participant in a hearing and the Examiner that occurs outside of the hearing in the absence of the other participants.
- i) "Examiner" means the Hearing Examiner, her/his Deputies and any Examiners Pro Tern appointed by the Council.
- j) "Party (or Parties) of Record" includes the Applicant or Appellant and all other persons who meet the definition found at SCC 2.02.165(1). Any person who appears through legal counsel shall be a party of record.
- k) "Principal Parties" means and is limited to the applicant(s), the appellant(s) and the respondent(s) to any given application/appeal.
- l) "SCC" means the Snohomish County Code.

Jurisdiction of Hearing Examiner.

- a) The Hearing Examiner's authority is set forth in Chapter 2.02 of the Snohomish County Code.
- b) The Hearing Examiner's jurisdiction is limited to those matters specifically identified in the Snohomish County Code, or assigned to the Examiner by the Snohomish County Council.

108 Expeditious Proceedings.

It is the policy of the 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 Examiner and all persons testifying shall make every effort at each stage of a proceeding to avoid delay.

116 Ex Parte Communication.

- a) Proceedings before the Examiner are subject to the provisions of Chapter 2.50 SCC, Code of Ethics, and SCC 2.02.060 and .070 which prohibit *ex parte* communication.
- b) No person shall communicate *ex parte* directly or indirectly with the Examiner concerning the merits or facts of any matter assigned to or under consideration by the Examiner.
- c) This rule does not prohibit *ex parte* communications about procedural matters, nor does it apply to written submissions made before the record is closed.
- d) If a substantive *ex parte* communication is made to or by the Examiner, or any Hearing Examiner's Office employees participating in the decision, such communication shall be publicly disclosed, and the provisions of Rule 760 shall apply.

120 Disclosure and Availability of Records.

- a) The decision of the Examiner, once issued, is a public record and available for public review. Working notes and draft decisions are exempt from public disclosure.
- b) Except to the extent necessary to prevent excessive interference with the normal functions of the Examiner's Office, the written case record, while in the possession of the Examiner's Office, and the tape recording of each hearing shall be available to the public during normal business hours for inspection and, upon payment of reproduction costs, copying.

128 Petitions for Review under SCC 18.72.190

Petitions need not be in any special form. However, they must be in writing and must contain the name, address, daytime telephone number and signature of the petitioner.

140 Special Exceptions.

These rules are designed to address most normal circumstances which might arise when dealing with the Examiner's Office. There is always the possibility that a situation may arise which has not been foreseen and which does not lend itself to full, literal compliance with these rules. Therefore, the Examiner reserves the right to exercise reasonable and necessary flexibility and discretion when applying these rules to extraordinary circumstances.

## PART 200

### SETTLEMENT CONFERENCES

(See Rule 401 regarding Prehearing Conferences and Rule 613 regarding Status Conferences in Appeal Cases)

204 General.

Section 2.02.100(7) SCC allows the Examiner the discretion to "hold conferences for the settlement or simplification of issues and/or for establishment of special hearing procedures". These rules govern settlement conferences.

208 Applicability.

Settlement conferences will normally be held in administrative land use appeals, land use code enforcement and non-land use cases. However, at the discretion of the Examiner, settlement conferences may be held regarding any other type of case.

212 Who May Request.

- a) A settlement conference may be requested by one or more of the principal parties and/or by an authorized agent.
- b) The Examiner may independently elect to use the settlement conference procedure.

220 Calling a Settlement Conference.

- a) The Examiner shall have sole discretion to call a settlement conference.
- b) The Examiner will establish the date, time and place for the settlement conference in consultation with the principal parties.
- c) Notice shall be sent by regular or interoffice mail, as appropriate, to the applicant/appellant, the applicant's/appellant's agent and known parties of record where time allows. Telephonic notification shall be sufficient where time is of the essence.

228 Appearance of Fairness Considerations.

- a) The Examiner who is scheduled to hear a case will not serve as a settlement Examiner/facilitator nor participate in any way in a settlement conference.
- b) The Examiner who serves as a settlement Examiner/facilitator shall report only the final outcome of the conference to the Examiner who is scheduled to hear the case, but shall not communicate or discuss the conference proceedings in any other way with said Examiner. In particular, substantive position statements and offers made by or on behalf of any person at the conference shall not be communicated unless they are part of an executed settlement agreement.

## PART 300

### SCHEDULING OF HEARINGS

304 Potential Conflict of Interest Cases.

If an application/appeal is received by the Department which the Director feels may present a conflict of interest issue to one or more staff Examiners, the Director shall, prior to assigning a hearing date and time to the application/appeal, bring the issue to the attention of the Examiner. If the Examiner concurs, the application/appeal shall be scheduled for a staff Examiner who is free from any conflict of interest. If all staff Examiners have a conflict of interest, the Council shall be informed of the situation so that an Examiner Pro Tern may be appointed.

308 Hearing Days.

- a) The Examiner's Office will publish on the county's computer network calendar program a calendar of hearing dates which will normally be updated monthly on a rolling quarterly basis. The Examiner reserves the right to revise the hearing date calendar (by adding, deleting or shifting dates) if found necessary; no change in dates for which legal hearing notices have been published will be made except in cases of extreme emergency or unforeseen conflict.
- b) Standard hearing days and hours for original jurisdiction land use cases are as follows: Tuesdays and Wednesdays from 9:00 a.m. to 5:00 p.m. with a one hour lunch recess scheduled between 11:30 a.m. and 1:30 p.m.; Thursdays from 9:00 a.m. to 12:00 noon.
- c) The Examiner's Office reserves Thursday afternoons and other weekdays for cases over which it has direct scheduling responsibility, such as but not limited to, code enforcement, business license and personal property forfeiture cases.

312 Scheduling and Notice Responsibility.

- a) The Examiner schedules appeal hearings (except for appeals from administrative actions related to applications over which the Examiner has original jurisdiction, which are scheduled by the Department for hearing simultaneously with the hearing on the underlying application); hearing continuances to dates certain; postponements to dates certain; and hearings on all non-land use cases. The Examiner may schedule petition for review hearings, remand hearings and other similar matters. Responsibility for assigning a hearing date and time to all other applications rests with the Department pursuant to SCC 2.02. 110.
- b) Hearings for cases subject to the 120-day timeline set forth in SCC 2.02.150 and 32.50.110 are required to be scheduled for commencement not later than the 101<sup>st</sup> elapsed day ("Day 101 ") of the 120-day timeline pursuant to SCC 32.50.110. The Department shall attempt to assure a reasonably even flow of cases to the extent that it can under county code and state law. The Department shall consult with the Examiner's Office at the earliest opportunity if a "bulge" is moving through the system for which a sufficient quantity of available timely hearing time does not appear to the Department to exist on the normal hearing calendar. The decision of the Examiner's Office on schedule adjustments/additions shall be binding on the Department.

- c) Every attempt should be made to schedule applications involving contiguous properties sequentially or simultaneously.
- d) All cases shall be scheduled for a time certain. Cases shall be scheduled for hearing on the hour or the half-hour, depending upon the Director's realistic estimate of the time necessary to conduct the hearing on each case.
- e) More than one case may be scheduled for hearing at a particular time, if, in the opinion of the Director, it is reasonable to expect that two or more cases could be heard during a given hour or hour-and-a-half.
- f) No more than twelve cases shall be scheduled for any calendar week without prior approval of the Examiner.
- g) If an application/appeal is received by the Department which, in the Director's opinion, is likely to be of significant interest to a large number of citizens, she/he may request a special hearing date and time from the Examiner. The Examiner shall have final authority to set the date, time and place for all such special hearings.
- h) If the Examiner cannot be present for a previously scheduled hearing due to illness or other unforeseen event, the Department may reschedule such hearing for another date. Where the Examiner's absence can be foreseen some days in advance, the Department shall make a reasonable attempt to notify applicants/appellants and all others who received notice of the hearing of the new date, time and place of the hearing. The Examiner's Office shall post notice on the day of the scheduled hearing on the hearing room door. Where the absence is unexpected, such posting alone will suffice for notice of the schedule change.
- i) Cases which are returning for supplementary hearing, revisions of previously issued permits and applications proposing a different use of a site for which an open record hearing was held or permit issued within the past two years shall be scheduled to be heard by the same Examiner who initially heard the case. If that Examiner is unavailable for an extended period of time, the case may be assigned to a different Examiner.

320 Procedural Assurances.

The Director shall assure her/himself that the legally required public notice(s) has been given and that the procedural steps required by SEPA (RCW 43.21 C) and by Title 23 SCC leading up to a threshold determination and issuance of an EIS (if required) have been complied with for each item on an agenda prior to issuing that agenda (except for SEPA-exempt actions and those items scheduled pursuant to SCC 23.16.280).

324 Hearing Agendas.

- a) The Department shall prepare an agenda for each Examiner hearing, listing thereon the date and place of the hearing, the time that each item is scheduled to be heard, an indication of the nature of each application to be considered and (for land use cases) a concise description of the location of the property affected by each application.
- b) The agenda shall be distributed to the Examiner (5 copies) and interested news media and shall be posted in the Department's offices for public review not later than 9:00 a.m. on the seventh day before the hearing.

## PART 400

### GENERAL PREHEARING CONFERENCES AND PROCEDURES

(See Special Case-Type Procedures in Parts 500 and 600)

#### 401 Prehearing Conferences.

- a) Prehearing conferences promote efficient case management of complex cases by providing an informal process for early identification of issues, limitation of issues, and resolution of procedural matters.
- b) The Examiner on motion of any party, including Snohomish County, or on the Examiner's own initiative, may convene a prehearing conference to:
  - 1) Identify, clarify, limit, or simplify issues;
  - 2) Hear and consider prehearing motions;
  - 3) Schedule hearings, identify parties and expert witnesses, determine the order of and limits upon testimony, obtain stipulations as to fact and law, identify and admit or reject exhibits, consider and act upon any other matter which may assure an efficient and orderly hearing.
  - 4) Discuss possible resolution of part or all of the issues between the parties.
- c) A request for a prehearing conference should be made to the Examiner as soon as the need is recognized and should be at least 20 days prior to the scheduled hearing date. The request should include the reasons why a prehearing conference is necessary and identify any issues or motions. Parties receiving timely notice of a prehearing conference should identify at the conference any motions not previously made which they intend to make. Parties or interested persons may also file timely written prehearing motions for consideration at the prehearing conference. Failure to make or disclose a motion which could have been brought at the prehearing conference may be grounds for its denial when made.
- d) Following a prehearing conference the Examiner shall issue an order specifying all items agreed to or decided upon. The order shall be binding upon all parties and interested persons who were given timely notice of the conference.

#### 408 Motions/Requests.

- a) Filing. Any party of record wishing to file a prehearing motion/request (such as a request for a prehearing conference, for establishment of special hearing procedures, etc.) shall submit it in writing to the Examiner's Office and concurrently to all principal parties to the case and to the Department. If a motion is filed less than 20 days before the scheduled open record hearing date, there may not be sufficient time to allow written responses and prepare written rulings. In such circumstances, the Examiner may elect to rule on the motion at the open record hearing; strict adherence to the procedures set forth in the following subsections may not occur.

- b) Response. Any principal party and/or the Department may file with the Examiner's Office a written response to a filed motion not later than 10 days after the date that the motion was filed. Late responses may be considered at the Examiner's discretion if received prior to issuance of a dispositive order ruling on the motion.
- c) Ruling. The Examiner will rule on each motion by issuance of a written order or orally at the open record hearing. Multiple motions may be consolidated for purposes of order issuance where efficiency would be served and where the rights of the parties would not be prejudiced.
- d) Distribution. Written orders issued prior to the scheduled open record hearing will be mailed to each party of record (or distributed by interoffice county mail where appropriate) where time allows, distributed at the open record hearing or announced at the open record hearing. Oral rulings made during an open record hearing will be memorialized within the written decision on the application/appeal.

412 Departmental Report.

- a) The Department is required by SCC 2.02.130 to "coordinate and assemble the reviews of the other county departments and governmental agencies having an interest in [a pending land use] application/appeal" and to "prepare a report summarizing the factors involved and the department's findings and recommendations." Other county departments have similar responsibilities in non-land use matters. This portion of the rules provides guidance on the manner in which these requirements are to be fulfilled.
- b) The departmental report shall be prepared and issued subsequent to the issuance of a final SEPA threshold determination, the expiration of the review period for a final SEPA threshold determination or the issuance of a Final EIS under SEPA, whichever comes later; PROVIDED that departmental reports issued for SEPA-exempt actions and those issued pursuant to the authority of SCC 23.16.280 are not subject to this limitation.
- c) The departmental report shall, at a minimum:
  - 1) Summarize the nature of the application/appeal, the basic applicable adopted laws and policies bearing on the application/appeal, and the issues of concern to the lead department and other reviewing departments/agencies;
  - 2) Set forth the department's detailed findings and conclusions as to the conformance of the application with adopted laws and policies, including the consistency determination recommendation required by SCC 32.50.100, when applicable;
  - 3) In land use application matters, the Departmental Report shall clearly indicate the elapsed day count ("Day 101", etc.) of the 120-day timeline set forth in SCC 2.02.150 and 32.50.110 which applies to the scheduled date of open record hearing commencement.
- d) Nothing in this Rule shall prohibit a department from changing its recommendation at or before the open record hearing.

416 View Trip.

When necessary to a full understanding of the case, the Examiner shall inspect the site prior or subsequent to the hearing. Failure to inspect the site will not render the Examiner's decision void.

## **PART 500**

### **SPECIAL PREHEARING PROCEDURES - ORIGINAL JURISDICTION CASES**

(Including Those in Combined Proceedings)

#### 504 Applicability.

The rules in this Part are in addition to those in Part 400 and apply to original jurisdiction cases (including those in combined proceedings).

#### 508 Applicant Submittal Deadlines.

- a) Applicant submittals made less than two weeks prior to a scheduled hearing shall not be considered at said hearing unless the Examiner finds that the due process rights of the parties and proper staff review will not be significantly affected.
- b) "Submittals" as used herein includes without limitation original and revised applications, site development plans, preliminary plat maps, concomitant agreements, Title 26B SCC traffic studies, Title 26B SCC mitigation offers, preliminary drainage plans, environmental checklists, technical and/or scientific evidence, etc. The term "submittals" does not include written applicant argument in response to staff positions and late-arriving agency review comments nor written statements describing and arguing for the application/appeal as already submitted.

#### 516 Initial Exhibits and Exhibit List.

- a) The Department shall select from the documents within the application file all those which it believes in its professional judgment will have probative value in the open record hearing process and which will be necessary for preparation of a properly and fully considered decision. The selected documents shall include the following:
  - 1) Departmental report, prepared pursuant to SCC 2.02.130 and Rule 412;
  - 2) Application form;
  - 3) Current site plan(s), preliminary plat map or other similar graphic materials submitted by the applicant and, if the matter to be heard is a proposed revision of a previously approved permit and/or a previously approved site plan, a copy of the current permit and/or of the current approved plan(s)/plat map proposed for revision, as applicable;
  - 4) Vicinity map;
  - 5) Ownership and zoning map;
  - 6) Aerial photo: print from the most recent series of county photos of the section(s) involved in the application;
  - 7) Final EIS (if one was prepared) or Determination of Nonsignificance (unless categorically exempt);
  - 8) Substantive comments of public agencies or community groups, where not incorporated into the Departmental report;

- 9) Letters and petitions of support or opposition;
  - 10) Documentation of compliance with public notice requirements;
  - 11) If the matter is processed under an old county file number, copies of the prior exhibit list and all substantive documents received into the case record subsequent to the last Hearing Examiner hearing; and
  - 12) Any other materials and exhibits deemed pertinent by the Department.
- b) The Department shall mark each document selected under Rule 516(a) with a consecutive Exhibit number. These marked documents shall constitute pre-filed exhibits.
  - c) The original (or if the original cannot be provided for exhibit purposes, one clear copy) of each of the pre-filed exhibits shall be transmitted to the Examiner by the Department not later than 12:00 noon on the seventh day prior to the date of the public hearing.
  - d) The Department shall prepare a computer listing of the pre-filed exhibits which shall be available on the county's computer network not later than the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be current as of the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be in a software program and use format, storage and naming conventions as mutually agreed upon by the Department and the Examiner.

520 Initial Parties of Record Register.

The Department shall prepare a listing of parties of record (as defined by SCC 2.02.165(1)) which shall be available on the county's computer network no later than the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be current as of the time that the pre-filed exhibits are transmitted to the Examiner's Office. The listing shall be in a software program and use format, storage and naming conventions as mutually agreed upon by the Department and the Examiner.

524 Postponement of Cases Before Hearing. (See Rule 732 for continuation/postponement at hearing.)

- a) The Department has the authority to postpone original jurisdiction cases prior to the start of the open record hearing.
- b) Once a hearing has been scheduled and public notice has been given, the scheduled hearing will be convened unless the Department has adequate time and resources (and is willing) to send timely cancellation notices to all persons who were sent the initial hearing notice and to all parties of record. If timely cancellation notices are not sent, the applicant shall appear at the scheduled hearing to request the postponement.
- c) In all other cases, postponement will have to be requested pursuant to Rule 732 at the outset of the scheduled hearing.
- d) Postponement will not be granted by the Examiner where to do so would violate any state or county procedural timelines, such as deadlines for bringing a matter to hearing or issuing a decision, unless the applicant agrees in writing to waive such timelines.

## PART 600

### SPECIAL PREHEARING PROCEDURES - ADMINISTRATIVE APPEAL CASES

(Including Those in Combined Proceedings)

605 Applicability.

The rules in this Part are in addition to those in Part 400 and apply to administrative appeal cases (including those in combined proceedings).

609 Initial Parties of Record Register.

The Department shall prepare a listing of parties of record (as defined by SCC 2.02.165(1)) which shall be available to the public and the Examiner and on the county's computer network no later than one week after the appeal is filed. The listing shall be current as of the time that the pre-filed exhibits are transmitted to the Examiner's Office.

613 Status Conference. (Also see Part 200 and Rule 401)

a) When and How Held.

At the Examiner's discretion, the Examiner may call a status conference among the principal parties to an appeal. The status conference may be scheduled as time allows, ideally within one to three weeks after the appeal is filed. The conference may be held in person and/or telephonically, at the Examiner's discretion.

b) Attendance Required.

Attendance at the status conference in person and/or telephonically (by principal party and/or representative) as arranged/required by the Examiner shall be mandatory. Principal parties/representatives shall be prepared to make firm time commitments. Failure on the part of the appellant or representative to appear may be grounds for dismissal of the appeal.

c) Subjects Covered.

The purpose of the status conference shall be procedural: to set deadlines for pre-filing of evidence; to determine if the optional prehearing briefing process will be employed; to establish a hearing date; to agree on a concise statement of the issues; to explore interest in a settlement conference; etc.

d) Alternative to Conference.

At the Examiner's discretion, as an alternative to a formal status conference, the Examiner may unilaterally and/or pursuant to less formal communication set a hearing date and issue a prehearing schedule.

617 Pre-filing of Evidence by Principal Parties.

- a) The intent of the following rules is to insure that all expert substantive/technical/scientific materials and arguments to be relied upon by any of the principal parties are available for review by all other principal parties prior to the open record hearing, thus preventing "surprise" at the hearing and facilitating efficiency. These rules will be interpreted by the Examiner to facilitate that purpose.
- b) The Examiner's Office shall be responsible for marking the following as pre-filed exhibits and for entering each, as received, into the computerized exhibit list: the document being challenged, each appeal, conference notices, hearing notices, motions filed prior to the hearing, orders issued prior to the hearing, prehearing briefs, the departmental report required by SCC 2.02.130, any correspondence containing anything of relevance to the matter on appeal sent by or to the Examiner's Office and other similar procedural materials.
- c) By not later than three weeks prior to the date of the scheduled open record hearing (unless another date has been established at the status conference), the department with custody of the public file in the case shall have performed the following actions with respect to each document within the public file which is believed necessary by the custodial department to document filing of the underlying application (if there is one), and to document and support the action(s) taken by the respondent department relative to the issues on appeal:
  - 1) Sequentially marked and added each such document to the list of pre-filed exhibits; and
  - 2) Provided to each principal party and to the Examiner's Office a copy of the exhibit list as it exists at that time.
- d) By not later than three weeks prior to the date of the scheduled open record hearing (unless another date has been established at the status conference), each principal party shall have provided to all other principal parties and to the Examiner's Office:
  - 1) An original or copy of all substantive/technical/scientific documents, materials, studies, analyses, etc. which the party desires to enter as exhibits in the appeal record.
  - 2) The following information for each person the party expects to call as an expert witness: name, curriculum vitae (resume), the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

The Examiner's Office shall sequentially mark and add each such document to the computerized list of pre-filed exhibits. Where multiple copies of the same document are received, only one need be marked and catalogued.

- e) By not later than one week prior to the date of the scheduled open record hearing (unless another date has been established at the status conference), the respondent Department shall have provided to each principal party and to the Examiner's Office:
  - 1) The documents cataloged pursuant to Rule 617(c).
  - 2) The departmental report required by SCC 2.02.130.

The Department shall first sequentially mark and add each such document to the computerized list of pre-filed exhibits.

- f) Parties have a duty under the following circumstances to supplement at the earliest possible opportunity their submittals made under subsections (c) - (e):
  - 1) Whenever an additional expert witness is identified whose participation in the proceedings could not reasonably have been foreseen before the close of the exhibit pre-filing period, the information required by Rule 617(d)(2) above, shall be provided.
  - 2) Whenever a party obtains information upon the basis of which (A) the party knows that the material submitted was incorrect when submitted, or (B) the party knows that the material submitted though believed correct when submitted is no longer correct and the circumstances are such that failure to amend the submittal would constitute knowing concealment of information central to the issues in the appeal.
- g) Substantive/technical/scientific documents, materials, studies, analyses, etc. not disclosed through the exhibit pre-filing process may not be entered as evidence or presented orally at the open record hearing except by agreement of the other principal parties or at the Examiner's discretion.

621 Optional Prehearing Briefing Process.

- a) A prehearing briefing process may be established by the Examiner upon the request of one or more of the principal parties or upon the Examiner's own initiative. Any such request shall include a request for a status conference.
- b) Establishment of such a process is dependent upon execution by the applicant (or appellant where there is no underlying applicant) of a waiver of decision timeline, if necessary, to provide for the time required for the submittal of prehearing briefs.
- c) In general, a prehearing briefing process will include submittal of initial briefs, response briefs and reply briefs. The initial and reply briefs would be submitted by the party(ies) having the burden of proof in the case. The response brief(s) would be submitted by the other principal party(ies). The Department may choose to treat one of its briefs as the departmental report required by SCC 2.02.130. All written prehearing briefs will be entered as exhibits in the hearing record.

- d) The schedule for submittal of briefs shall be established at the status conference. Unless a different schedule is established at the status conference, the initial brief(s) will be due three weeks before the hearing, the response brief(s) will be due one week before the hearing and the reply brief(s) will be due not less than two working days before the hearing.
- e) Unless required by the Examiner, no principal party shall be compelled to produce a prehearing brief. Non-submittal of a brief by the established deadline shall not be held against the party which did not submit the brief. The running of a time period without submittal of the expected prehearing brief(s) shall constitute a waiver of the right to submit a brief by the party who fails to submit the brief.
- f) Special procedures and timing may be established where to do so would serve the interests and preserve the due process rights of the parties.

625 Postponement of Cases Before Hearing. (See Rule 732 for continuation/postponement at hearing.)

- a) The Examiner has the authority to postpone appeal cases prior to the start of the open record hearing.
- b) All postponement requests made before the scheduled hearing has been convened must be filed in writing.
- c) Postponement requests in combined original jurisdiction and appellate proceedings filed jointly by the principal parties will be granted only if the Department has adequate time and resources (and is willing) to send timely cancellation notices to all persons who were sent the initial hearing notice and to all parties of record. A new hearing date and time will be set in consultation with the parties.
- d) Postponement requests in all other appellate proceedings filed jointly by the principal parties will be granted.
- e) Postponement requests filed other than jointly will not be granted *ex parte* except in extraordinary circumstances. Otherwise, such requests will be considered at the outset of the scheduled hearing.
- f) Postponement will not be granted where to do so would violate any state or county procedural timelines, such as deadlines for bringing a matter to hearing or issuing a decision, unless the applicant (or appellant where there is no underlying applicant) agrees in writing to waive such timelines.

## PART 700

### CONDUCT OF HEARINGS

708 Format.

- a) The format for an open record hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will be readily and efficiently available to the Examiner. An open record hearing will normally include, but need not be limited to, the following elements: a brief prefatory statement of procedures and introduction of pre-filed exhibits by the Examiner; a presentation by the applicant/appellant which shall include an explanation of the request, explanation of relevant visual aids (maps or plans) and a discussion of the reasons why the application/appeal should be approved/granted; testimony of any public agencies, including the Department; testimony by the public; and opportunity for rebuttal by applicant/appellant, staff and, at the discretion of the Examiner, the public.
- b) All testimony will be taken under oath or affirmation administered by the Examiner.
- c) The Examiner may ask questions of any witness, including agency and Department staff, at any time during their testimony to seek clarification or elaboration of testimony being given. Further, the Examiner may request submittal of additional information to better enable her/him to make a complete and accurate evaluation of the issues.
- d) The Examiner may indicate, at the outset of the hearing, that she/he has studied the materials relating to the case and has preliminarily determined that there seem to be certain central issues which need to be addressed. The Examiner may request that these issues be addressed in testimony to be offered.

e) The normal sequence of hearing proceedings shall be as follows:

<u>Original Jurisdiction Hearings</u>	<u>Combined Original Jurisdiction and Appeal Hearings</u>	Enforcement Appeal Hearings	All Other Appeal Hearings
Introduction by Hearing Examiner	Introduction by Hearing Examiner	Introduction by Hearing Examiner	Introduction by Hearing Examiner
Direct Testimony & Evidence Applicant County Staff	Direct Testimony & Evidence Applicant - on the merits Appellant- on the appeal & merits Respondent(Agency)on the appeal & merits	Direct Testimony & Evidence Respondent (Agency) Appellant	Direct Testimony & Evidence Appellant Respondent (Agency)
General Public Testimony, Evidence & Questions	General Public Testimony, Evidence & Questions	General Public Testimony, Evidence & Questions	General Public Testimony, Evidence & Questions
Rebuttal Testimony & Evidence Applicant County Staff General Public*	Rebuttal Testimony & Evidence Applicant Appellant Respondent (Agency) General Public*	Rebuttal Testimony & Evidence Respondent (Agency) Appellant General Public*	Rebuttal Testimony & Evidence Appellant Respondent (Agency) General Public*
Closing Statements (Optional) County Staff Applicant	Closing Statements (Optional) Applicant Respondent (Agency) Appellant	Closing Statements (optional) Appellant Respondent (Agency)	Closing Statements (Optional) Respondent (Agency) Appellant

\*At the discretion of the Examiner

- f) The Examiner reserves the right to abbreviate the normal sequence of events at a hearing when it appears that no one's rights would be infringed upon by such abbreviation and that detailed exposition of the facts is not necessary to the Examiner's understanding of the case. The Examiner also reserves the right to vary from the normal sequence of events in order to ensure due process and/or for convenience or efficiency.
- g) Each public hearing will be electronically recorded on magnetic tape to provide a verbatim record of the proceedings. Therefore, all parties wishing to offer verbal testimony will be required to speak into a microphone provided for that purpose, prefacing their remarks with their full name, spelling of their last name and mailing address. Hearing tapes will be retained as required by state law/rule (presently six year retention is required). Hearing tapes will be destroyed or erased at the Examiner's convenience after the end of the retention period.

## 712 Clerk.

The Examiner's Office shall provide a clerk during hearings. It shall be the responsibility of the clerk to maintain the register of parties of record, to mark exhibits, to keep a list of exhibits and witnesses and to perform such other ministerial duties as may be assigned by the Examiner.

716 Parties of Record.

- a) The Examiner's Office shall provide a parties of record register for use in each case heard. The parties of record register will include a place for entry of full name and complete mailing address. The Examiner will not be responsible for sending materials to persons who enter their name or address on the register illegibly or incompletely.
- b) The Examiner's Office shall be responsible for updating the initial parties of record register to include all additional persons who become parties of record during the hearing process.
- c) Further mailings will not be made to a party of record if mail sent to the address provided by the party is returned by the postal service as undeliverable for any reason

720 Rights of Parties.

- a) General. Every party shall have the rights set forth in SCC 2.02.140(2) and all other rights essential to a fair hearing. The Examiner may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony. Testimony shall be concise and non-repetitious.
- b) Cross-Examination. In accordance with SCC 2.02.090 the fundamental right to cross-examine witnesses is allowed: The allowance and scope of cross-examination is within the discretion of the Examiner. The following guidelines shall apply:
  - 1) Generally speaking, in hearings before the Examiner, cross-examination of persons expressing their views would not be appropriate or contribute anything of value to the fact finding process. However, where the hearing assumes distinctly adversarial proportions, some or all of the parties are represented by counsel, expert witnesses are called, and/or complex, technical and disputed factors are involved, cross-examination may be beneficial.
  - 2) Cross-examination by principal parties of expert witnesses (which term includes public agency staff) and of principal party witnesses will be allowed in accordance with these guidelines. Only one person representing each principal party may cross examine any given witness. (This Rule does not prevent different persons representing one party from cross examining different witnesses. It only prohibits more than one person representing a given party from cross examining a single witness.) Cross-examination after any redirect testimony shall be limited to the subject(s) of the re-direct testimony.
  - 3) Within the above guidelines, the allowance and scope of cross-examination is within the discretion of the Examiner.
  - 4) No combative, rude or degrading or irrelevant questions will be allowed.



724 Evidence.

- a) Burden of Proof. The moving party (applicant, appellant or department as the case may be) shall have the burden of proof as to material factual issues except where applicable county code provisions or state law provides otherwise.
- b) Admissibility. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence including hearsay evidence shall be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded
- c) Pre-filed Exhibits. Exhibits pre-filed in accordance with Rules 516 and 617 shall be entered into the record by the Examiner at the outset of the open record hearing.
- d) Formal Submittal of Evidence. Parties may submit documentary evidence to the record during their direct and rebuttal portions of the open record hearing. A copy of each item offered for submission by a principal party shall be provided by the offering party to all other principal parties unless previously disclosed through the pre-filing process under Rule 617 (in appeal cases). Such evidence will be marked as exhibits when accepted for entry by the Examiner.
- e) Rebuttal Evidence. Rebuttal evidence may be presented to respond to both expert and non-expert testimony.
- f) Handling of Facsimile Transmittals and Hand Deliveries to Examiner's Office. The Examiner's Office shall not be responsible for ensuring that facsimile transmittals and post- and hand-delivered documents received on the day of hearing are entered into the hearing record. Persons submitting such documents are responsible for ensuring such entry. The originator of a facsimile transmittal is solely responsible for insuring that the transmittal was successfully and timely received by the Examiner's Office.
- g) Receipt and Retention. All documentary or other physical evidence submitted shall be sequentially numbered as exhibits and retained by the county as a part of the official case record, except county codes, laws, comprehensive plans or other readily available public documents. Materials which the offering party is not willing to have become county property will not be accepted as evidence except, at the discretion of the Examiner, in unusual circumstances.
- h) Oversize, Mounted and Three Dimensional Models. Reduced scale/size copies and/or copies which can easily be folded for storage in a legal sized file folder are preferred whenever oversized and mounted documents are used for display purposes at hearing. Three dimensional models may not be used in presentations unless the offering party has color photographs of the model to offer as evidence.
- i) Copies. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.

- j) Official Notice. The Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within her/his specialized knowledge. When any decision of the Examiner rests in whole or in part upon the taking of official notice of a material fact not appearing in evidence of record, the Examiner shall so state in her/his decision. Appellate court decisions and adopted state and local laws, ordinances, motions, policies, plans and other similar documents in the public domain may be, referenced, cited, quoted and relied upon.
  
- k) Evidence received subsequent to the hearing. No documentary material submitted after the close of the public hearing will be considered by the Examiner unless, at such hearing, the Examiner granted additional time to submit such material and stated on the record that the hearing record was left open for such receipt.
  
- l) Updating of Exhibit List. The Examiner's Office shall be responsible for updating the initial exhibit list to include all additional materials admitted during the hearing and reconsideration processes.
  
- m) Reconsideration Documents. Documents involved in the reconsideration process (to include the Examiner's initial Decision and Affidavit of Mailing, requests for reconsideration, etc.) will be assigned sequential exhibit numbers for identification. Such documents will become actual exhibits only if the hearing is reopened or through subsequent appeal proceedings.

728 Optional Written Closing Statement Process.

- a) A written closing statement process may be established by the Examiner upon the request of one or more of the principal parties. Establishment of such a process may be dependent upon execution by the applicant (or appellant where there is no underlying applicant) of a waiver of decision timeline to provide for the time required for the submittal of written closing statements.
  
- b) No principal party shall be compelled to produce a written closing statement. Non-submittal of a written closing statement before the established deadline shall not be held against the party which did not submit the statement. The running of the time period without submittal of the expected closing statement(s) shall constitute a waiver of the right to submit a statement by the principal party who fails to submit the statement.

732 Continuation or Postponement at Hearing. (See Rules 524 and 625 for postponement prior to hearing.)

The Examiner may continue or postpone proceedings for any good cause she/he deems reasonable and appropriate within the time limits imposed by relevant ordinances. If the Examiner determines at a hearing that there is good cause to continue or postpone such proceeding and specifies the date, time and place on the record, no further notice is required.

736 Extension of Continuation/Postponement Dates.

- a) When an open record hearing has been continued or postponed to a date and time certain, the Examiner may administratively cancel the established hearing date and further continue or postpone the hearing as follows:
  - 1) The request must be made in writing by the applicant/appellant and must state why a further delay is desired.
  - 2) The Department must assure the Examiner's Office that it has adequate time and resources (and is willing) to send timely cancellation notices to all persons who were sent the initial hearing notice and to all parties of record.
  - 3) The Examiner will grant or deny the request in writing with a copy sent to the applicant/appellant and to the Department.
  - 4) The Department shall send cancellation notices to all parties of record. The cancellation notice shall: state the reason therefor; indicate in what fashion, if at all, the hearing will be reconvened; and be approved by the Examiner prior to its publication and distribution.
  
- b) When an open record hearing has been continued or postponed indefinitely subject to a "Not Later Than" (NLT) date, the Examiner may administratively grant extensions of the NLT date as follows:
  - 1) The request must be made in writing by the applicant/appellant and must state why a further delay is desired.
  - 2) The request must be received by the Examiner: not less than 30 days prior to the NLT date; and prior to the distribution of notice of the date, time and place for the continued/postponed hearing.
  - 3) The Examiner will grant or deny the request in writing with a copy sent to the applicant/appellant and to the Department.

740 Reopening of Hearing.

- a) After closing the record the Examiner may re-open the hearing for good cause shown at any time prior to the issuance of a decision or a decision on reconsideration. The Examiner at any time may re-open the hearing if he or she becomes aware that the decision was based on fraudulent evidence, misrepresentation, or other misconduct by a party of record; or for any similar reason which would require reopening the hearing in the interest of justice.
  
- b) Where through mistake, misconception of facts, or erroneous application of law the Examiner issues a decision which he or she recognizes may be in error, the Examiner may, prior to the expiration of the appeal period and after due and prompt notice to parties of record, reconvene the hearing for the purpose of considering and correcting the error.

- c) When determination for further hearing is made by the Examiner following a hearing on a given matter, notice of such further hearing shall be given in writing by the Examiner's Office at least ten (10) days before the date for rehearing to all parties of record from the initial hearing.

744 Case Record - Content.

The official case record of a hearing conducted by the Examiner shall consist of:

- a) A written case record including all documentary written materials and other exhibits submitted for consideration by the Examiner and the Examiner's decision(s), together with the register of parties of record and the list of exhibits and witnesses maintained by the clerk.
- b) An electronic recording on magnetic tape of the open record hearing. Where a qualified court reporter retained by the Examiner's Office reports the hearing, the reporter's transcript of proceedings shall constitute the official transcript of the oral proceedings.

748 Case Record - Disposition.

- a) General. The integrity of all materials which have become a part of the case record shall be maintained by all offices handling the case record with the following exceptions:
  - 1) Oversize or bulky exhibits may be transmitted directly to the Department for storage. They must be reasonably available for public review if requested, however.
  - 2) The electronic recording shall be maintained in the office of the Examiner.
- b) Procedure - Land Use Cases. The written case record shall be transmitted to the Department for permanent storage upon completion of proceedings (including the reconsideration period, if any, and the appeal period), unless the decision requires compliance with preconditions. Where preconditions are involved, the record is retained (unless appealed, in which case it is returned to the Examiner's Office following the appeal) until fulfillment of all preconditions or expiration of the precondition fulfillment period, whichever comes first. The record is then transmitted to the Department.
- c) Procedure - Non-Land Use Cases. Disposition of the written case record in non-land use cases is governed by separate rules of procedure and/or protocol between the Examiner's Office and the involved county department.

752 Examiner Decision - Distribution.

- a) One copy of the Examiner's decision(s) in each case shall be transmitted or mailed to each of the following:
  - 1) The applicant/appellant;
  - 2) All parties of record whose names and addresses are legible; and

- 3) Any public agency or department which the Examiner believes may be particularly affected by or interested in the instant case.
- b) The names of all recipients shall be listed on an Affidavit of Mailing placed in the case file.

756 Examiner's Power to Maintain Order During Hearing.

The Examiner shall have the power to maintain order and decorum during the conduct of all hearings before her/him.

760 Recusal of Examiner.

- a) When the Examiner deems her/himself disqualified to preside in a particular proceeding, she/he shall withdraw by notice on the record as soon as the need for recusal becomes known/apparent to the Examiner.
- b) Any person may request recusal of the Examiner assigned to a particular case. Such a request shall be raised as soon as the basis for disqualification is known to the person and shall state the grounds for the request with as much specificity as possible.
- c) The Examiner's decision on a recusal request shall be documented in writing and placed in the relevant case file (preferably as a marked exhibit whenever possible) or delivered orally during the open record hearing.
- d) If, after considering the merits of a recusal request, the Examiner determines not to recuse her/himself, the raising of such request shall in no way be considered by the Examiner in rendering a decision on the substantive case at hand.



## PART 800

### RECONSIDERATION

804 General.

All substantive Examiner decisions may be subject to the right of reconsideration, if the applicant (or appellant where there is no underlying application) agrees to allow reconsideration and to waive any applicable decision issuance timeline for the purpose of allowing such reconsideration. Such agreement shall be made in writing, on a form provided by the Examiner, not later than the close of the open record hearing (exclusive of any period during which the written record remains open for supplemental submittals as provided by Rule 724(k)). No agreement shall be accepted after the close of the hearing. Section 2.02.170 SCC contains regulations governing reconsideration. These rules are supplementary thereto.

808 Filing, Format and Content.

- a) Petitions for Reconsideration must be filed directly with the Examiner's Office. There is no filing fee.
- b) There is no required format. A neatly typed document which clearly indicates (through a title, subject line or within the first sentence) that it is a Petition for Reconsideration is preferred.
- c) The written request must contain all elements required by SCC 2.02.170(4) and must be based on one or more of the grounds set forth in SCC 2.02.170(3).

812 Written Communication Required.

All communication with the Examiner regarding a Petition for Reconsideration shall be in writing. Oral communication with support staff in the Examiner's Office regarding procedural questions is permissible.

816 Handling of Requests.

- a) Petitions for Reconsideration will be considered on the merits of the written request. No opportunity for supplementation or amendment after the close of the period for filing a reconsideration petition will be authorized or allowed, except upon special request that such information is necessary as part of a fair hearing process and upon approval of the Examiner and notification to all parties who will then be allowed an opportunity to respond.
- b) Where more than one Petition for Reconsideration is filed on a given decision, the Examiner may elect to respond to the petitions collectively, in groups or individually. Where one petition is denied and another is granted, the reconsideration process will not be considered completed for the purpose of filing appeals to a higher authority until the last petition is acted upon.

## PART 900

### FULFILLMENT OF PRECONDITIONS

904 General.

Certain county code provisions require that an applicant take some legally binding action before a land use application can be approved. An example is the requirement in Title 26B SCC to deed right-of-way to the County before a rezone is approved. Such a requirement cannot logically be fulfilled before the public hearing and decision on the application: once taken, the action is irreversible for all practical purposes. The "precondition" process has been developed to deal with such situations. The rules in this part provide standardization to the precondition process.

908 Applicability.

The rules in this part apply to any Examiner decision where, either because of code or law requirement or because of the special nature of the case, the decision being rendered cannot become effective until the applicant has taken one or more specified actions, referred to as "preconditions". The precondition process is not intended as a substitute for compliance with application submittal and other evidentiary requirements established by county code and/or rule.

912 Effect of Precondition on Decision.

A decision subject to one or more preconditions is binding but will not become effective until the stipulated precondition(s) have been fulfilled and such fulfillment is certified by the Director on a full copy of the decision. Failure to timely fulfill the precondition(s) or to timely request and receive a time extension for fulfillment as allowed by these rules will void the decision.

916 Fulfillment Procedures.

- a) Applicants are advised to consult with the appropriate Executive Branch department before preparing all materials: Department of Public Works for road-related documents; Department of Planning and Development Services for all other materials.
- b) An original of each document required for fulfillment of the precondition(s) must be submitted in a complete, executed fashion (where required) with the Department not later than the deadline stipulated in the decision. All materials (except site plans and other documents not requiring execution) must be signed (and notarized as necessary) before submittal. Documents are not to be recorded prior to submittal to the Department. The deadline for submittal shall be established by the Examiner based upon a realistic estimate of the amount of time necessary for a prudent and conscientious person to complete the requirement(s).

- c) Submittal is not the same as fulfillment. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s). The Department will route the submitted document(s) through the appropriate approval process.
- d) Once the precondition submittal deadline has expired, one and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction. A decision subject to preconditions will automatically be null and void if the corrected documents are not resubmitted within the allotted time.
- e) A decision subject to preconditions will automatically be null and void if all required precondition(s) have not been fulfilled as required; provided that:
  - 1) The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
  - 2) The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.
- f) The Department shall mail to the applicant and the Examiner's Office a countersigned copy of the Examiner's decision after the preconditions have been certified as fulfilled.

**PART 1000 WITHDRAWAL OF  
APPLICATIONS/APPEALS**

1004 Withdrawal.

Withdrawal of an application/appeal shall be made by the applicant/appellant in writing, except as provided herein, and shall be accepted in the following manner:

- a) Withdrawal Prior to Publication of Public Hearing Notice. If withdrawal of an application is made before publication of the public hearing notice, the applicant shall notify the Department, which shall place the withdrawal in the official case file. No further action by the County is necessary. If withdrawal of an appeal is made before publication of the public hearing notice, the appellant shall notify the Examiner's Office. The withdrawal shall be documented by the Examiner in a written Order which shall be placed in the official case file and shall be mailed to parties of record.
- b) Withdrawal after Issuance of Public Hearing Notice but prior to Public Hearing. If withdrawal is made after publication of the public hearing notice but prior to the opening of the public hearing, the applicant/appellant shall notify the Examiner's Office of such withdrawal. The withdrawal shall be documented by the Examiner in a written Order which shall be placed in the official case file and shall be mailed to principal parties. Where sufficient time and resources are available, the Order may be mailed to all persons to whom the notice of hearing was mailed.
- c) Withdrawal at or after the Public Hearing but Prior to Decision Issuance. If withdrawal is made verbally at the public hearing or in writing after the public hearing but before issuance of a decision, the Examiner shall accept the withdrawal. Withdrawal shall be documented by issuance of a written order which shall be placed in the official case file and shall be mailed to parties of record.
- d) Withdrawal after Decision Issuance. Withdrawal after a decision has been issued will not be honored unless expressly authorized by county code or state law.

1008 Effect of Withdrawal.

- a) No appeal from a withdrawal is authorized.
- b) Withdrawal terminates county consideration of the application/appeal.