

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING RULES)
OF PROCEDURE FOR THE OFFICE OF) R E S O L U T I O N
THE HEARING EXAMINER)

WHEREAS, pursuant to the provisions of the Revised Code of Washington, Section 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

WHEREAS, pursuant to the provisions of Resolution No. 96-0171 passed and adopted on the 13th day of February, 1996, the Board of County Commissioners adopted a Hearing Examiner Ordinance which established the Office of the Hearing Examiner, effective March 29, 1996; and

WHEREAS, pursuant to the provisions of RCW Section 36.70.970 the Board of County Commissioners shall prescribe procedures to be followed by the hearing examiner; and

WHEREAS, pursuant Section 6 of the Hearing Examiner Ordinance, the Board of County Commissioners may adopt interim procedures to be followed by the hearing examiner; and

WHEREAS, the Division of Building and Planning and the Hearing Examiner recommend the Board of County Commissioners adopt the attached Rules of Procedure;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners that the Chairman of the Board or the majority hereby adopts the attached Rules of Procedure to be followed by the Hearing Examiner.

PASSED AND ADOPTED this 26 day of March, 1996.

BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

ATTEST:

WILLIAM E. DONAHUE,
Clerk of the Board

By: Doranne Montoya
Deputy Clerk

[Signature]
Phillip D. Harris, Chair
[Signature]
John Roskelley
[Signature]
Steve Hasson

SPOKANE COUNTY HEARING EXAMINER

RULES OF PROCEDURE

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1. Authority for Rules of Procedure.

These rules are adopted pursuant to section 6 of the Spokane County Hearing Examiner Ordinance, which ordinance was adopted as an attachment to County Resolution No. 96-0078. These rules set forth uniform procedures applicable to all matters coming before the hearing examiner.

2. Definitions.

For the purposes of these rules:

A. "Application" shall mean the application for a permit or approval, or any appeal, within the jurisdiction of the hearing examiner.

B. "Division of building and planning" or "division" means the Division of Building and Planning, Spokane County Public Works Department.

C. "Examiner", "chief hearing examiner", "deputy hearing examiner" and "examiner pro tempore" shall have the meanings assigned to such terms in the Hearing Examiner Ordinance.

D. "Ex parte communication" means any oral or written communication made by any person, including a county employee or official, pertaining to a matter that is or will be within

the jurisdiction of the hearing examiner and that is made outside of a public hearing and is not included in the public record.

E. "Party" means any person who has appeared at a public hearing conducted by the examiner.

3. Ex Parte Communications.

A. No person may communicate ex parte, directly or indirectly, with the hearing examiner. The hearing examiner may not communicate ex parte with opponents or proponents of any application unless the hearing examiner makes the substance of such communication part of the public record and provides the opportunity for any party to rebut the substance of such communication as provided by law. The hearing examiner may reopen the hearing or record prior to a final decision to address such matter.

B. This section does not prohibit ex parte communication regarding procedural matters, communication by the hearing examiner with his\her staff or the county prosecuting attorney's office, communication by the examiner for the sole purpose of conveying information regarding the specifics of an application, or communication by the examiner with county departments for the purpose of obtaining information or clarification, so long as the information or clarification received by the examiner is made part of the record.

4. Disqualification.

A. The hearing examiner may enter an order disqualifying the examiner from consideration of an application in the event of a conflict of interest.

B. Prior to the taking of evidence, the hearing examiner shall disclose publicly and on the record any conflict of interest the hearing examiner may have regarding the application.

C. Anyone seeking to rely on the appearance of fairness doctrine or conflict of interest to disqualify the hearing examiner from participating in a decision must raise the challenge as soon as the basis for disqualification is known.

D. The hearing examiner shall rule on the issue of disqualification in each instance when it is raised.

5. Hearing Examiner-Authority.

A. The hearing examiner shall have the general duties and powers set forth in the Hearing Examiner Ordinance and applicable law. Public hearings shall be conducted by the duly appointed chief examiner, deputy examiner or examiner pro tempore.

B. The hearing examiner shall have such powers as are necessary to carry out the intent of the Hearing Examiner Ordinance, including the authority to:

- (1) conduct pre-hearing conferences;
- (2) require the submittal of information;
- (3) schedule and continue hearings;
- (4) rule on all evidentiary and procedural matters, including motions and objections appropriate to the proceedings;
- (5) receive evidence and cause preparation of a record;
- (6) regulate the course of hearings and the conduct of the parties and their agents;
- (7) maintain order;
- (8) render decisions and enter written findings and conclusions;
- (9) include in a decision the conditions of approval necessary to ensure that the application complies with the applicable criteria for its approval; and
- (10) revoke any approval for failure to comply with the conditions imposed by the hearing examiner.

6. Scheduling of Hearings.

A. The division of building and planning shall coordinate the scheduling of public hearings with the chief examiner. The chief examiner shall prepare a weekly agenda indicating the dates and times that matters will be heard during the week, which shall be the official agenda for hearings conducted during the week.

B. To provide a convenience to the public, when practical, minor applications such as variances or conditional use permit applications shall be scheduled at the beginning of the day's agenda, followed by more complex matters such as rezone and preliminary plat applications. The hearing examiner shall reasonably limit the number of complex matters that will be scheduled for hearing on a single day.

C. When practical and not in violation of ordinance or prejudicial to the rights of any party, the hearing examiner may consolidate for hearing applications under the jurisdiction of the hearing examiner involving the same or related properties.

D. The chief examiner shall notify the division in advance of his\her intent to take authorized leave, to facilitate scheduling and to arrange for a deputy examiner or examiner pro tempore if necessary to conduct hearings during the chief examiner's absence.

7. Timeliness of Hearings.

A. To ensure compliance with RCW 36.70B.090, the division of building and planning shall, at the time an application is ready to be scheduled for hearing, advise the chief examiner in writing of the number of days that have elapsed since the applicant was notified by the division that the respective project permit application was complete. Such advisement shall state the period(s) of time, if any, that were excluded in determining the number of elapsed days and the reason for any excluded period(s).

B. The chief examiner shall, if possible, schedule a hearing on the project permit application within a sufficient period of time to assure compliance with the 120 day period specified in RCW 36.70B.110. If the 120 day time period is not complied with, the hearing examiner shall provide written notice to the project applicant stating the reasons for noncompliance and the estimated date for issuance of the notice of final decision.

C. This section shall apply only to project permit applications within the examiner's jurisdiction and filed on or after April 1, 1996.

8. Hearing Backlog.

The division of building and planning shall notify the chief examiner when it appears that the hearing of any application will be delayed for more than six weeks or cannot be scheduled to meet the time limit provided for in RCW 36.70B.110, due to the number of hearings already scheduled before the examiner. The chief examiner shall call for additional hearings, or arrange for a deputy examiner or examiner pro tempore, if necessary to address such concerns.

9. Notice of Hearing-Effect of Notice.

A. Each public notice required for the hearing of an application shall conform to applicable statutory and ordinance requirements. The notice should contain a statement that the hearing will be held pursuant to the rules of procedure adopted by the hearing examiner.

B. Failure of a person entitled to notice to receive notice does not affect the jurisdiction of the hearing examiner to hear the application when scheduled and render a decision, if the notice was properly mailed and posted.

C. A person is deemed to have received notice if the person appears at the hearing or submits written information regarding the merits of the application, even if notice was not properly mailed or posted.

D. If required notice is not given and actual notice is not received, the hearing examiner may reschedule the hearing or keep the record open on the matter to receive additional evidence.

10. Staff Reports on Applications.

A. The division of building and planning shall coordinate and assemble the comments and recommendations of other county departments and commenting agencies, and shall make a written staff report to the hearing examiner on all applications.

B. At least seven calendar days prior to the date of the scheduled public hearing, the staff report shall be filed with the office of hearing examiner and mailed by first class mail or provided to the applicant. At such time, the division shall also make the report available for public inspection. Upon request, the division shall provide or mail a copy of the report to any requesting person for the cost of reproduction indicated in chapter 1.42 of the Spokane County Code plus the cost of mailing if applicable.

C. If the staff report is not timely filed or furnished, the hearing examiner may at his\her discretion continue the hearing, considering the prejudice to any party and the circumstances of the case.

D. The staff report shall succinctly include the following information, as relevant to the application:

- (1) a description of the application;
- (2) the names and current addresses of the applicant, the owners of the subject property and any technical advisor or agent representing the applicant;
- (3) the name and office of the staff person preparing the report;
- (4) the location and general physical characteristics of the site, including size, dimensions, topography and existing uses;
- (5) the comprehensive plan designation and current zoning, and a brief history of past zoning and land use actions involving the site;

- (6) a technical data summary of the minimum lot sizes, allowable density, permitted site coverage and comparison of allowable uses under the existing and proposed zoning of the site;
- (7) the general character, land use and zoning of the surrounding area; including a brief summary of recent land use actions or development trends in the surrounding area;
- (8) the application's compatibility and impact on the zoning and character of the surrounding area;
- (9) a summary of the relevant and material provisions of the comprehensive plan, and the consistency of the application with such provisions, the county zoning code and applicable development regulations;
- (10) the proposed conditions for approval of the application under applicable land use codes and controls;
- (11) a summary of the type and service capacities of existing facilities and infrastructure, and the impact of the application thereon;
- (12) a summary or transmittal of the reports and recommendations of other agencies or departments commenting or consulted;
- (13) pertinent information regarding the State Environmental Policy Act and chapter 11.10 of the Spokane County Code;
- (14) analysis of the benefits offered by the application to the community;
- (15) if a rezone, a summary of the changed circumstances if any that support approval of the application;
- (16) the current population density in the general vicinity;
- (17) the division's conclusions and recommendations regarding approval of the application and SEPA; and
- (18) a zoning map and comprehensive plan map for the site and vicinity; and a copy of the proposed site plan, if any, for the application.

E. The chief examiner may make recommendations to the division on the format and content of staff reports submitted to the hearing examiner.

11. Site Inspections.

A. The hearing examiner may make site inspections, which may occur at any time after the staff report on an application has been filed with the hearing examiner and before the examiner renders a final decision. The hearing examiner need not give notice of the intention to make an inspection.

B. The inspection and the information obtained from it shall not be construed as new evidence or evidence outside the

record. If an inspection reveals new and unanticipated information, the hearing examiner may upon notice to all parties of record request written response to such information or reopen the hearing to consider the information.

12. Presentation of Evidence.

A. The format of the public hearing shall be organized so that the testimony and written evidence can be presented quickly and efficiently. The format will generally be as follows:

- (1) a brief introduction of the matter by the hearing examiner;
- (2) a report by division staff including introduction of the official file on the application and its procedural history, an explanation of the application, including the use of visual aids, and the recommendation of the division on the application;
- (3) the submittal of testimony and documents by the party with the burden of proof at the hearing, typically the applicant on an initial application or the appellant in the case of an appeal; followed by persons in support of such party's position;
- (4) the submittal of testimony and documents by opposing parties;
- (5) rebuttal;
- (6) questions and clarifications;
- (7) closure of the hearing;
- (8) closure of the record and continuation of the matter for final decision.

B. All reasonably probative evidence is admissible by the hearing examiner. The hearing examiner may exclude all evidence that is irrelevant, immaterial or unduly repetitious. The judicial rules of evidence are not strictly applied, but may be used by the examiner for guidance. The hearing examiner shall accord such weight to the evidence as he/she deems appropriate.

C. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference, at the hearing examiner's discretion. The examiner may require that the original of a document be produced. A party submitting documentary material at the hearing should make copies available at the hearing for review by the opposing party.

D. The hearing examiner may take official notice of judicially cognizable facts; federal, state and local laws, ordinances or regulations; the county's comprehensive plan and other adopted plans or policies of the county; and general, technical and scientific facts within the examiner's

specialized knowledge; so long as any noticed facts are included in the record and referenced or are apparent in the examiner's final decision.

E. The hearing examiner may require that testimony be given under oath or affirmation. All testimony taken by the hearing examiner in an appeal under section 11.10.170 of the Spokane County Code shall be under oath.

F. The hearing examiner may allow the cross-examination of witnesses. The hearing examiner is authorized to call witnesses and request written evidence in order to obtain the information necessary to make a decision. The hearing examiner may also request written information from or the appearance of a representative from any county department having an interest in or impacting an application.

G. The hearing examiner may impose reasonable limitations on the number of witnesses to be heard and the nature and length of their testimony to avoid repetitious testimony, expedite the hearing or avoid continuation of the hearing.

H. The hearing examiner may cause the removal of any person who is being disruptive to the proceedings, or continue the proceedings if order cannot be maintained. The examiner shall first issue a warning if practicable.

I. No testimony or oral statement regarding the substance or merits of an application is allowable after the close of the public hearing. No documentary material submitted after the close of hearing will be considered by the hearing examiner unless the examiner has left the record open for the submittal of such material and all parties are given an additional time to review and rebut such material.

13. Reopening or Continuing Hearings.

A. The hearing examiner may reopen or continue a hearing to take additional testimony or evidence, or other compelling cause, provided a final decision has not been entered.

B. If the hearing examiner announces the time and place of the continued hearing on the record before the hearing is closed, no further notice is required. If the hearing is reopened after the close of the hearing, all parties must be given at least five days notice of the date, time, place and nature of the reopened hearing.

C. Motions by a party for continuance or to reopen a hearing must state the reasons therefore and be made as soon as reasonably possible. The motion must be submitted in writing

unless made at the hearing. The hearing examiner may continue or reopen a hearing on his\her own motion, citing the reasons therefore.

14. Dismissal of Application.

A. The hearing examiner shall conduct the public hearing based on the completed application. If the hearing examiner deems that the application has been substantially changed since it was deemed complete, the examiner shall dismiss the application without prejudice and direct that a new application be submitted by the applicant and appropriate fees paid therefore. If the hearing examiner determines that the proposal has been changed but not substantially, the examiner shall not take action on the application until all reviewing agencies have been given an opportunity to review the changes made and make recommendations deemed to be necessary under applicable rules and regulations.

B. The hearing examiner may dismiss an application pursuant to a request by the applicant to withdraw an application, or for failure of the applicant to attend required hearings or provide requested information. If the applicant notifies the division of building and planning in writing of the desire to withdraw an application prior to notice of hearing being mailed to the persons entitled thereto, the dismissal shall be allowed without prejudice, and noted in the application file. If the request for withdrawal of an application is received after such notice being mailed and before a final decision is rendered, the application shall be dismissed with prejudice with the same effect as a denial of the application on the merits, in that the same or similar application cannot be considered by the hearing examiner for a one year period commencing with the date the initial application was deemed complete.

15. Record of Hearing.

A. The hearing examiner shall establish and maintain a record of all proceedings and hearings conducted by the examiner, including an electronic recording capable of being accurately transcribed and reproduced. Copies of the recording and any written portions of the record shall be made available to the public on request for the cost of reproduction or transcription, as determined by the chief examiner.

B. The record of hearing shall include, but is not limited to:

- (1) the application;
- (2) department staff reports;

- (3) all evidence received or considered by the hearing examiner;
- (4) the final written decision of the hearing examiner;
- (5) affidavits of notice for the hearing;
- (6) the environmental determination regarding the application;
- (7) the electronic recordings of the hearings and proceedings by the hearing examiner; and
- (8) the departmental file for the application, if incorporated into the record by the examiner.

C. For purposes of appeal to court or to the board of county commissioners, the electronic recording shall be transcribed at the cost of the appellant. The transcript shall be a verbatim transcript, unless the hearing examiner, the appellant and the applicant, if different from the appellant, agree that only certain portions of the hearing and other proceedings need be transcribed. The hearing examiner shall in all cases certify the official record and transcript for the purpose of appeal.

D. The hearing examiner may authorize a party to have the proceedings reported by a court reporter and have a stenographic transcription made at the party's expense. The hearing examiner may also cause the proceedings to be reported by a court reporter and transcribed.

E. The hearing examiner shall have custody of the hearing record and shall maintain such record until the period for appeal of the examiner's final decision has expired or the record is transmitted to court or the board of county commissioners pursuant to an appeal of the examiner's final decision.

16. Decision of the Hearing Examiner.

A. The decision of the hearing examiner shall include at least the following:

- (1) a description of the application;
- (2) the location of the property;
- (3) a statement regarding the status of SEPA review for the application;
- (4) the date and location of the hearing;
- (5) a list of the persons who testified at the hearing or a summary thereof;
- (6) a list of exhibits, or summary of such list;
- (7) a statement identifying the ordinance or criteria governing approval of the application; and
- (8) written findings of fact, conclusions, and a final decision based on such findings and conclusions, granting, denying or granting the application with such

conditions, modifications and restrictions as the examiner deems appropriate.

B. The final decision of the hearing examiner shall be rendered within ten (10) working days after the record is closed by the hearing examiner on an application, or such longer period of time as the applicant and the examiner agree in writing. The hearing examiner shall provide a copy of the final decision to the division of buildings as soon as possible.

C. No later than three (3) working days following the rendering of the final decision, copies of the final decision shall be mailed by certified mail to the applicant and by first class mail to other parties of record in the case.

D. Appeals from the hearing examiner's final decision must be taken in the manner and within the time frames established by the Hearing Examiner Ordinance.

17. Reconsideration.

The hearing examiner shall have limited authority to reconsider or clarify a final decision, which shall be confined to addressing exceptional circumstances such as correcting clerical errors, fraud or obvious ambiguity.

18. Compliance with Law.

The hearing examiner may modify these rules on a case by case basis to comply with applicable law.