

INTRODUCED BY: Consent
PROPOSED BY: Hearing Examiner
DATE: August 7, 1986

RESOLUTION NO. 86-41

A RESOLUTION APPROVING HEARING EXAMINER RULES

WHEREAS, Whatcom County Code 20.92.225 indicates that the Hearing Examiner shall have power to prescribe rules and regulations for the conduct of hearings before him subject to approval by the County Council; and,

WHEREAS, the Whatcom County Hearing Examiner has revised the rules of the Whatcom County Hearing Examiner; and,

WHEREAS, the Whatcom County Council has reviewed those rules and find them to be appropriate;

NOW, THEREFORE, BE IT RESOLVED that the Whatcom County Council hereby approves of the rules which are prescribed by the Hearing Examiner to conduct the hearings before the Hearing Examiner;

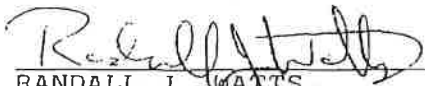
BE IT FURTHER RESOLVED that these rules shall take effect immediately and shall apply to hearings which are held both under Title 20 as well under Title 2.24.

PASSED this 7th day of August, 1986.


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


DONALD G. HANSEY, Chairman

APPROVED AS TO FORM:


RANDALL J. WATTS
Civil Deputy Prosecuting
Attorney

ATTEST:


Carol Ebergson

RECEIVED

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WHATCOM COUNTY
COUNCIL

EXHIBIT TO RES. 86-41

BUSINESS RULES

OF THE

WHATCOM COUNTY HEARING EXAMINER

ARTICLE 1 - RULES OF GENERAL APPLICATION

1.1 These rules are supplementary to the provisions of the ordinances of Whatcom County as they relate to the procedures of the Hearing Examiner.

1.2 Nothing herein shall be construed to give or grant to the Hearing Examiner the power or authority to alter or change the Zoning Ordinance including the Zoning Map, that authority being fully reserved to the Whatcom County Council.

1.3 The Hearing Examiner shall maintain for public inspection a file containing the various records of his actions, findings and determinations.

1.4 It is the policy of the Hearing 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 Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.5 In order to ensure the appearance of fairness, ex parte communications shall be proscribed as follows:

- A. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for a public hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters only.
- B. The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor with his or her agent, employee or representative, interested in a particular application which is designated for a public hearing with regards to the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters nor shall it prohibit the Hearing Examiner from requesting additional information for submission at the hearing.
- C. If a substantial prohibited or ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed and the Hearing Examiner shall, within his or her discretion, abstain from participating in any consideration of the matter. Any party of record may request that the Hearing Examiner abstain from participation in the public hearing, and if a request is so made a substitute Hearing Examiner shall conduct the public hearing.

D. For purposes of this rule on *ex parte* communications, "*ex parte communication*" means a written or oral communication not included in the public record and made outside of a public hearing.

E. In cases where the designated Hearing Examiner may have a conflict of interest, or foreknowledge that may give the appearance of unfairness, he shall disclose this fact to the respective parties. Upon objection by either party, the case shall be continued until the appointment of a substitute Hearing Examiner.

1.6 Notice of Hearing shall be provided by the Hearing Examiner as follows:

A. It is the responsibility of the Hearing Examiner to receive applications transmitted by Planning and Development Services, and to mail, publish, or otherwise provide proper notice of time and place of public hearings as provided by Ordinance.

B. It shall be the responsibility of the individual applicant to provide to the Hearing Examiner the names and addresses of all persons or other entities entitled to receive notice under the provisions of the Ordinance relevant to the application, as set forth in said Ordinance. The applicant shall provide to the Hearing Examiner a statement setting forth compliance with this rule on a form provided by Planning and Development Services.

C. A notarized affidavit, or its equivalent, attesting to the written notice of a given public hearing shall be made a part of each official case record.

1.7 The Whatcom County Prosecuting Attorney shall act as legal counsel to the Office of the Hearing Examiner and shall be consulted in cases where the powers of the Hearing Examiner are not clearly defined.

1.8 At the discretion of the Hearing Examiner, testimony taken at a public hearing may be taken under oath.

1.9 Computation of any period of time prescribed or allowed by these rules shall begin with the first business day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national or state holiday, the period shall run until the end of the next following business day.

1.10 At the request and discretion of the Hearing Examiner, a representative of the Whatcom County Prosecuting Attorney shall be present at public hearings or meetings to advise on matters of law and procedure.

1.11 Relevant, material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence may be excluded, although the rules of evidence applicable in Washington State Superior Court will not be strictly applied.

1.12 Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of any written materials in the record may be obtained by any interested person upon payment of the cost of reproduction of such materials.

1.13 The following definitions shall apply, unless context or subject matter otherwise requires:

A. "Comprehensive Plan" means all development principles and standards adopted by the Whatcom County Council as objectives and goals for the Comprehensive

Plan for the County which are in effect at the time of submission of a petition or application.

- B. *"Examiner"* means the Hearing Examiner.
- C. *"Interested Person"* means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, and shall include any party in a contested case.
- D. *"Party of Record"* means any of the following:
 - 1. Persons who testify at a hearing;
 - 2. The applicant;
 - 3. Persons submitting written arguments, dealing with the merits of the case; provided that persons who do not qualify as a party of record may receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner with a request for such notice.
- E. *"Council"* means the Whatcom County Council.
- F. *"Applicant"* means any person applying for a permit or variance or the appellant in the case of an administrative appeal.

ARTICLE 2 - HEARING PROCEDURES

2.1 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 the most readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need not be limited to, the following elements: a brief introductory statement by the Hearing Examiner; introduction of the official file; a report by the departmental staff; a summary of the recommendations of the departments; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross examination and rebuttal; and opportunity for questions by the Hearing Examiner.

2.2 Prior to commencement of a public hearing, the Hearing Examiner may at his discretion order a pre-hearing conference for purposes of marking potential documents and exhibits and resolving questions or procedure.

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

2.4 Every party shall have the right of due notice, cross examination, rebuttal, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross examination is permitted as necessary for a full disclosure of the facts.

2.5 A continuance may be ordered in any case for good cause shown at the discretion of the Hearing Examiner. Continuances shall be governed by the following provisions:

- A. A continuance of the public hearing shall be to a date and time certain.

- B.** If a continuance is granted at a public hearing, no further notice is required. Continuances requested prior to hearing shall be announced at the time and place set for the hearing and said announcement shall constitute proper notice of the continuance to all parties.
- C.** If a continuance is granted outside of a public hearing, notice shall be provided to all parties of record not less than five (5) days prior to the newly scheduled hearing. Said notice shall include the date, time, place and nature of the subsequent hearing.
- D.** Where the Hearing Examiner determines that additional information is necessary to form a complete record, the record may be left open for a determinant period of time by the Hearing Examiner for receipt of only those items specified by the Hearing Examiner.
- E.** The applicant may request a continuance of the hearing at any time. Any party of record may request a continuance at the hearing. Continuances shall be granted unless it appears to the Hearing Examiner that the request is for the purpose of delay only. No more than two continuances shall be granted without a substantial showing of just cause.
- F.** If the granting of a continuance requested by an applicant will set a hearing date that is beyond a date specified by the applicable ordinance for a final decision, the applicant shall provide the Hearing Examiner with a written consent to an extension of that deadline. The Hearing Examiner may deny a request for continuance by a party of record other than the applicant if the applicant will be prejudiced by a continuance which has the effect of delaying a decision beyond the date set by the ordinance.

2.6 At any time prior to the filing of the recommendation or decision, the Hearing Examiner may reopen the proceeding for reception of further evidence. All parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

2.7 Evidence submitted prior to or at a hearing shall be governed by the following:

- A.** In each particular proceeding, the petitioner, applicant, or proponent of an individual petition or application shall have the burden of proof.
- B.** The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is of the type which 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.
- C.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- D.** The Hearing Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. When any recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such

notices of the fact shall be granted any affected person making timely motion therefor. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

- E.** If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significant relevance and good cause for delay in submission. All 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. This provision shall not apply to material submitted under Rule 2.5D, above, but shall apply only to evidence presented other than at the request of the Hearing Examiner.

2.8 The applicant or those in opposition to the application may appear in their own behalf or may be represented by counsel or other agent. In the event that those opposing an application retain legal counsel to represent them at the hearing then such legal counsel shall notify the appellant or the applicant or his agent or attorney that he has been so retained and will be present to object. Such notice shall be delivered to the offices of the Hearing Examiner and the applicant or his agent or attorney at least two (2) days prior to the scheduled hearing. If such notices are not given by counsel retained by party opponents, then the applicant or his agent or attorney shall have the option of postponing the hearing to the next available hearing date.

2.9 Any person appearing on behalf of any party of record as said party's agent or counsel, shall provide to the Hearing Examiner prior to the date of the hearing a written authorization from the party of record authorizing the appearance of agent or counsel on behalf of the party of record.

ARTICLE 3 - DISMISSAL OF APPLICATIONS

3.1 Applications may be dismissed by the Hearing Examiner for the following reasons:

- A.** By written request for dismissal by the applicant.
- B.** For failure of an applicant or his authorized representative to appear at the time and place scheduled for the hearing of the application.
 - 1.** The Hearing Examiner shall notify in writing the applicant in those cases which are dismissed by him due to the applicant's failure to appear.
 - 2.** The applicant may, within seven (7) days of the date of notice of dismissal, apply for reinstatement of the application. In such cases, the applicant must file a written request for reinstatement. Reinstatement shall be at the discretion of the Hearing Examiner for good cause shown and upon payment to the Hearing Examiner a filing fee which may be established by the Whatcom County Council. The applicant shall also be responsible for the payment of any costs associated with the provision of required notice for hearing on the reinstated application.
- C.** Upon the filing of applications found to contain false information or incomplete or erroneous property owners' names and addresses.
- D.** Where the Hearing Examiner finds that proper notice, as required by the applicable ordinance, has not been given.

ARTICLE 4 - PROCEDURES FOR APPEAL OF ADMINISTRATIVE DECISIONS

4.1 Appeals from administrative decisions may be brought before the Hearing Examiner as provided for by ordinance.

4.2 The Hearing Examiner shall, upon receipt of the application for appeal, transmit to the administrative official involved a copy of the application for review, upon receipt of which the administrative official shall transmit to the Hearing Examiner all papers and other materials constituting the record upon which the action appealed from was taken. All materials forwarded shall be available for inspection by the appellant.

4.3 Upon receipt of a properly completed appeal application form, the Hearing Examiner shall assign a case number and place it on the calendar of the Examiner for hearing within requisite time provisions. Applications for appeal shall be assigned for hearing in the order in which they are received. Said application may be filed with an accompanying application for variance, conditional use permit, or other permit where applicable.

4.4 Filing of an application for appeal shall stay all proceedings in furtherance of the action appealed from unless the Hearing Examiner finds that a stay of decision would cause peril to life or property or would otherwise work an undue hardship.

4.5 The Hearing Examiner shall, unless the parties have mutually agreed to waive the applicable time limit, render a decision within prescribed time limits with written findings of fact based upon information provided by the applicant, the Whatcom County Comprehensive Plan, pertinent provisions of the applicable codes and ordinances, site inspection, testimony and other evidence presented at the public hearing.

4.6 The format of the hearing shall be that as set forth elsewhere in these Rules.

ARTICLE 5 - FINAL AND RECOMMENDED DECISIONS AND APPEALS THEREFROM

5.1 All decisions of the Hearing Examiner shall include written findings of fact and shall state the reasons for the decision of the Hearing Examiner. If conditions are attached to any application granted by the Hearing Examiner, such conditions shall be referred to in the notice of decision and embodied in the findings of fact. Decisions shall be rendered with the time required by ordinance, unless the applicant has agreed in writing or at the hearing to waive the applicable time limit.

5.2 The decision shall be based upon a consideration of the whole record and supported by a reliable, probative and substantial evidence.

5.3 In those cases where the Hearing Examiner's decision is final (as opposed to recommended) a notice of decision shall be issued to the applicant, pertinent administrative officials, and all parties of record who request said notice in writing. Any party of record may receive a copy of the Hearing Examiner's decision upon request therefor and upon payment of the costs of reproduction. Provision of a copy of the decision shall constitute notice of decision.

5.4 Unless otherwise specified by the Hearing Examiner, a final decision of the Hearing Examiner authorizing a proposal shall expire if the applicant fails to obtain other necessary permits to commence, if required, or to otherwise take advantage of the approval of the original request within one (1) year of the date of the decision. An extension of the expiration date may be granted by the Hearing Examiner where the applicant has made a written request for an extension in a timely manner, at least thirty (30) days prior to the expiration date. A Hearing Examiner may, at his discretion, order that a public hearing be held on the request.

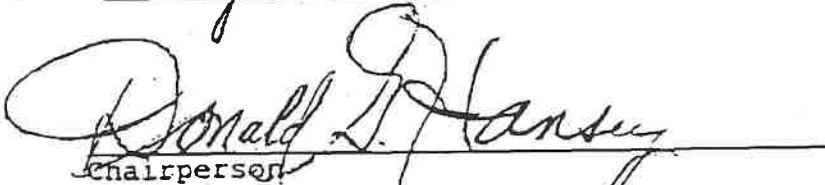
5.5 In cases of final decisions, a request for reconsideration may be filed in writing by an applicant or any opponent of record within three (3) days of the date of decision. The request must be based upon error or omission in the content of the decision, and although the Hearing Examiner is not required to modify his original decision to reflect the comments received thereon, he may initiate such action as is deemed appropriate. Where the Hearing Examiner determines that the grounds cited for reconsideration do not warrant modification of the original notice of decision, he shall provide the requesting party with written notice of his determination prior to the expiration of the time set out herein for the filing of an appeal.

5.6 A person aggrieved by a final decision of the Hearing Examiner may make application for appeal to the Whatcom County Council on a form provided by Planning and Development Services. Such an application for appeal must be made within ten (10) days of date of the decision of the Hearing Examiner. Procedures involved in the conduct of a hearing upon an appeal to the Whatcom County Council shall be those set forth in the business rules of the Whatcom County Council.

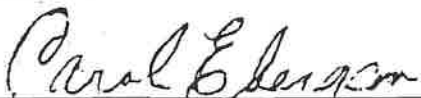
The foregoing rules and regulations are hereby adopted on the 7th day of August, 1986, by the Hearing Examiner of Whatcom County.


Charles R. Snyder, Hearing Examiner

Approved this 7th day of August, 1986 by the Whatcom County Council.


Chairperson

ATTEST:


Clerk of the Council

Approved as to Form:


Deputy Prosecuting Attorney