

**RULES OF PROCEDURE BEFORE THE
COWLITZ COUNTY HEARINGS EXAMINER**

INTRODUCTION

The following Rules of Procedure have been adopted by the Cowlitz County Hearing Examiner.

The examiner and deputy examiners will be guided, where appropriate, by provisions and interpretations of the Washington Administrative Procedure Act (Ch. 34.05 RCW), and the Rules of Civil Procedure and Rules of Evidence applicable in the Superior Courts of the State of Washington.

In situations of conflict within these rules, with the enabling ordinances of the hearing examiner, or with ordinances and regulations administered thereunder, the more specific statement on any matter shall govern and section headings may be considered in determining the applicability of the rule; EXCEPTING, that matters of the jurisdiction of the hearings examiner in hearings and appeals shall be strictly governed by language of the enabling ordinances of the hearing examiner. In such other matters, the discretion and reasoned interpretations of the examiner shall govern resolution of conflicts.

ARTICLE I.

RULES OF GENERAL APPLICATION TO EXAMINER HEARINGS

The rules in this Article I apply to substantive proceedings before the hearings examiner.

1.1 Expeditious Proceedings. The examiner and all parties shall make every reasonable effort to avoid delay at each stage of every proceeding.

1.2 Computation of Time.

A. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall be included.

B. The last day of the period so computed shall be included, terminating at 5:00 p.m., unless the last day of the period is a Saturday, Sunday or legal holiday, in which event the period shall run until 5:00 p.m. of the next day which is not a Saturday, Sunday or legal holiday.

C. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays or legal holidays shall be excluded from the computation.

D. "Working" days used herein exclude weekends and legal holidays.

1.3 Definitions.

A. The use of the masculine includes the feminine.

B. "Board" means the Cowlitz County Board of County Commissioners, or the Cowlitz County Board of Health, as applicable.

C. "County" means Cowlitz County, Washington.

D. "Department" means the Cowlitz County Departments of General Administration, Community Development, Public Works or Health and Human Services, as applicable.

E. "Examiner" means the hearing examiner for the County of Cowlitz or a deputy or special deputy thereof.

F. "Party of record" shall mean any of the following:

1. The applicant; or
2. All persons who testify at the public hearing; or
3. All persons who individually submitted written comments concerning the specific matter to the responsible County Department or hearing body prior to the close of the hearing (excluding persons who have only signed petitions and opinion letters, or mechanically produced for letters); or
4. All persons who specifically request notice of a decision by personally entering their name and mailing address on a register provided for such purpose at the public hearing provided that a person who becomes a party of record shall remain such through subsequent Board proceedings involving the same application, except that the Board may cease mailing notice and other materials to any party of record whose mail is returned by the postal service as undeliverable or no longer subject to automatic forwarding; or
5. All persons who are otherwise determined to be such by statute or by operation of law.

1.4 Presiding Official.

A. Hearings shall be presided over by a duly qualified examiner approved by the Board of County Commissioners.

B. The examiner shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. In the court of the proceedings, the examiner may:

1. Administer oaths and affirmations.
2. Issue subpoenas.
3. Rule upon offers of proof and receive evidence.
4. Regulate the course of the hearings and the conduct of the parties and their agents.
5. Consider and rule upon procedural and other motions appropriate to the proceedings.
6. Make and file recommendations and decisions.

C. Conflicts of Interest.

1. The Appearance of Fairness Doctrine, as set forth in Ch. 42.36 RCW, and the Cowlitz County Code shall apply to the examiner. Any conflict of interest shall be disclosed prior to such hearing.

2. No person shall interfere with or attempt to interfere with the examiner in the performance of their designated duties.

1.5 Ex Parte Communication

A. For purposes of this rule, “ex parte communication” means a written or oral communication made outside of a public hearing and not included in the public record.

B. No interested person or his agent, employee, or representative shall communicate ex parte directly with the examiner or the examiner’s immediate staff concerning the merits or facts of any matter having an adjudicatory hearing before the examiner or any factually related matter. The rule shall not prohibit ex parte communications about procedural topics.

C. Neither the examiner nor any member of his immediate staff shall communicate ex parte directly or indirectly with any interested person or his agent, employee, or representative in such matters except concerning procedural topics, as above.

D. If a substantial, prohibited, ex parte communication is made to or by the examiner or his immediate staff, such communication shall be publicly disclosed at the next following public hearing or meeting regarding the subject position or application or, if there is no further such hearing or meeting, disclosure shall be made in writing to all parties of record within ten days (see Rule 1.2) of the date of the improper communication.

1.6 Decorum, Recording, and Safety.

A. All person in attendance shall conduct themselves with reasonable decorum and courtesy consistent with quasi-judicial proceedings. The hearing examiner may recess a hearing at any time that a violation occurs. In that event, the examiner shall re-convene the hearing pursuant to oral notice give at the time of recessing, or pursuant to subsequent written notice to the parties of record, under such conditions as are reasonable to assure that the violation(s) will not be repeated. Such conditions may include the exclusion of identified persons from the hearing and further participation in the hearing, except by written materials.

B. Recording and photographic equipment shall be permitted, subject to such conditions as may be imposed by the examiner to prevent disruption of the hearing and maintain the deliberative nature of the hearing. Flash photography and supplemental lighting is prohibited.

C. No firearms shall be permitted in the hearing room except when in the possession of a law enforcement officer, as defined under the Revised Code of Washington. Notice of this prohibition shall be posted at the entry door(s) to the hearing. Any person who enters the hearing room carrying or concealing a firearm is required to disclose that fact. If such person is not a law enforcement officer, and a secure repository for the firearm is not available within the hearing facility, the person possessing the firearm must remove it to a location outside the facility. A person who fails either to disclose upon entry or to remove a firearm shall be excluded from the hearing in accordance with subsection A, above.

1.7 Right of a Party. A party appearing before the examiner, depending upon the nature of the proceeding, shall possess some or all of the following rights:

A. Due Notice. See section 1.12 and 1.6.

- B. Presentation of Evidence. See Introduction and sections 1.8 and 1.12.
- C. Objection. An objection to the admission or exclusion of evidence shall state briefly the ground for objection. Any evidence entered into the record without objection shall be deemed admissible.
- D. Motion. See sections 1.16 and 1.17.
- E. Argument. See Introduction, and sections 1.8 and 1.12.
- F. Rebuttal. See Introduction, and sections 1.8 and 1.12.
- G. Cross-Examination. See Introduction, and sections 1.8 and 1.11.
- H. Representation by Counsel. A person may be represented at his or her own expense by a lawyer licensed in Washington.
- I. Other Rights. The examiner may grant such other rights as he/she may find reasonable and necessary to conduct a fair hearing or proceeding.

1.8 Evidence.

A. Burden of Proof. Except as may be otherwise specified by law or ordinance, the burden of proof rests upon the moving party; that is, upon the applicant, appellant or petitioner:

- 1. If the burdened party fails to introduce evidence sufficient to sustain its burden of proof, the examiner may deny the application or petition, or dismiss the appeal, without taking evidence or hearing argument in opposition.
- 2. In a proceeding to consider an appeal or challenge to a Cowlitz County agency's imposition of a penalty or burden on a party or on his/her property, the agency shall be required to present a prima facie case based upon competent evidence demonstrating that the legal standard for imposing such burden or penalty has been met.

B. Standard of Proof.

- 1. Unless otherwise provided by law or ordinance, the standard of proof is a preponderance of the evidence.
- 2. In the case of appeals from threshold determinations made pursuant to the State Environmental Policy Act, the burden rests with the appellant to demonstrate that the decision of the responsible official was clearly erroneous based on the record as a whole.
- 3. The examiner shall grant substantial weight or otherwise accord deference whenever directed by ordinance or statute, or by operation of law.
- 4. Substantial weight also may be given to the factual determinations and conclusions (but not to conclusions of law), made by public agencies charged with the administration of statutes and ordinances, with respect to matters within their jurisdiction.

C. Admissibility. All relevant evidence is admissible which, in the opinion of the examiner, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.

D. Inadequate Legal Notice. Lack of legal notice of the proceeding may be raised by any person at any time before the hearing is closed. To the extent possible consistent with due process and statutory limitations, the effects of deficient notice shall be cured by providing adversely affected persons, through continuances and other procedural mechanisms, reasonable opportunity to effectively participate in the hearing. Unless otherwise required by law, the receipt of actual timely notice by a person of a proceeding shall be considered generally as having cured a deficiency in legal notice to that person. If corrective actions are not deemed adequate by the examiner, the examiner shall adjourn the hearing and order new notice to be issued, and shall address waiver of time limitations in accordance therewith.

E. Copies. 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.

F. Official Notice. The examiner may take official note of judicial facts in the absence of controverting evidence, and in addition may take notice of general technical or scientific facts within 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 or record, opportunity to disprove such noticed fact shall be granted any affected person making a timely motion. The examiner shall not take notice of disputed adjudicative facts, which are at the center of a particular proceeding.

G. Evidence Received Subsequent to the Hearing. No evidence shall be submitted after the completion of the public hearing unless authorized by the examiner.

1.9 Recordings. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings and of any written materials in the record shall be made available to the public upon request, upon payment of costs as provided by law.

1.10 Oath. All testimony shall be taken under oath or affirmation.

1.11 Cross-Examination. Cross-examination shall be permitted and limited as provided by law.

1.12 Limit on Testimony. The examiner may impose reasonable limitations on the number of witnesses heard and on the nature and length of their testimony in order to expedite the proceeding and avoid the continuation of the hearing. If a party is unable to present his arguments and testimony within the allotted time, an opportunity may be granted to submit written materials after the close of the hearing. (However, see Rules 1.8.F, above, and 2.2.B, below) Such written materials must be filed with the examiner not later than two (2) business days following close of the hearing, unless otherwise ordered by the examiner. Copies of all responses, studies, briefs or other written statements shall be concurrently served upon the opposing parties to the extent reasonable and applicable hereunder. The examiner may exclude from consideration documents which are not timely filed or served under these rules or pursuant to order of the examiner.

1.13 Notice of Hearings.

A. Time Requirement. Notice of any hearing before the examiner shall be given as provided by State statute, ordinance, or these rules.

B. Time and Place of Hearing. Hearings before the examiner shall be at such times as established by the examiner and shall be conducted at the Cowlitz County Commissioner's Hearing Room in the County Administration Building.

C. Affidavit of Notice. Where required by law, a notarized affidavit attesting to the written notice of a public hearing, such as the affidavit of publication in the newspaper, shall be made a part of the official case record.

D. Multiple parties. Multiple parties and interested persons who have similar interests are encouraged to select one or two persons (who may or may not be attorneys) as representatives for the purpose of accepting service of documents, motions and notices, scheduling of hearings, and otherwise facilitating the efficient and economical management of cases having numerous participants. In the absence of selection by the parties or interested persons, the examiner may designate a representative party or parties when reasonably necessary for efficient and economical case management purposes.

1.14 Discovery.

A. Limited discovery is authorized to assist parties and interested persons in preparing for a hearing and to make the hearing more efficient, while remaining consistent with the policy of keeping the hearing process accessible to the lay public. Applicants and opponents of record, and in particular those parties represented by counsel, will be directed by the examiner to furnish responsive information to the examiner, county and other such parties:

1. The name, address, telephone number and qualifications of expert witnesses; and a summary of the testimony expected from each expert, including the principal facts and opinions to be offered; and

2. Copies of any studies or reports (whether prepared by experts or others) which are planned to be offered at the hearing.

B. Requests for other discovery by depositions upon oral and written examination; written interrogatories; productions of documents or things; permission to enter upon land for inspection or investigation; and requests for admissions, may be made by a party or interested person only if such request is previously approved by the examiner in conjunction with pre-hearing proceedings, addressed below, and with such conditions and restrictions as the examiner may order.

C. Failure of a party to respond timely and fully to discovery requirements under subsection A or to requests under subsection B, above, without providing substantial justification for failing to respond, shall cause one or more the following actions to be taken by the examiner, as appropriate (without unduly either penalizing or inconveniencing other parties, or delaying the proceedings):

1. Continuance of a scheduled hearing to enable obtaining the information. A party who violates these rules of discovery is deemed to have affirmatively waived time limitations for hearing and all further proceedings thereto under the examiner ordinance(s);

2. Testimony, reports, studies or other evidence within the scope of the discovery violation may be excluded, or terms and conditions may be placed upon the introduction of such evidence;

3. Specific facts within the scope of the discovery violation may be ordered as having been admitted and issues and objections within said scope may be deemed as having been waived by the offending party; and

4. Place appropriate limitations on the nature and scope of participation in the hearing by the offending party under section 1.12, as well as, (to the extent permitted by law) issuance of an order that modifies the burden of proof applicable to the proceeding in a manner which compensates for the consequences of the failure to respond.

5. Payment of the costs incurred by other parties or interested persons to establish discoverable facts may be required of the party or person who failed to provide discovery, as a condition of issuance of a permit or provision of the relief requested, or as a condition of further participation in the proceeding.

1.15 Pre-hearing Conferences and Proceedings.

A. Request for Hearing. The examiner, on the motion of any party or upon his/her own motion, may convene a pre-hearing conference which includes the applicant, county representatives and any other party having filed a written notice of appearance prior to the date of hearing, for purposes of and where applicable:

1. Identifying, clarifying, limiting or simplifying legal and factual issues;
2. Hearing and considering pre-hearing motion; and
3. Scheduling hearings, identifying parties and witnesses, determining the order of and limits upon testimony, obtaining stipulations as to facts and law, identifying and admitting exhibits, ordering discovery or issuing sanctions thereto, and considering or acting upon any other matter which may aid in the efficient disposition of the hearing.

B. Time of Request. Request for a pre-hearing conference shall be made to the examiner as soon as the need for a conference is recognized by the moving party, and shall state the reasons for the request, including any motions to be presented. Such conferences shall be held telephonically, and excepting for motions on continuance and motions on discovery violations, no pre-hearing matters shall be considered by the examiner within five (5) days of a scheduled hearing; EXCEPTING, the examiner, alone, may set a pre-hearing conference on any matter to be held less than five (5) days prior to the scheduled hearing if found to be in the interests of justice. The examiner will pursue scheduling of hearings on pre-hearing matters to the convenience of all parties; EXCEPTING, a pre-conference hearing shall be set as a date-certain based upon the availability of the examiner and his/her schedule and based upon the setting of the hearing, and irrespective of the availability of any given party or counsel to any party on said date.

1.16 Motions. Any application to the examiner shall be by motion which, unless made during a public hearing, shall be in writing, shall state explicitly the reasons for the request, and shall state the specific relief or order sought. Written motions shall be received by the examiner and all parties of record at least five (5) days (see Rule 1.2) before the date of the hearing. Written replies to the motion shall be received by the examiner and all parties of record by 12 noon, at least one (1) day prior to the date of the hearing. The examiner may issue an order based only on the written motion and replies thereto, or may call for oral arguments at the hearing.

Legal briefing in support of any motion for application shall be received by the examiner, and all parties of record requesting copies, at least forty-eight (48) hours before the time and date of the hearing.

Three (3) additional days shall be added to any deadline in service of motions or briefing is by mail. Delivery may be accomplished by electronic facsimile, provided a paper copy is immediately mailed. When completion of the transmission occurs after 4:30 p.m., the documents is deemed received on the next business day. In every case, the burden of demonstrating actual delivery or actual facsimile receipt is borne by the sending party. The examiner may place reasonable limitations on the length and quantity of documents which may be served by electronic facsimile. Failure to timely serve motions may be sanction with continuances, exclusions, admissions, or limitations similar to those noted in section 1.14.C, at the discretion of the examiner.

1.17 Consolidation of Hearing. When practical and consistent with ordinance requirements, the examiner may consolidate land use matters for hearing. Any party may bring to the attention of the examiner the need for consolidation.

1.18 Site Inspection. The examiner will normally conduct an on-site inspection of a site before or after a hearing. A site inspection is discretionary with the examiner.

1.19 Postponement, Continuation or Reopening of Hearing.

A. Request for Continuance (Postponement). Prior to the scheduled hearing date a party may move to continue a public hearing. The motion shall be filed as soon as reasonably possible after the need for the continuance becomes known, and shall state the reason for the request. The examiner may take action on the motion based upon the supporting statement alone, may provide an opportunity for comments by other parties and interested persons, or may schedule a hearing on the motion. The examiner's action will consider whether the continuance request can be granted consistent with any time limit requirements as herein stated, whether there are reasonable alternatives to a continuance, and whether other parties or interested persons will be prejudiced or unduly inconvenienced.

1. Motions for continuance received less than 7 days prior to the scheduled hearing date normally will be granted only if the need for a continuance was not reasonably foreseeable, all parties consent, or on the basis of an emergency. Unless otherwise ordered, a continuance of a scheduled hearing shall not extend the deadlines for the conduct of pre-hearing discovery.

2. A public hearing may be continued or rescheduled by the examiner without a motion in his/her discretion for the safety or welfare of the public, parties and interested persons, to assure due process of law, or for any other reason(s) consistent with purposes and intent of these procedures.

B. Continuation or Reopening. The examiner may continue or reopen proceedings on his/her own motion or the motion of a party for good cause by entering an order prior to the filing of the examiner's decision.

C. Notification. If the examiner determines at hearing or conference there is good cause to postpone, continue or reopen the hearing and specifies the date, time, and place, no further notice is required. If the determination to postpone, continue or reopen is made after the conclusion of a hearing or conference, notice of the rescheduling shall be given to the parties of record. For rules regarding multiple parties, see section 1.13.D, above

1.20 Departmental Staff Report on Application for Hearing.

A. Staff Report. A written report by the involved departments shall be either delivered to or placed in the mail to the examiner and the applicant at least seven (7) calendar days (see Rule 1.2) prior to the date of the public hearing.

B. Content of Staff Report. The staff report should include the following, when relevant:

1. A summary of the proposed action.
2. Names and current addresses of the current applicant(s), owner(s) of the subject property, and any technical advisor(s) to the applicant(s).
3. A technical data summary regarding the Land use Map designation, the physical characteristics of the subject site, and the characteristics of the neighborhood.
4. A brief chronological history of salient zoning and other land use actions regarding the subject site and its general vicinity.
5. The current character of surrounding zoning (if any) and land use.
6. A comparison of uses permitted under the existing and proposed zoning, if applicable.
7. A summary of the principal relevant and material provisions of the Comprehensive Plan and requirements specified by other land use controls.
8. A summary of the reports or recommendations of any other agencies consulted. Where appropriate, the documents may be submitted.
9. A vicinity-zoning map, if applicable.
10. The result of the determination pursuant to the State Environmental Policy Act.
11. Absence of a required county department of official's report or document, or delay in its issuance, shall not affect the jurisdiction of the examiner. Such absence or delay shall constitute grounds for continuance upon motion by any party or interested person demonstrating prejudice to that party or person. Such continuance may be no longer than is necessary, but in no event shall be longer than ten (10) days.

1.21 Format of Hearing. The format for a public hearing will be of an informal nature, but organized so that the testimony and evidence can be presented quickly and efficiently. A public hearing may include, but need not be limited to, the following elements:

- A. A brief introductory statement and notice of the opportunity to become a party of record given by the examiner.
- B. A report by the departmental staff.
- C. Testimony by the applicant and any persons who wish to speak in support of the application.
- D. A decision containing findings and conclusions and a statement of matters officially noticed by the examiner.
- E. Testimony of opposing parties.
- F. Cross-examination where appropriate.

G. Response and rebuttal.

H. Summary comments.

The order of proceedings may be modified: 1) by the examiner as necessary for the clear, fair and efficient presentation of evidence and argument; or 2) by agreement of the parties present with the examiner's approval, with such approval not unreasonably being withheld. A modification to the order does not alter or affect any burden of proof or presumption established by law.

1.22 Content of the Record. The record of a hearing conducted by the examiner shall include the evidence submitted, but need not be limited to, the following:

- A. The application or petition.
- B. The departmental staff reports.
- C. All evidence received or considered, which shall include all exhibits and other materials filed.
- D. A decision containing findings and conclusions and a statement of matters officially noticed by the examiner.
- E. Recordings made on electronic equipment.
- F. An affidavit attesting to the written notice given of the hearing where required.
- G. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (herein referred to as "SEPA") or ordinances thereto.

1.23 Decision. Within ten (10) business days (see Rule 1.2) of the conclusion of a hearing, unless extended as provided by ordinance, the examiner shall render a written decision, including findings and conclusions, which shall be filed with the Department, or, in the alternative, with the appropriate Department or official. The Department, or in the alternative, the appropriate Department or official, shall mail copies of the examiner's decision to the applicant by certified mail, and to all other parties of record by regular mail on the date of issuance of the decision by the examiner.

1.24 Content of Decision. The examiner's decision shall contain findings of fact, conclusions based thereon, and a decision consistent with those conclusions. In addition, the examiner's decision shall include conditions necessary to mitigate any significant impacts of the proposal found as facts by the examiner and appeal rights in the matter.

1.22 Reconsideration.

A. Any party of record, or department or official of the county may file a written petition for reconsideration with the examiner within ten (10) days following the date of entry of the examiner's decision. Timely filing of a petition for reconsideration shall stay the effective date of the examiner's decision until such time as the petition has been disposed of by the examiner. The grounds for seeking reconsideration shall be limited to the following: a) the examiner exceeded his jurisdiction; b) the examiner failed to follow the applicable procedure in reaching a decision; c) the examiner committed an error of law or misinterpreted the applicable statute, county ordinance or resolution, law or regulation; d) the examiner's findings, conclusions, or conditions are not supported by the record; e) newly discovered

evidence alleged as material to the examiner's decision which could no reasonably have been produced at the hearing; and f) changes to the application proposed by the applicant in response to deficiencies identified at hearing.

1. The petition for reconsideration shall contain: specific identification of the hearing and parties involved in the order, permit, decision, determination or other action being petitioned for reconsideration (including the county's file and application number where applicable; the specific findings, conclusions, actions and conditions upon which the petitioner relies for reconsideration, including a concise statement of the factual reason for reconsideration, and, as applicable, the identity and specific nature of the newly discovered evidence and its importance in the reconsideration proposed by the petitioner (in the case of reconsideration involving SEPA, Shorelines and Floodway hazard permits, a specific listing must be made of the sanctions and elements addressed by the decisions); the full name, address, daytime telephone number or each petitioners, or the attorney for the petitioner(s), if any. The party(s) filing a petition for reconsideration shall certify the service of a true copy of the same upon the county department or official, the applicant and all parties of record by regular mail in conjunction with said filing; and

2. The petition will have been deemed denied if one of the following actions has not been taken within ten (10) calendar days following receipt of the petition. The examiner may by written order: a) deny the petition; b) grant the petition and issue an amended decision, as provided for above; c) grant the petition and give all parties of record notice of the petition and an opportunity to submit written testimony or argument within ten (10) calendar days thereof to consider new testimony; proposed changes in the applications or to hear oral argument of the parties.

1.23 Termination of Jurisdiction. Upon termination of the hearings examiner's jurisdiction, land use matters which are appealed or under the jurisdiction of the Appellate examiner. The appellate examiner may, however, remand the matter to the hearing's examiner for clarification of specific issues or the taking of further testimony. Remand hearings shall be conducted in the same manner as any land use matter.

1.24 Disposition of Case Record. The official case record and other related materials before the examiner shall be maintained in the office of the examiner. Case records of the examiner are public records and are available for review during normal business hours.

ARTICLE II.

RULES OF SPECIFIC APPLICATION ON APPEALS TO THE EXAMINER

2.1 Generally. Appeals with the examiner shall be conducted in accordance with the provisions of the Cowlitz County Code, and where applicable, the general rules noted in Article I, above.

2.2 Statement of Appeal. The statement of appeal within the petition for appeal shall identify clearly and specifically address the requirements of the Cowlitz County Code.

2.3 Procedures on Review.

A. Consolidation. If more than one appeal is timely filed on a matter the examiner may, at his discretion, consolidate all such appeals into a single appellate hearing process.

B. Pre Hearing Conference. Pre-hearing conferences promote efficient case management by providing an informal process for early identification of issues and resolution of procedural matters in

complex cases. Evidence generally will not be received at a pre-hearing conference, except when required in order for the examiner to rule on a motion. (Pre-marking and introduction of exhibits to which there is no objection may occur at the discretion of the examiner.)

1. The examiner, on motion of any party or upon the examiner's own motion, may convene a prehearing conference as set forth in § 1.15.A and B, above.

2. A motion to convene a pre-hearing conference shall be made to the examiner as soon as the need for a conference is recognized by the moving party, and shall state the reasons for the request, including any motions to be presented.

3. A party who has received timely notice of a pre-hearing conference shall identify at the conference any pre-hearing motions not previously made which he/she intends to make. Parties or interested persons may also file timely written pre-hearing motions for consideration at the pre-hearing conference. Failure to make or disclose a motion which was available to the party at the time of the conference may be grounds for its denial if subsequently made.

4. Following a pre-hearing conference, the examiner shall issue an order specifying all items determined at the conference. The order shall be binding upon all parties and interested persons who received timely notice of the conference.

C. Motion to Dismiss an Appeal. A pre-hearing motion may be made by any party to dismiss or limit an appeal for one or more of the following reasons:

1. The appellant(s) lacks standing to appeal the decision or action challenged.

2. The notice of appeal, appeal fee, or statement of appeal were not filed within the time period required by law or ordinance.

3. The examiner lacks jurisdiction, in whole or in part, over the subject matter of the proceeding.

4. The statement of appeal is not sufficiently specific to apprise Cowlitz County and other necessary parties of the factual basis upon which relief is sought, or the grounds stated do not constitute a legally adequate basis for the appeal. In lieu of dismissal, the examiner's order may clarify the issues on appeal, or may require the appellant to file a bill of particulars to supplement the appeal statement within five (5) days of his/her order.

D. Hearing Presentation. This section addresses the presentation of oral argument at hearing, only, and not the presentation of written argument and permissible documentary evidence. Argument, whether written or oral, shall be defined as a "line of reasoning designed to persuade that a particular conclusion follows logically from the state of facts established from the evidence in the record." The examiner in his/her deliberations shall ignore evidence introduced during argument to establish additional facts or argument from facts not in evidence.

1. All such parties of record shall be aligned as either in support of or in opposition to the appeal, and shall thereafter share any hearing time allotted to the "appellants" or to the "respondents" side, respectively.

2. All parties of record desiring to make oral argument to the examiner shall have the obligation to communicate with other parties on their side to attempt to reach an agreement for the selection of representatives or to otherwise arrange for the allocation of allotted time.

3. The examiner shall normally limit argument to thirty (30) minutes per side, with the hearing divided equally between (a) the presentation of the appellant's case, including its rebuttal case and any opening and closing arguments, and (b) the presentation of the respondent's case, include the applicant and the responsible County department or individual, including opening and closing argument.

4. Following a formal announcement of the matter to be heard, and introductory remarks by the examiner, a public hearing generally will proceed as follows:

a. Introduction of the matter to be heard by the responsible county agency.

b. Parties' opening statements (optional).

c. Appellant's presentation of evidence.

d. Responsible county agency's presentation of evidence.

e. Applicant's presentation of evidence (if applicant is not the appellant).

f. Rebuttal, evidence; in the same order.

g. Final recommendation by the responsible county agency.

h. Final argument, commencing with the appellant, who shall also have an opportunity to make the closing argument.

ARTICLE III.

HEARINGS EXAMINER'S JURISDICTION

3.1 Hearings Examiner Jurisdiction. The examiner has the authority to conduct public hearings for the following matters:

A. Adjudication or review of all "land use decisions", as defined in the Cowlitz County Code.

B. Adjudication or review of all health ordinances of the Board of Health, as specified in the Cowlitz County Code.

C. Adjudication or review of all other proceedings as specified under specific provisions of the Cowlitz County Code.

D. Except as otherwise provided, an examiner's decision shall be final and conclusive, and may be reviewable as specified by ordinance, statute or regulation to such other administrative appellate examiner or court of competent jurisdiction, as shall thereto be applicable.

E. The jurisdiction of the examiner may be amended at any time by the Board.

3.2 Decision. The decision of the examiner shall be final and conclusive on the 15th day after the date of execution of the decision, except as otherwise expressly provided for by statute or ordinance, and unless a petition for reconsideration is taken and granted or an appeal is taken pursuant to ordinance or statute.

ADOPTED: Mark C. Scheibmeir, Cowlitz County Hearing Examiner