

WALLA WALLA COUNTY
Land Use Hearing Examiner
Rules Of Procedure For Public Hearings On
Land Use Permit Applications And Appeals

1. APPLICABILITY

- 1.1 The procedures established in this Chapter shall apply to public hearings on land use permit applications and appeals of administrative decisions.

2. DEFINITIONS

- 2.1 "Administrative decision" means a decision issued by the Director of the Community Development Department or a threshold determination issued by the Responsible Official for State Environmental Policy Act (SEPA) review.

"Appellant" means a person, organization, or other similar group who files a complete and timely appeal of a decision or other appealable action.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property who has applied for a land use permit to develop real property.

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

"Board" means the Board of Walla Walla County Commissioners

"County" means Walla Walla County, Washington.

"Department" means the Walla Walla County Community Development Department.

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

"Hearing" means the open record public proceeding at which testimony and exhibits of evidence are presented to the Hearing Examiner on a given land use permit application.

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of Walla Walla County.

"Interested Person" means any individual, partnership, corporation, association, or public or private organization of any character, that may be affected by proceedings before the Hearing Examiner and shall include any party in a contested case.

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

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

"Party of record" or "Party" means:

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

"Record" means the oral testimony and written exhibits submitted at the hearing. The tape recording of the proceeding shall be included as part of the record.

"Staff" means the staff member of the Community Development Department assigned to and presenting a case before the Hearing Examiner.

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

"WWCC" means Walla Walla County Code.

3. JURISDICTION

- 3.1 The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to make a decision or issue an order pursuant to WWCC 2.50.070 and other sections of the WWCC.
- 3.2 Timely filing of an appeal is required for the Examiner to acquire jurisdiction of any appeal.
- 3.3 Any party may challenge the Examiner to hear an appeal/matter on jurisdictional grounds, or the Examiner may independently raise the jurisdictional issue. If the Examiner is satisfied that he/she does not have jurisdiction, the appeal will be dismissed.

4. EX PARTE COMMUNICATION

- 4.1 a. No person, nor agent, employee, or representative of any person, who is an interested party in an application currently pending before the Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of the pending application or any factually related application. Communications on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis. All allowed ex parte procedural communications should be directed to the Examiner care of the Community Development Department.
- b. The Examiner shall not communicate ex parte directly or indirectly with any person, agent, employee, or representative of any person who is an interested party in an application currently pending before the Examiner concerning the merits of the pending application or any factually related application.
- c. If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed at hearing. The Examiner shall exercise proper discretion as to whether to disqualify himself or herself as Examiner for that particular hearing.

5. NATURE OF PROCEEDINGS

5.1 Expeditious Proceedings

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

5.2 Frequency

Hearings will normally be scheduled once per month. Each case shall be noted to commence at a given time. There may be more than one case scheduled to commence at the same time and in such event, the Hearing Examiner shall have discretion in setting the agenda. Additional hearing dates may be scheduled by arrangement in urgent circumstances and/or as appropriate.

5.3 Site View

When necessary, the Hearing Examiner may inspect the site of the proposed development before or after the hearing. The site view is not part of the record. Failure to inspect the site will not render the Hearing Examiner's decision void.

5.4 Record of Hearing

- a. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the Hearing Examiner and to the public within three business days of a request. The reasonable cost of such copying shall be paid by the requester. No minutes of the hearing will be kept.
- b. Copies of any written materials in the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.

5.5 Computation of Time

Computation of any period of time prescribed or allowed by these rules, the ordinances of Walla Walla County, and the laws of the State of Washington shall begin with the first day following the day 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 holiday, the period shall run until the end of the next business day.

6. **RIGHTS AND RESPONSIBILITIES OF PARTIES**

6.1 Rights of County

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

6.2 Rights of Applicant and Appellant

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

6.3 Rights of Parties of Interest

Every party of interest shall have the right to present evidence and testimony at a hearing. The right of parties of interest to cross-examine, object, submit

motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

6.4 Responsibilities of County Staff

The County Staff shall: provide notice of Hearing consistent with County Code; provide a staff report consistent with the provisions of Rule 8.6; present materials at the Hearing; and, provide the Hearing Examiner with documentation relevant to the case. In addition, County staff shall be responsible for electronically recording the proceedings and maintaining possession of the official record in each matter.

6.5 Responsibilities of Applicant

The Applicant or his/her representative shall: prior to the hearing, familiarize him-/herself with the criteria for review; provide the Hearing Examiner with any material that supports his/her case; be prepared to present his/her case; and, to answer questions from the Hearing Examiner.

6.6 Responsibilities of Appellant

Appellants have the same responsibilities as Applicants, and in addition shall be required to provide a specific and comprehensible written statement of the issues of appeal prior to the hearing.

6.7 Responsibilities of All Parties

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

6.8 Time Limits on Witness Testimony

Where the Hearing Examiner finds that testimony would be repetitious or irrelevant to the matters before him/her, the 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, but the Hearing Examiner shall control the amount and style of cross-examination.

7. PRESIDING OFFICIALS

7.1 Presiding Officials

- a. The Hearing Examiner shall preside over all hearings.
- b. The Hearing Examiner shall have the authority and duties granted to him/her in state statutes, WWCC, and other County ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearing; to take all necessary action to avoid delay in the disposition of proceedings; and, to maintain order. He/she shall have all powers necessary to that end, including the following:
 1. to administer oaths and affirmations;
 2. to rule upon offers of proof and receive evidence;
 3. to regulate the course of the Hearing and the conduct of the parties and their agents;
 4. to question any party presenting testimony at the hearing;
 5. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
 6. to require briefs on legal issues;
 7. to consider and rule upon all procedural and other motions appropriate to the proceedings; and,
 8. to make and file recommendations or decisions, consistent with County Code.
- c. Interference. In the performance of his/her adjudicative functions, the Hearing Examiner shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any County department.

8. APPEAL HEARINGS

8.1 Pre-hearing Conference

- a. The Hearing Examiner may, on his/her own order or at the request of a party, hold a conference prior to the hearing to consider:
 - (1) Identification, clarification, and simplification of the issues;
 - (2) Disclosure of witnesses to be called and exhibits to be presented;
 - (3) Motions;
 - (4) Other matters deemed by the Hearing Examiner appropriate for the orderly and expeditious disposition of the proceedings.
- b. Pre-hearing conferences may be held by telephone conference call.

- c. The Hearing Examiner shall give notice to all parties of any pre-hearing conference. Notice may be written or oral.
- d. All parties shall participate in any pre-hearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner not to attend.
- d. Following the pre-hearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.
- e. Pre-hearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

8.2 Timeliness

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period. The appeal must be filed with the Walla Walla County Community Development Department at 310 W. Poplar, Walla Walla, Washington 99362-2865.

8.3 Fee

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

8.4 Contents

An appeal must be in writing and contain the following:

- a. A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the Appellant's issues on appeal, noting Appellant's specific exceptions and objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification;
- d. Signature, address, and phone number of the Appellant, and name and address of Appellant's designated representative, if any.

8.5 Briefs

Briefs or other memoranda of law, limited to the specific issues set forth in the Appellant's statement of appeal, may be submitted by the parties in support of or

in response to an appeal. Each party is permitted one primary brief not exceeding fifteen double-spaced pages in length. In addition, the Appellant may submit a reply brief not exceeding ten pages in length. The Hearing Examiner may, in his/her discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

8.6 Motions

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

- 8.7 Where an appeal is filed by several individuals or a group, the party shall designate one individual to be its representative, who shall be made known to the Hearing Examiner. Notice or other communication to the party representative is considered notice to the party.

9. **CONDUCT OF OPEN RECORD HEARINGS**

9.1 Notice Requirements of Hearing and Filings

- a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in the WWCC.
- b. Affidavit of Notice: An affidavit attesting to the notice given of a public hearing (including dates and places of publication, posting and list of those mailed to) shall be part of each official case record.

9.2 Oath or Affirmation

All testimony before the Hearing Examiner shall be given under oath or affirmation to tell the truth.

9.3 Development of Record at the Permit Application Hearing

A permit application hearing generally includes, but is not limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a summary of the request and identification of applicable WWCC criteria and development standards by departmental staff; a detailed presentation of the proposal by the Applicant; an analysis of the proposal and summary of the recommendation of the Department by departmental staff; cross examination of these witnesses; public testimony; opportunity for cross-examination and rebuttal; and, opportunity for questions by the Hearing Examiner.

9.4 Content of the Record

The record of a permit application hearing conducted by the Hearing Examiner shall include, at a minimum, the following materials:

- a. The application for permit;
- b. Appropriate departmental staff reports;
- c. All evidence received, including oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- d. A statement of all matters officially noticed;
- e. A recommendation by Community Development Staff as to the outcome;
- f. Recordings made on electronic equipment; and,
- g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA), as applicable.

9.5 Content and Form of Staff Reports on Permit Applications

The staff report shall be distributed to the Hearing Examiner, the Applicant, and the public, and shall include the following, as appropriate:

- a. Names and addresses of the owner(s) and Applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing;
- b. A brief summary of the requested action and the citation of the ordinance controlling the request;
- c. The following descriptive information about the subject property:
 - (1) The address and legal description of the subject property;
 - (2) A statement of the zoning and Comprehensive Plan designations applicable to the subject property;
 - (3) A description of existing development on the subject property;
 - (4) A description of surrounding land uses;
 - (5) Any scientific, environmental, or engineering information germane to the case;
 - (6) A description of critical areas identified or suspected to exist on site;
- d. An in-depth analysis of the project's consistency with the criteria for approval. In making the analysis, the staff shall refer to applicable ordinances as often as possible.

- e. A summary of the reports or recommendations of any other agencies consulted;
- f. Appropriate maps of the subject property (if photographs of the site are available the Applicant is encouraged to provide color reproductions that shall be part of the staff report);
- g. The result of the determination pursuant to the State Environmental Policy Act; and
- h. Staff's conclusions and recommendations, including recommended conditions of approval.

9.6 Development of Record at an Appeal Hearing

Open record appeal hearings generally include, but are not limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a brief background of the decision appealed from departmental staff; a detailed presentation, including witnesses if any, on the merits of the appeal from the Appellant; departmental staff response, including witnesses if any, to the appeal; the Applicant's response (if the Applicant is not the Appellant); cross examination of parties and witnesses; opportunity for rebuttal; and, opportunity for questions by the Hearing Examiner.

9.7 Continuances of Hearing

a) Hearing Examiner

If the Hearing Examiner determines that more information is necessary in order to make a decision, or he/she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If continued to a specific time and place, and posted on the door of the hearing room, no further notice of that hearing need be given. Continuances shall be consistent with the provisions of the WWCC.

b) At the Request of a Party

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance. If the request is made orally at the hearing, it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

9.8 Evidence

- a. Burden of proof. In each proceeding, the Applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and Walla Walla County.

- b. Admissibility. Relevant evidence, including hearsay, shall be admitted if:
 - (1) it possesses probative value such as would be commonly accepted by reasonably prudent persons in the conduct of their affairs, and
 - (2) in the opinion of the Examiner, it is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.
- c. Hearing Examiner Discretion: The Hearing Examiner shall have discretion on the admissibility of all evidence. Objections to admissibility of evidence will be noted in the record. In passing on the admissibility of evidence, the Examiner shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings before the superior courts in the state of Washington. The Examiner shall exclude evidence that is excludable on the basis of evidentiary privilege in the courts of this state. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.
- d. Copies. Documentary evidence may be received in the form of copies if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Parties bringing documentary evidence to hearings are advised to provide an extra copy of all documents to the Hearing Examiner for use as “working copies.”
- e. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts, applicable federal and state laws, general, technical, or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts.
- f. Record held open for submission of relevant evidence. The Hearing Examiner may request a document to be filed after the close of public testimony. In such cases, only those documents specifically requested by the Hearing Examiner on the record during public hearings may be admitted.
- g. Submission of additional evidence after close of record. After the close of the record in a given matter, additional evidence may only be submitted upon a Request for Reconsideration based on new evidence not available at the time of the public hearing. Additional evidence will only be considered upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and submit rebuttal arguments.

9.9 Presence of Legal Counsel at Public Hearings

- a. Although representation by legal counsel is not required at the hearing, all parties participating in the hearing may be represented by legal counsel of their choice.
- b. At the request of any department and discretion of the Hearing Examiner, a representative of the Walla Walla County Prosecuting Attorney's Office may be present at public hearings to advise on matters of law and procedure.
- c. All forms of legal authority including briefs, staff reports, and other legal memoranda upon which a party of record will be relying or presenting at the hearing must be submitted to the Hearing Examiner's clerk at least one week before the scheduled hearing date. The above mentioned documents shall be available to the public at least one week before the hearing.

10. WITHDRAWAL

10.1 Withdrawal of Permit Application

If the Applicant notifies the County of an intent to withdraw the pending request for permit approval, the withdrawal shall be automatically permitted. If a withdrawal request is made at any time other than that mentioned in 9.1, the Hearing Examiner shall use discretion in allowing or disallowing the request.

10.2 Withdrawal of Appeal

Any appeal may be withdrawn only by the Appellant. Where the appeal is filed by several persons or a group, withdrawal shall be made by the person designated as the party representative.

- 10.3 The Hearing Examiner may dismiss an appeal by an order of default where the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

11. DECISIONS

11.1 Written Decisions

A written report of findings, conclusions, and decision shall be made and forwarded to all parties of record. The Hearing Examiner decision shall be within issued within ten working days or within the time allowed by law or agreed to by

the Applicant and Walla Walla County. The findings, conclusions, and decision shall indicate how the decision carries out the goals, policies and requirements of the WWCC and other relevant laws and plans.

11.2 Content of Decision

At a minimum, each decision shall include the following:

- a. The nature and background of the proceeding.
- b. Findings. The findings shall be a statement of the facts that are the basis of the conclusions and decision of the Examiner and shall be based exclusively on the evidence entered into the record and any matters officially noticed. The findings shall consist of concise statements of each fact found upon each contested issue. The source of each finding shall be identified.
- c. Conclusions. Whenever practical, the conclusions shall reference specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same.
- d. A decision or order. The decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence. All decisions may include conditions of approval.

11.3 Procedure for Reconsideration and Reopening Hearing

- a. At any time prior to the filing of the final decision, the Hearing Examiner may reopen the proceeding for the 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.
- b. If within five working days after the Public Hearing any party of record petitions the Hearing Examiner for a reopening of the hearing, the Hearing Examiner shall have discretion to reopen the hearing to consider new testimony or new evidence that was unavailable at the time of the hearing.
- c. Reconsideration.
 - 1) Any party of record may file a written request with the Hearing Examiner for reconsideration of a final decision within ten calendar days of the date of the Hearing Examiner's decision. The request shall explicitly set forth alleged errors of law or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's decision. Each party is allowed only one motion for reconsideration. Other parties may, at the discretion of the Hearing

Examiner, file responses to the request for reconsideration.

2) The Hearing Examiner shall respond to the request for reconsideration within ten days by issuing an Order on Reconsideration. The Order on Reconsideration may:

- a) deny the request for reconsideration;
- b) approve the request by modifying or amending the initial final decision based on the established record;
- c) approve the request based on additional evidence added to the established record upon a showing of significant relevance and good cause for delay in its submission, consistent with Rule 9.8(g); or,
- d) set the matter for additional public hearing.

3) If an additional hearing is required, the notice of said hearing shall be mailed to all parties of record not less than five working days from the date of the Order of Hearing Examiner.

12. APPEALS OF HEARING EXAMINER DECISIONS

12.1 Any party of record aggrieved by the Examiner's final decision, which constitutes the final decision of the County, may file an appeal of the decision to Walla Walla County Superior Court; provided, in the case of appeals from the County's final decision on a Shoreline Management Substantial Development Permit, appeals shall be made to the Shorelines Hearings Board. All appeals shall be made pursuant to the procedures as set forth in Revised Code of Washington 36.70.C.

12.2 In appeals to Superior Court, the appealing party shall pay for transcripts of the Examiner's proceedings.

13. CONFLICTS

These rules of procedure are adopted to supplement the requirements set forth of the WWCC. Any conflicts between these rules and the provisions of the County code will be decided consistent with the provisions of the County code.