

**OFFICE OF HEARING EXAMINER
FOR THE
CITY AND COUNTY OF YAKIMA**

RULES OF PROCEDURE

These rules of procedure are adopted by the Office of Hearing Examiner pursuant to RCW 36.70.970, and the Hearing Examiner Ordinance, adopted respectively by the City of Yakima as Chapter 1.43 of the City of Yakima Municipal Code and by Yakima County as Chapter 2.23 of the Yakima County Code. In the event of any conflict between these rules of procedure and the above identified statute and ordinances, the statute, ordinances, and applicable case law shall control.

I. DEFINITIONS

1.1 APPLICANT means a person submitting an application for any permit or approval required by the applicable ordinance or statute and who is the owner of the subject property or the authorized agent of the owner. Applications shall be identified by the real parties in interest, rather than by the name of the consultant or representative who may file the application.

1.2 CITY means the City of Yakima.

1.3 COUNTY means Yakima County.

1.4 HEARING EXAMINER means that person appointed by the Yakima City Council and Board of County Commissioners.

1.5 PARTY OF RECORD means the applicant and any other person who has submitted written comment on any

action or proposed action, or who has appeared at a public hearing or public meeting and signed an official register requesting notice of further action.

1.6 PLANNING DEPARTMENT means the Yakima County Planning Department or the Department of Community and Economic Development of the City of Yakima, whichever is appropriate.

1.7 GENDER. Masculine pronouns include the feminine.

II. SCHEDULING

2.1 PROMPT AND EFFICIENT PROCEEDINGS. The Hearing Examiner shall, to the extent practicable and consistent with requirements of law, conduct public hearings promptly and efficiently. The Hearing Examiner, the Planning Department, and all applicants shall make every effort to avoid delay at each stage of a matter to be processed by the Hearing Examiner.

2.2 FREQUENCY OF HEARINGS. Hearings will normally be scheduled every Thursday, or as otherwise determined by the Examiner and relevant Planning Department, subject to the Hearing Examiner's schedule and the availability of hearing rooms. Matters within the City's jurisdiction will be scheduled for the first and third week of each month, and matters within the County's jurisdiction will be scheduled for the second and fourth week of each month. This is flexible, and both city and county matters may be heard on the same day if necessary.

2.3 SCHEDULING OF HEARINGS. The City and County shall be responsible for scheduling hearings within their jurisdiction. In the event hearings from both jurisdictions are to be heard on the same day, the City and

the County shall coordinate scheduling on those days to avoid conflicts. For example, if the City wishes to schedule a hearing on a County hearing day, the City shall coordinate with the County and the County shall have priority.

2.4 HEARING AGENDA. The Planning Department shall prepare an agenda for each Examiner hearing, listing its date and place, the estimated time that each item is scheduled to be heard, an indication of the nature of each application to be considered, and a concise description of the property location affected by each application. The agenda shall be posted in the Planning Department's offices for public review at least seven (7) days before the hearing, and may be distributed to interested news media.

2.5 SCHEDULING ISSUES. Prior to a hearing, the Examiner on his own motion, or at the request of a party of record, may resolve scheduling issues. This may include, but is not limited to, establishing a briefing schedule, requiring identification of witnesses, scheduling of witnesses, and resolution of any other issues, for the purpose of conducting an efficient hearing.

2.6 CONTINUATION OF HEARING.

(A) CAUSE. The Hearing Examiner may continue or reopen proceedings for any good cause he deems reasonable and appropriate provided an order for such action is entered prior to the filing of the recommendation or decision.

(B) NOTIFICATION. If the Hearing Examiner determines at a hearing that there is a good cause to continue such proceeding and publicly specifies the date, time, and place, no further notice is required. When determination for a further hearing is made following the

closing of a hearing on a given matter, all parties of record shall be provided not less than ten (10) days notice of the date, time, place, and nature of the subsequent hearing. Such notice shall also be published in the city/county official newspaper in the same manner as required for an initial hearing. Whenever any hearing is continued, a notice of continuance shall be conspicuously posted immediately after the time of the continuance on or near the door of the place where the hearing was being held. When a hearing is continued, the resulting continued hearing is a regular hearing for all purposes unless specifically limited by the order granting continuance.

III. UNAUTHORIZED CONTACT OR INFLUENCE

3.1 STANDARD OF CONDUCT. No person, including city or county officials, elective or appointive, shall attempt to influence an Examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an Examiner in the performance of his duties in any other way; provided, that an official or employee of the city or county may, in the performance of his official duties, provide written reports and recommendations, including the official file, to the Examiner prior to the hearing.

3.2 PERSONAL OR FINANCIAL INTEREST. No Examiner shall conduct or participate in any hearing or decision in which the Examiner shall have a direct or indirect financial or personal interest or in which such conduct or participation shall violate any rule of law applicable thereto.

3.3 EX PARTE COMMUNICATIONS.

(A) For purposes of this rule, "ex parte communications" means a written or oral communication between the Examiner and an applicant, party of record, opponent, proponent, or their representatives, occurring in the absence of other interested parties, other than in a public hearing, concerning the substance of the matter.

(B) During the pendency of any matter before the Examiner, the Examiner may not engage in ex parte communications with any interested person, which is defined to include applicants, parties of record, proponents, and opponents, with respect to the substance of the matter which is the subject of the application and hearing.

(C) This prohibition does not preclude the Examiner from communicating with the Planning Department, and receiving the Planning Department's written reports, written recommendations, and official file prior to the hearing. Specific substantive recommendations of the Planning Department shall be in writing, but other ex parte verbal communications between the Examiner and the Planning Department shall be permitted.

(D) The prohibition against ex parte communication does not preclude the Examiner from requesting prior to or in a public hearing specific information or data relative to the subject of the proceeding if both the request and the response are part of the record. Nor does this prohibition preclude receipt of correspondence by the Examiner from a citizen if any such correspondence is made a part of the record at the public hearing when it pertains to the subject matter pending before the Examiner.

3.4 APPEARANCE OF FAIRNESS DOCTRINE. The appearance of fairness doctrine as enacted in RCW Chapter 42.36 applies to all proceedings before the Hearing Examiner and is incorporated herein by reference. In the event of a conflict between this rule and the statute, the statute shall control.

IV. CONDUCT OF HEARING

4.1 HEARING FORMAT. A public hearing shall include, but not be limited to, the following elements: a brief introductory statement by the Examiner; a report by the departmental staff which shall include introduction of the official file consisting of the application for development and the report of the planning department, reference to visual aids (maps), and a summary of the recommendation of the department; testimony by the applicant; supporting testimony; opposing testimony; opportunity for rebuttal; and opportunity for questions by the Examiner.

4.2 AFFIDAVIT OF PREJUDICE. An applicant as a matter of right shall be entitled to file concurrently with his application or at any time prior to scheduling of a hearing one affidavit of prejudice that a specified examiner is prejudiced against him or his interest, which shall preclude said examiner from hearing the matter.

4.3 SITE VIEW. When necessary to a full understanding of the case, the Examiner shall inspect the site prior or subsequent to the hearing. Whether a site view occurred shall be stated at the hearing, if applicable, and in the written decision. Failure to inspect the site shall not render the Examiner's recommendation or decision void.

(A) The view trip shall be taken out of the presence of any applicant, party of record, opponent, proponent, or Planning Department representative, whenever feasible. When accompaniment by any individual is necessary to fully view the property, no substantive discussion shall occur during the view trip, and the individuals accompanying the Examiner shall be identified at both the hearing, if applicable, and in the written decision.

4.4 RIGHTS OF PARTIES. Every applicant and party of record shall have the right of due notice, representation by an attorney or agent at the individual's expense, presentation of evidence, rebuttal, and other rights essential to a fair hearing. The Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony.

(A) Cross examination may be permitted, in the discretion of the Examiner, as necessary for a full disclosure of the facts. Normally cross examination will not be permitted, and the Examiner will encourage development of the facts by other means. However, when the hearing assumes an obviously adversary character, or proponents and opponents are represented by counsel, or expert witnesses are called, or complex, technical, and disputed factors are involved, cross examination may be beneficial. The allowance and scope of cross examination is within the sole discretion of the Examiner.

4.5 EVIDENCE.

(A) ADMISSIBILITY. 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 individuals in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law.

(B) COPIES. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, applicants or parties of record shall be given an opportunity to compare the copy with the original. Copies shall be provided for the Examiner, Planning, and all attorneys.

(C) CORRESPONDENCE. All correspondence with the Examiner from attorneys or agencies after the hearing, shall be simultaneously copied to the Planning Department and all attorneys.

(D) OFFICIAL NOTICE. The Examiner may take official notice of judicially cognizable facts, including local ordinances, comprehensive plans, and similar planning documents.

4.6 CONTENT OF THE RECORD. The official record of a hearing conducted by the Examiner shall include, but need not be limited to, the following materials: (a) Application for Development; (b) detailed site plan; (c) vicinity map; (d) Planning Department report; (e) substantive written comments of affected public departments, agencies, and jurisdictions; (f) an environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) and related documents, if applicable; (g) affidavit of publication attesting to the written notice of public hearing as published in the official newspaper; (h) written comments of community groups; (i) letters and petitions of support or opposition; (j) all evidence received or considered, which shall include all exhibits and other materials filed

with the Examiner at or prior to the hearing; (k) recordings made on electronic equipment of the hearing; (l) a written decision or recommendation containing the findings and conclusions of the Examiner.

4.7 TESTIMONY. Each individual testifying shall sign a register with their full name and mailing address and shall state on the record their full name and mailing address.

4.8 RECORDING. Each public hearing shall be electronically or otherwise recorded to provide a verbatim record of the proceedings. All individuals wishing to offer verbal testimony shall be required to speak into a microphone provided for that purpose.

4.9 COURT REPORTER. In complex or controversial cases, either the Examiner or Planning Department may decide to utilize a court reporter in addition to the electronic recording. In the event a court reporter is utilized, the Planning Department will be responsible for the court reporter's appearance fee. If any party or individual orders any portion of the record transcribed by the court reporter, that individual or entity shall be responsible for the cost of transcription, and shall also reimburse the Planning Department for the reporter's appearance fee.

4.10 QUESTIONS BY THE EXAMINER. The Examiner may ask questions of any witness, including agency and department staff, at any time to seek clarification or elaboration of testimony being given or relevant issues. Further, the Examiner may request submittal of additional information to better enable him to make a complete and accurate evaluation of the issues.

4.11 PUBLIC ACCESS TO RECORDS. After the hearing, the official case record shall be maintained by the Examiner's office until the Examiner's decision or recommendation is filed, at which point the official case record shall be transferred to and maintained by the Planning Department. The file, including the tape recording of any hearing, shall be available to the public for inspection and copying, subject to payment of reproduction charges, if any. Inspection and copying requests should be directed first to the Planning Department. If the material requested is not in the Planning Department's file, the Planning Department shall request copies of the material from the Examiner's office. The decision or recommendation of the Examiner, once issued, is a public record and available for public review. The Examiner's work product, including but not limited to notes, research, and draft decisions, is not available for public review and is not a part of the official record.

4.12 CASE RECORD DISPOSITION. The integrity of all materials which have become a part of the case record shall be maintained by all offices handling the case record, except oversized or bulky exhibits may be transmitted directly to the Planning Department after the hearing for storage. They must be readily available if requested, however.

Subsequent to the issuance of a decision or recommendation by the Examiner, the case record, including the electronic recording, shall be transmitted by the Examiner to the Planning Department.

4.13 AUTHORITY TO MAINTAIN ORDER. The Examiner shall have all necessary authority to maintain order and decorum during the conduct of all hearings. This includes but is

not limited to the authority to order the hearing continued to another time or location, the authority to limit questioning or testimony, the authority to remove individuals interfering with the orderly conduct of the hearing, and the authority to summon the City of Yakima Police Department or the Yakima County Sheriff's Department to carry out any of the provisions of this rule.

V. ADOPTION AND AMENDMENT

5.1 ADOPTION. The effective date of the adoption of these rules is August 1, 2000.

5.2 AMENDMENT. The Hearing Examiner may, from time to time, promulgate amendments of these Rules of Procedure, pursuant to YMC 1.43.060 and YCC 2.23.060.

ORIGINAL SIGNED BY

Philip A. Lamb

Hearing Examiner