JEFFERSON COUNTY

IN THE MATTER OF AN ORDINANCE )
ADOPTING PROCEDURAL RULES FOR ) Ordinance # 01-0203-03
HEARINGS BEFORE THE JEFFERSON )
COUNTY HEARING EXAMINER(S) )

WHEREAS, there has been a perceived need in Jefferson County to enact and codify procedural rules that would govern the process during a hearing or appeal before this County’s Hearing Examiner or Appellate Hearing Examiner; and

WHEREAS, prior to January 16, 2001 Jefferson County had in place procedural Ordinances that governed hearings or appeals before the County’s Hearing Examiner, including, but not limited to, the “Land Use Procedures Ordinance” (also known as Ordinance #04-0828-98), the “Hearing Examiner Ordinance” (also known as Ordinance #01-0318-91) and “Procedures & Criteria to Clarify Land Use Regulations Ordinance (also known as Ordinance #05-0828-98); and

WHEREAS, all of the Ordinances listed above were repealed as part of the adoption of the Unified Development Code (or “UDC”) via Ordinance #11-1218-00, thus leaving the County without any procedural rules for the process during a hearing or appeal; and

WHEREAS, the UDC, specifically UDC §1.3.6(e)(4), authorizes the Hearing Examiner and/or the Appellate Hearing Examiner to “prescribe rules and regulations concerning procedures for hearings authorized herein, subject to confirmation by the Board of Commissioners;” and

WHEREAS, legal counsel for the Board of County Commissioners has discussed the language of this Ordinance in some detail with Irv Berteig, the person most often asked to serve as this County’s Hearing Examiner; and

WHEREAS, Mr. Berteig has offered suggestions to improve the language of this Ordinance and can approve and recommend its adoption to the Board of County Commissioners; and

WHEREAS, this Ordinance has been disseminated to staff members of the County’s Departments of Public Works and Community Development and then discussed with those affected staff members on September 10, 2002 for additional comments and questions and the Ordinance has been revised, in part, to reflect those concerns and comments; and
WHEREAS, legal counsel for the Board of County Commissioners has prepared and approved of those sections of this Ordinance which may have legal implications, for example, sections on ‘standing,’ ‘evidence’ and ‘appearance of fairness’; and

WHEREAS, this Ordinance will promote fairness in the process of hearings and appeals before the County’s Hearing Examiners and should promote efficient use of the County’s resources, i.e., its Hearings Examiners; and

WHEREAS, the County Commissioners have authority to enact and adopt this Ordinance pursuant to the general police powers provided to them by Article XI, Section 11 of the Washington State Constitution and RCW 36.32.120(7).

NOW, THEREFORE, BE IT ORDAINED as follows:

Section 1: Conflicts among authorities:
These Rules may conflict with other sources or authorities of law. The order of precedence applicable to such conflict situations shall be (from top to bottom) as follows:
   a) State or federal constitution
   b) State or federal statutes
   c) State or federal regulations
   d) State or federal published case law
   e) UDC or other applicable duly-enacted Jefferson County Ordinance
   f) These Rules

Thus, for example, to the extent these Rules conflict with the UDC, then the applicable UDC provision shall apply.

Section 2: Definitions:
The following definitions apply for the purposes of this ordinance:
Aggrieved person: A person or entity is deemed to be an ‘aggrieved person’ only when all of the following conditions are present: i) the decision being challenged has prejudiced or is likely to prejudice that person or entity, ii) the person or entity’s asserted interests are among those that the County was required to consider when it made the decision, and 3) a judgment or decision in favor of that person or entity would substantially eliminate or redress the prejudice to that person or entity caused or likely to be caused by the challenged decision.

BoCC: The Jefferson County Board of County Commissioners, the County Legislature for the municipal corporation known as Jefferson County or any subsequently created or approved legislative body for Jefferson County.

Comprehensive Plan: The 1998 Jefferson County Comprehensive Plan and Land Use Map as now adopted and as may be amended in the future.
Ex Parte Communication: Any written or oral communication between an aggrieved person or a government agency and a Hearing Examiner that was made outside of public hearing and was not included in the public record.

Hearing Examiner: The Hearing Examiner or the Appellate Hearing Examiner.

Hearing: An Open Record predecision hearing before a Hearing Examiner or a closed record hearing before an Appellate Hearing Examiner. By way of example only, the term ‘hearing’ includes appeals based upon the UDC, the State Environmental Protection Act (or “SEPA”) and road vacation requests directed to and handled by the County’s Department of Public Works.

Interested Citizen: Any person or entity that has
  a) asked for a copy of a written Hearing Examiner decision by either requesting (in writing) such documents from the Jefferson County Department of Community Development or has signed a register provided for such purpose at an Open Record predecision hearing or appeal Hearing, or
  b) made comments (written, oral or otherwise) during an Open Record predecision hearing.

Party: An aggrieved person (as defined above) who has filed the fee required by Jefferson County Ordinance to initiate or generate the hearing process, the applicant and the Jefferson County agency that provided one or more reports to the Hearing Examiner shall be considered parties to the hearing. Those persons or entities meeting the definition of “interested citizen” above shall not be considered to be a “party” for the purposes of this Ordinance unless they also meet the definition of “aggrieved person” listed above. For the purposes of hearings relating to road vacations, the Petitioner requesting the road vacation shall be considered a “party” as that term is defined in this Ordinance.

Timely submissions: Written submissions to the Hearing Examiner shall be considered timely if the submission if sent to the Hearing Examiner (via paper or electronically) seven days before the date of the hearing. Written submissions to the Appellate Hearing Examiner shall be considered timely if the submission is sent to the Appellate Hearing Examiner (via paper or electronically) seven days before the date of the hearing. A submission is deemed to be sent when it is either sent electronically or possession of the submission in paper form is transferred to the United States Postal Service or any private document carrier.

UDC: The Unified Development Code, a set of development regulations derived from the Growth Management Act, the County’s Comprehensive Plan that were made effective as of January 16, 2001, as they are now adopted and as they may be amended, replaced or revised in the future.
Section 3: Standing:
Only an ‘aggrieved person,’ as that term is defined in this Ordinance, shall have the authority (legally known as “standing”) to come before the Hearing Examiner and seek a remedy or resolution from the Hearing Examiner. A determination by the Hearing Examiner that a person or entity holds or lacks standing can be appealed pursuant to law.

Section 4: Powers of the Hearing Examiner:
The Hearing Examiner shall have the following powers:

a) To make all rulings, determinations or decisions he or she is permitted to make pursuant to the laws and regulations of this country and this State and the Ordinances of Jefferson County and to enter, if necessary, any written or oral Order that accomplishes or implements any act the Hearing Examiner is authorized to do. The authority granted by this section includes, but is not limited to, the authority to approve, deny or remand an application, proposal or decision before him or her or, in the alternative, combine one or more of the three alternatives listed, e.g., approve in part, remand in part.

b) To enter, if necessary, a written or oral Order, finding and ruling that a particular person or entity is not an ‘aggrieved party’ as that term is defined in this Ordinance and thus does not have standing (in the legal sense) to seek a resolution or remedy from the Hearing Examiner.

c) To hold the power, while conducting any hearing, to administer oaths, preserve order, limit or not accept repetitious testimony, and to issue summons for and compel the appearance of witnesses and production of documents and/or materials.

d) To have sole discretion to rule on all procedural disputes that arise during a hearing, subject to subsequent appeal if a party decides that decision of the Hearing Examiner was incorrect factually or legally.

e) To inspect the site which is the subject of a matter before them prior to or subsequent to the hearing if he or she deems it necessary to obtain a full understanding of the case. The failure of the Hearing Examiner to view a site shall not nullify or injure the decision ultimately rendered by that Hearing Examiner.

f) To review and consider in making his or her decision all ‘timely submissions,’ as that term is defined below. He or she shall have full discretion as to whether they will consider submissions that are not timely.

g) To continue proceedings for any good cause he or she deems reasonable and appropriate provided they enter a written or oral Order doing so before making their final decision or recommendation.
h) To continue, upon an oral statement of good cause being shown, the current hearing to a specific time, place and date without further notice of that new date, time and place if he or she specifies on the record the time, date and place for the continuation of the hearing.

i) To reopen a hearing after a written decision is rendered BUT before the applicable appeal period expires if he or she becomes aware that the decision rendered i) was based on fraudulent evidence, misrepresentation or other misconduct by a ‘party’ [as that term is defined in this Ordinance], or ii) was based upon mistake, misconception of facts, or erroneous application of the law.

j) To set a date for the reopened hearing, but said date must be sufficiently in the future to provide not less than ten days’ written notice of the time, date and place for the reopened hearing in the official newspaper for Jefferson County and ten days’ written notice of the time, date and place for the reopened hearing to all ‘parties’ and ‘interested citizens’ as those terms are defined within this Ordinance.

k) To set a time and date when the public comment period for a particular matter before the Hearing Examiner closes or ceases.

l) To dismiss the application or appeal for default if the applicant or appealing party (or their designated representative) fails to appear at the regularly scheduled hearing or the reopened hearing, subject to the applicant or appealing party (or their designated representative) filing a request within seven (7) business days to vacate the default for good cause shown.

m) To impose upon an applicant or appellant (or their designated representative) who is subject to a default but subsequently has that default vacated, the costs associated with providing written notice for the rescheduled hearing date AND any costs associated with the initial hearing date that the applicant or appealing party missed or did not appear at.

Section 5: Disqualification or Recusal of Hearing Examiner
Any person acting as a Hearing Examiner for Jefferson County is subject to disqualification for bias, prejudice, conflict of interest or any other cause for which a judge can be disqualified under the Code of Judicial Conduct.

Any ‘party’ or ‘interested citizen’ [as those terms are defined in this Ordinance] may request the Hearing Examiner to disqualify himself or herself as soon as reasonably possible upon discovering potential grounds for disqualification. The Hearing Examiner shall determine whether to grant the request, stating facts and reasons for their decision. If the Hearing Examiner is requested to recuse himself or herself but does not, the making of the request by a ‘party’ or ‘interested citizen’ shall not be considered by the Hearing Examiner when they make their substantive decision.
If the Hearing Examiner believes that his or her relationship to the ‘parties’ [as that term is defined in this Ordinance] or his or her financial interest in the subject of the hearing creates the appearance that the proceedings will not be fair, then the Examiner must either a) voluntarily step down from the case; or b) disclose the relationship or interest on the record and state that he or she has a bona fide conviction that the interest or relationship will not interfere with the rendering of an impartial decision.

A Hearing Examiner’s voluntary decision to recuse himself or herself shall be made as soon as the need for recusal becomes apparent or known to the Hearing Examiner.

Recusal or disqualification of a Hearing Examiner shall not be necessary or mandated simply because the Hearing Examiner has considered the same or similar proposal in another hearing, has made a ruling adverse to the interest of a ‘party’ [as that term is defined in this Ordinance] in the present or another hearing, or has considered and ruled upon the same or similar issue in the same or similar context.

Section 6: Evidence
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 the type which would tend to prove or disprove a material or relevant fact or assertion and would be 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. Relevant material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and repetitious evidence may be excluded at the sole discretion of the Hearing Examiner, who shall, during the hearing, have full discretion to make evidentiary rulings.

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.

Official Notice. 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 a 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 the evidence of the record, opportunity to disprove such facts so noted shall be granted any affected person making timely notice therefore.

Evidence received subsequent to the hearing. If additional evidence is submitted after the public hearing or after the date when public comment will no longer be accepted, such additional evidence will only be considered upon a showing that the evidence has significant relevance AND there is good cause for the delay in its submission. All “parties” (as that term is defined herein) will be given notice of the consideration of such evidence and, at the discretion of the Hearing Examiner, granted an opportunity to review such evidence and file rebuttal arguments regarding that additional evidence.
Section 7: Recording the Hearing
Hearings shall be electronically or digitally recorded and such recordings shall be part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the public upon request and the reasonable cost of such copying shall be paid by the person or party requesting the recording.

Section 8: Obtaining copies
Copies of any or all documents submitted during a hearing can be obtained by any person or party willing to pay for such copies.

Section 9: Testimony
All testimony before the Hearing Examiner shall be taken under oath.

Section 10: Rights of Parties:
Every party (as that term is defined in this Ordinance) shall have the right of proper notice, cross-examination (rebuttal), presentation of evidence, objection and all other rights essential to a fair hearing. Cross-examination shall be permitted to the extent it is necessary for a full disclosure of the facts.

Section 11: Ex Parte Communications Prohibited (and Remedy)
No person or entity that is either a ‘party’ or ‘interested citizen’, as those terms are defined in this Ordinance, with respect to a particular petition or application which has been designated for an hearing before the Hearing Examiner shall communicate ex parte (outside of the record), 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 that purely concern procedural matters (e.g., what are the deadlines for a timely submission, where can I get a copy of the Hearing Examiner Rules, what is the address for the County?)

No Hearing Examiner shall communicate ex parte, directly or indirectly with any person or entity that is either a ‘party’ or ‘interested citizen’, as those terms are defined in this Ordinance, with respect to a particular petition or application which has been designated for an hearing before the Hearing Examiner concerning the merits of that or a factually related petition or application. Communications about purely procedural matters do not fall within this prohibition.

If a substantial prohibited ex parte communication is made to or by the Hearing Examiner, then 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 that was discussed ex parte.
Section 12: Severability
In the event any one or more of the sections of this Ordinance shall for any reason be held to be invalid, then such invalidity shall not affect or invalidate any other provisions of this Ordinance, but instead this Ordinance shall be construed and enforced as if such invalid provision had not been contained therein.

Section 13: SEPA
This ordinance is categorically exempt from SEPA, per WAC 197-11-800 (20). The adoption of this ordinance relates solely to governmental procedures and contains no substantive standards respecting use or modification of the environment.

Section 14: Effective Date
This Ordinance shall be effective upon adoption.

Approved and adopted this 3rd day of February, 2003.

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

Dan Titterness, Chair

Glen Huntingford, Member

Wendi H. Wrinkle, Member

Lorna Delaney, CMC
Clerk of the Board

Approved as to form only:

Jefferson Co. Prosecutor’s Office

Ordinance for Jefferson County Hearing Examiner
In the Superior Court of the State of Washington for Clallam/Jefferson County.

Peninsula Daily News

REFERENCE: 4900354
p04526617 notice public hearin

The undersigned being first duly sworn on oath, deposes and says:
That she/he is authorized to and does make this affidavit for and on behalf of Peninsula Daily News, a corporation, and that the following statements of fact are within her/his personal and actual knowledge.

That said corporation is the owner and publisher of the Peninsula Daily News published in Clallam/Jefferson Counties, and had been approved as a legal newspaper by order of the Superior Court of said Clallam/Jefferson County of the State of Washington.
That the annexed is a true copy of a legal insertion as it was published in regular issues (and not in supplement form) of said newspaper was regularly distributed to its subscribers during all of said period. The publishing date cited is the last day of publication.

PUBLISHED ON: 01/19

TOTAL COST: 56.87
FILED ON: 01/19/03

Subscribed and sworn to before me this day of 1/21/03

Notary Public in and for the State of Washington residing at Port Angeles.
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing is scheduled by the Jefferson County Board of Commissioner to be held Monday, February 3, 2003 at 10:30 a.m. in the Commissioners Chamber, Lower Level, County Courthouse, 1820 Jefferson Street (PO Box 1220), Port Townsend, WA 98368.

This public hearing is scheduled for the Commissioners to take comments for and against the proposed ordinance establishing procedural rules for the Hearing Examiners as summarized below. Any person wishing to comment on this proposed ordinance may provide verbal comments at the above scheduled public hearing or submit written comments to the Jefferson County Board of Commissioners at the above address. For further information on, or questions about the proposed ordinance, contact the Jefferson County Department of Community Development at (360) 379-4450. For a copy of the complete text of the proposed ordinance, contact the Jefferson County Commissioners Office at 360-385-9100.

JEFFERSON COUNTY BOARD OF COMMISSIONERS

Dan Titterness, Chair

JEFFERSON COUNTY

1/13/03

In the Matter of an Ordinance Adopting Procedural Rules for Hearings Before the Jefferson County Hearing Examiner(s)
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Approved as to form only:

David Allen
Jefferson Co. Prosecutor’s Office

1/15/03