

RESOLUTION 1150

A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, TO ESTABLISH RULES OF PROCEDURE BEFORE THE HEARING EXAMINER

WHEREAS, the City of North Bend hired Driscoll and Hunter to perform Hearing Examiner duties on February 21, 2006, by Resolution 1119; and

WHEREAS, the appointed Hearing Examiner, Mr. Ted Hunter proposed to draft Rules of Procedure for the benefit of the applicant and the public to understand the hearing process; and

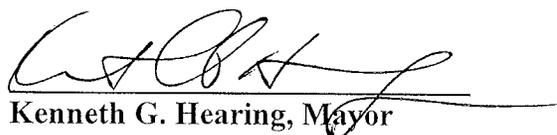
WHEREAS, the Community Services Committee and staff reviewed the proposed Rules of Procedure on June 15, 2006 to ensure no conflict with North Bend Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

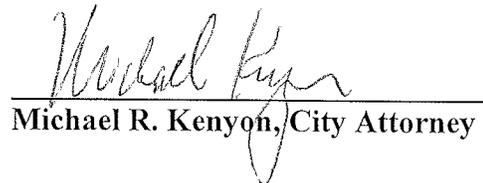
Section 1. The City of North Bend adopts the Rules of Procedure for Proceedings before the Hearing Examiner, as set forth in attachment A.

PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 18TH DAY OF JULY, 2006.

CITY OF NORTH BEND:


Kenneth G. Hearing, Mayor

APPROVED AS TO FORM:


Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:


Cheryl Proffitt, City Clerk

Effective: July 18, 2006

Posted: July 19, 2006

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE CITY OF NORTH BEND, WASHINGTON**

CHAPTER I: HEARINGS ON PERMIT APPLICATIONS

Application of these Rules

This Chapter applies to open record hearings on land use applications.

SECTION 1: DEFINITIONS

"NBMC" means the North Bend Municipal Code.

"Appellant" means a person, organization, association 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, and who has applied for a land use permit.

"Business Day" means any day for which the City's offices are open for normal business matters.

"Calendar Day" means each day of the calendar week.

"City" means the city of North Bend, Washington, or the area within the territorial limits of the city of North Bend, Washington, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

"City Council" means the North Bend City Council.

"Clerk of the Hearing Examiner" means a person designated by the City of North Bend Department of Community Development to assist the Hearing Examiner in his/her duties, typically that staff person assigned to process the application under review by the Hearing Examiner.

"Comprehensive Plan" means the comprehensive plan for the City of North Bend planning area, as now constituted, or hereafter amended, or its successor.

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

"Hearing" means the proceeding at which the public has the opportunity to provide written and oral testimony and the testimony becomes part of the record. The hearing creates the record through testimony and submission of evidence and information.

"Hearing Examiner" or "Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of North Bend.

"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 an oral request during the course of a hearing or 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.

"Open Record Appeal Hearing" means a hearing that creates the record on appeal through written and oral testimony and submission of evidence and information. An open record appeal hearing may only be held if no open record pre-decision hearing has been held on the application.

"Open Record Hearing" means a hearing held under Chapter 36.70B RCW and conducted by the North Bend Hearing Examiner who is authorized by the City to conduct such hearings, that creates the record through testimony and submission of evidence and information, under procedures prescribed by the City by ordinance or resolution.

"Party of record" means:

- a. the applicant;
- b. the property tax payer as identified by the records available from the King County assessor's office;
- c. persons submitting written comment about an action or proposed action before the Examiner, excluding persons who have only signed petitions or mechanically produced form letters; and
- d. persons who have testified at the open record hearing on the application and signed an official register requesting notice of further action.

"Planning Department" means the department created under City ordinances to administer the planning and development of the City.

"Planning Director" means the person designated by the mayor as the director of the city department of planning and community development or his/her designee

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

“Staff Report” means the document prepared by the City’s planning department that reviews an application and makes a recommendation for approval, disapproval or approval with conditions.

SECTION 1.2: JURISDICTION

The Hearing Examiner's jurisdiction is limited to those issues where an ordinance or other appropriate authority grants the Hearing Examiner the authority to make a decision, recommendation, or issue an order.

SECTION 1.3: EX PARTE COMMUNICATION

- 1.3.1 No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application currently pending before the Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters. All allowed ex parte procedural communications shall be directed to the Clerk of the Hearing Examiner.
- 1.3.2 The Examiner shall not communicate ex parte directly or indirectly with any interested person, nor his or her agent, employee or representative, with regard to the merits of a petition or application.
- 1.3.3 If a prohibited ex parte communication is made to or by the Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Examiner on whether to disqualify himself or herself as Examiner for that particular hearing.

SECTION 1.4: NATURE OF PROCEEDINGS

1.4.1 Expeditious Proceedings

It is the policy of the Office of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, hearings shall be expeditious. In the conduct of such proceedings the Hearing Examiner, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

1.4.2 Frequency

Hearings will be held on an as-needed basis. Each case shall be noted to commence at a particular time. The Hearing Examiner shall have discretion in setting the order in which cases on the agenda will be heard.

1.4.3 Format

The format for a hearing will be informal. It should allow the evidence and facts relevant to a particular proceeding to be available to the Hearing Examiner and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

1.4.4 Site Visit

When necessary, the Hearing Examiner may inspect the site prior or subsequent to the hearing. The site visit is not part of the record. Failure to inspect the site will not render the Hearing Examiner's recommendation or decision void.

1.4.5 Record of Hearing

- a. Record. The City should make an electronic recording of all hearings in an audio format. The electronic recording shall become part of the record. No minutes of the hearing will be kept. Copies of the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.
- b. Upon request, any interested person may obtain copies of written materials contained within the record. The requesting individual shall pay the cost of reproduction.
- c. All materials shall be made available for duplication within five (5) business days from the date of the hearing.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the City of North Bend and the State of Washington shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday or a City, National, or State holiday, the period shall run until the end of the next following business day.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF ALL INVOLVED PARTIES

1.5.1 Rights of City

The City staff shall have the right to present evidence and testimony, object, motion, argument, recommendations, and all other rights essential to a fair hearing.

1.5.2 Rights of Applicant

Every applicant shall have the right to notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The Applicant shall have access to the City's staff report a minimum of ten (10) calendar days prior to the hearing on the matter.

The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. The Hearing Examiner will allow cross-examination as necessary for full disclosure of the facts. The Hearing Examiner may control the quantity and style of cross-examination in the spirit of efficiency and fairness.

1.5.3 Rights of Parties of Record

Every party of interest shall have the right to present evidence and testimony at hearings. 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 in the spirit of efficiency and fairness. Every party of interest shall have access to the City's staff report a minimum of ten (10) calendar days prior to the hearing on the matter.

1.5.4 Responsibilities of City Staff

The City Staff shall provide a staff report; provide notice of hearings; present materials at the hearings; and provide the Hearing Examiner with documentation relevant to the case. Staff Reports shall be submitted to the Hearing Examiner a minimum of ten (10) calendar days prior to the scheduled hearing. A minimum of ten (10) calendar days prior to the scheduling hearing, copies of the Staff Report shall be mailed to the Applicant and made available to the public for the cost of reproduction. All interested parties, including the Applicant, shall have access to any materials that the City intends to present at the hearing. Such material shall be available a minimum of ten (10) calendar days prior to the hearing.

1.5.5 Responsibilities of Applicant

Whenever possible, the applicant shall provide the Hearing Examiner with material that supports his/her case prior to the hearing; prepare for questions from the Hearing Examiner; and treat all who participate in these proceedings courteously.

1.5.6 Responsibilities of All Involved Parties, Witnesses and Observers

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

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Officials

- a. Hearings shall be presided over by the Hearing Examiner.
- b. The Hearing Examiner shall have all of the authority and duties as granted him/her in state statutes and City ordinances. Included in the duties of the Hearing Examiner are the following: to conduct fair and impartial hearings; 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 hearings and the conduct of the parties and their agents;
 4. to question any person presenting testimony at the hearing;
 5. to hold conferences for settlement or 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.
- 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 municipal department.
- d. Disqualification due to Conflict of Interest. The Hearing Examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might exert such influence upon the examiner that might interfere with his/her decision-making process. Any actual or potential conflict of interest shall be disclosed by the hearing examiner to the parties immediately upon discovery of such conflict. An examiner should disqualify himself/herself from a proceeding in which the examiner's impartiality might reasonably be questioned, unless all parties agree in writing to have the matter heard by that examiner. If all parties do not agree and the hearing

examiner must abstain, the mayor shall be notified and the mayor shall appoint a hearing examiner pro tem to sit in the hearing examiner's stead

1.6.2 Presence of Legal Counsel at Hearings or Meetings

- a. Although representation by legal counsel is not required at the hearings, interested parties may choose legal counsel to represent their interests at the hearing.
- b. At the request of any department and in the discretion of the Hearing Examiner, a representative of the City of North Bend Attorney's Office may be present at the hearings or meetings to advise on matters of law and procedure.
- c. Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice of Hearing A copy of the Notice of Hearing, issued pursuant to the city ordinance governing the application and an affidavit attesting to the notice (including dates and places of publication and list of addresses) shall be part of each case record.

1.7.2 Prehearing Conference

- a. The Hearing Examiner may, on his/her own order, or at the request of a party, hold a conference before 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 to be appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call. Notice of a prehearing conference may be given either written or orally to the parties of record.
- c. The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice shall be written.
- d. All parties shall be represented at any prehearing conference unless they waive the right to be present or represented, and are granted permission by the Hearing Examiner not to attend.

- e. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference.

1.7.3 Oath or Affirmation

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

An interpreter acting on behalf of any interested person shall take an oath that a true interpretation of the interested person's testimony will be made.

1.7.4 Content of the Record

The record of a hearing conducted by the Hearing Examiner shall include, but not be limited to, the following materials:

- a. the application or petition;
- a. the planning department's staff reports;
- b. any other department's staff report;
- c. all evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- d. a statement of all matters officially noticed;
- e. a decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
- f. recordings made on electronic equipment; and
- g. an environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

1.7.5 Development of Record at the Hearing

A hearing usually will include, but not be limited to, the following elements: a brief introductory statement of the hearing process by the Hearing Examiner; a report by the departmental staff that shall include introduction of the official file, reference to visual aids and a summary of the recommendation of the department; testimony by the applicant or petitioner and cross examination of these witnesses; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

1.7.6 Continuances of Hearings

- a. Hearing Examiner
If, in the opinion of the Hearing Examiner, more information is necessary in order to make a recommendation or decision, or he/she is unable to hear all of the public comments on the matter, the hearing may be continued to a certain date. If the hearing is continued to a specific time and place, and notice is 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 NBMC but shall not be granted for a period of longer than thirty (30) calendar days.

- b. At the Request of a Party
Any party of record may request continuance of a hearing. The request, if made before the hearing, must be in writing and state reasonable grounds for a continuance. The request must be reasonable. 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.

1.7.8 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 the City of North Bend.
- b. Admissibility. The hearing generally will not be conducted in strict adherence to the Washington State Rules of Evidence. Any relevant evidence shall be admitted if it is the type that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. The Hearing Examiner shall have discretion on the admissibility of all evidence.
- c. 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. All parties wishing to submit documentary evidence for the first time at the hearing should bring a minimum of three (3) copies of the document in addition to the original or copy submitted into the permanent record, including one to serve as the Hearing Examiner's working copy, one for the Applicant, and one for the City file.
- d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- e. Occasionally the Hearing Examiner may request a document to be filed after the close of testimony. Only those documents referred to at the hearing and documents specifically requested by the Hearing Examiner may be submitted.
- f. Additional evidence may only be submitted upon a Request for Reconsideration based on the discovery of new evidence which could not reasonably be available at the time of the hearing. If additional evidence is submitted with a request for reconsideration it will be considered only 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 file rebuttal arguments.

- g. All parties will be allowed an opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

SECTION 1.8: WITHDRAWAL OF APPLICATION OR PETITION

1.8.1 Withdrawal Prior to Service of Official Notice

If a withdrawal request is made before the official notice of the hearing is given, the applicant or petitioner shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

1.8.2 Withdrawal Made Any Other Time

If a withdrawal request is made at any time other than that mentioned in 1.8.1, the Hearing Examiner shall have discretion in allowing or disallowing the request.

SECTION 1.9: RECOMMENDATIONS / DECISIONS

1.9.1 Written Recommendations

For permits that require City Council approval, a written report of findings, conclusions and recommendations shall be forwarded to the City Council and the parties of record. The Hearing Examiner's recommendations shall be issued within ten (10) business days from the conclusion of the hearing or a time agreed upon by the Applicant and the City of North Bend. If the Hearing Examiners finds that due to the amount and nature of the evidence a recommendation cannot be issued within the normal time period, then, upon notice to all parties of record, the time period for filing of the recommendation may be extended for not more than twenty (20) business days from the conclusion of the hearing. The findings, conclusions and recommendations shall indicate how the recommendation carries out the goals, policies, plans and requirements of the NBMC and other policies and objectives of the City.

1.9.2 Written Decisions

For permits on which the Hearing Examiner has final approval authority, a written report of findings, conclusions and decision shall be made and forwarded to all parties of record. The Hearing Examiner's decision shall be issued within ten (10) calendar days from the conclusion of the hearing or a time agreed upon by the Applicant and the City of North Bend. If the Hearing Examiners finds that due to the amount and nature of the evidence a

decision cannot be issued within the normal time period, then, upon notice to all parties of record, the time period for filing of the decision may be extended for not more than twenty (20) business days from the conclusion of the hearing. The findings, conclusions and decision shall indicate how the decision carries out the goals, policies, plans and requirements of the NBMC and other policies and objectives of the City.

1.9.3 Content of Recommendation/Decision

A recommendation/decision shall include a statement of:

- a. The nature and background of the proceeding.
- b. Findings of Fact. The findings shall include not only the findings of the ultimate facts but also the basic facts leading up to the ultimate questions. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of each fact found upon each contested issue of fact.
- c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same.
- h. The appropriate rule, order or relief. The recommendation/decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence. All decisions and recommendations may include conditions of approval.

1.9.4 Procedure for Reconsideration and Reopening Hearing

- a. Reopening of Hearings
 1. At any time prior to the filing of the final decision or recommendation, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record who participate at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
 2. If within seven (7) calendar days after the 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.
- b. Reconsideration.
 1. The planning director or any interested party affected by the final decision or recommendation of the examiner may file a written request for

reconsideration with the Hearing Examiner within ten (10) calendar days of the date of the Hearing Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of law, fact, or procedure, or the discovery of new evidence which was not available at the hearing. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's recommendation or decision.

2. The Hearing Examiner shall respond to the Request for Reconsideration, in writing, within ten (10) calendar days, by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an additional 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 (5) calendar days from the date of the Order of the Hearing Examiner but at least ten (10) calendar days prior to the hearing.

SECTION 10: APPEALS OF DECISIONS

When all reconsideration periods have expired and the Hearing Examiner has issued a final decision, the decision may be appealed to the City Council or to Superior Court as specified in the NBMC. All appeals must clearly state the alleged errors of fact or law and include a specific request for relief. The City Council will receive no or limited new evidence and will only review the record developed at the Hearing Examiner Hearing.

SECTION 11: CONFLICTS

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

CHAPTER II:
RULES OF APPEAL
OF ADMINISTRATIVE DECISIONS

APPLICATION OF THESE RULES

This chapter applies to appeals of administrative decisions that approve, deny, or condition a land use permit application.

SECTION 2.1: DEFINITIONS

See DEFINITIONS, Chapter I, Section 1.

SECTION 2.2: FILING

2.2.1 Compliance with Rules

All appeals must comply with these Rules and with the requirements established in the applicable City of North Bend ordinance(s) under which the appeal is filed.

2.2.2 Timeliness

An appeal must be filed within 21 calendar days of the date of decision unless an alternate deadline is specified in the North Bend Municipal Code. The appeal must be filed with the City Clerk.

2.2.3 Fee

Any filing fee as required by the City of North Bend Fee Schedule shall accompany an appeal.

2.2.4 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.

2.2.5 Briefs

Briefs or other memoranda of law 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 (15) double-spaced 8 ½ x 11 pages in length. In addition, the appellant may submit a reply brief not exceeding ten (10) double-spaced 8 ½ x 11 pages in length. The Hearing Examiner may, in his discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

Briefs must be limited to the specific issues set forth in the appellant's statement of appeal.

Deadlines for filing of briefs or other memoranda of law will be set at a prehearing conference. If there is no prehearing conference, then the Hearing Examiner will set the deadlines for filing and provide these deadlines to the parties.

2.2.6 Motions

Motions and responses to motions are not to exceed fifteen (15) 8 ½ x 11 double-spaced pages in length without prior approval of the Hearing Examiner.

2.2.7 Proposed Findings and Conclusions

The Hearing Examiner may request proposed Findings and Conclusions to be submitted at the option of the parties.

SECTION 2.3: DISMISSAL

- 2.3.1 An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely for the purpose of delay.
- 2.3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Hearing Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.
- 2.3.3 When the decision or action being appealed is withdrawn by the issuing department, the appeal becomes moot and shall be dismissed.

SECTION 2.4: PREHEARING CONFERENCE

- 2.4.1 The Hearing Examiner may, on his/her own order, or at the request of a party having standing, hold a conference prior to the hearing to structure the scope of the hearing. The Hearing Examiner may use the conference for:
- a. Identification, clarification, and simplification of the issues;
 - b. Argument of motions based on law;
 - c. Other matters deemed by the Hearing Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- 2.4.2 Prehearing conferences may be held by telephone conference call.
- 2.4.3 The Hearing Examiner shall give reasonable notice to parties of any prehearing conference. Notice may be written or oral.
- 2.4.4 All parties of record have the right to be represented by legal counsel at any prehearing conference. Representation by legal counsel is not required.
- 2.4.5 Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants.
- 2.4.6 At the hearing the Hearing Examiner shall develop for the record the time, purpose and result of the conference. If any orders have been issued they will be part of the record.
- 2.4.7 Prehearing orders may not be appealed until the Hearing Examiner issues an appeal decision.

SECTION 2.5: WITHDRAWAL

- 2.5.1 Only the appellant may withdraw an appeal.
- 2.5.2 Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person designated as the party representative.
- 2.5.3 An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 2.6: PARTY'S REPRESENTATIVE REQUIRED

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner's office of the name, address and telephone number of that designated representative. The rights of the appellant shall be exercised by the

person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to the party.

SECTION 2.7: PARTIES' RIGHTS AND RESPONSIBILITIES

- 2.8.1 Although appellants and applicants have the right to be represented by legal counsel, representation by legal counsel is not required.
- 2.8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.
- 2.8.3 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

SECTION 2.8: DEFAULT

- 2.9.1 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.

SECTION 2.9: HEARING FORMAT

- 2.10.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Hearing Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.
- 2.10.2 The order of an appeal hearing will generally be as follows:
 - a. Examiner's introductory statement;
 - b. Background presentation by department;
 - c. Appellant's argument;
 - d. department's presentation;
 - e. Applicant's presentation;
 - f. Rebuttal;
 - g. Closing argument of parties.

- 2.10.3 Notwithstanding the provisions of the City of North Bend Municipal Code, the order of hearing may be modified or a different order established as the Examiner deems necessary for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Examiner's approval.
- 2.10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s). The burden of proof is on the appellant.
- 2.10.5 Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so will result in removal from the hearing.
- 2.10.6 Attorneys engaged in the representation of clients before the Hearing Examiner shall conduct themselves in accordance with all applicable Rules of Professional Conduct, including the display of courtesy to other members of the bar, witnesses, and all other persons present in the hearing room.

SECTION 2.10: HEARING EXAMINER'S DECISION

- 2.11.1 A decision of the Hearing Examiner on appeal shall include, but not be limited to, a statement regarding the following:
- a. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
 - b. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
 - c. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
 - d. Decision. The Hearing Examiner's decision as to outcome of the appeal (affirm, modify, reverse) based upon a consideration of the whole record and supported by substantial evidence in the record

SECTION 2.11: RECORD

- 2.12.1 The record of an appeal shall include:
- a. The application or petition;
 - b. The departmental staff reports;

- c. All evidence received which shall include oral testimony given at the open record hearing, all exhibits and other materials admitted as evidence;
 - d. A statement of all matters officially noticed;
 - e. A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
 - f. Recordings made on electronic equipment; and
 - g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).
- 2.12.2 The Hearing Examiner's administrative file on an appeal case may include other information or materials that are not part of the evidentiary record.

SECTION 2.12: RECONSIDERATION

- 2.13.1 Reconsideration of the appeal decision may be granted by the Hearing Examiner on a showing of error of law, fact or procedure, or the discovery of new evidence, which was not available at the hearing. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Examiner's decision.
- 2.13.2 Each party is limited to one motion for reconsideration, even when the original decision is subsequently reversed or modified.
- 2.13.3 Motions for reconsideration must be filed within ten (10) calendar days of the date of the Hearing Examiner's decision on the appeal. Unless otherwise specifically provided by the applicable ordinance(s), the filing of a motion for reconsideration shall not stop the period provided to appeal the Hearing Examiner's decision.
- 2.13.4 No party may file a response to a motion for reconsideration except at the request of the Hearing Examiner.
- 2.13.5 Reconsideration will not be granted to review prehearing orders.

SECTION 2.14. CLARIFICATION

- 2.14.1 Any party of record may request at any time clarification of the appeal decision upon notice to the other party.