Ordinance No. 2233
(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes
Passed 6/16/1980
Creating the office of Hearing Examiner

Amended by Ord. 3424;
Amended by Ord. 3511 (Sec. 2.54.100 now 2.32.090)
Amended by Ord. 3574 (Sec. 2.54.160 now 2.32.150; 2.54.170 now 2.32.160)
Amended by Ord. 4044 (Sec. 2.32.130)

The date ["Beginning July 1, 1998"] has led to confusion. This date will be deleted from cover sheets of ordinance/resolution revision pages. This cover sheet will be deleted on electronic pages only, no other deletions or changes have been made to the document – 6/21/2012.
OFFICE OF THE HEARING EXAMINER

June 17, 1980

TO WHOM IT MAY CONCERN.

FROM: NADINE N. BURKE, HEARING EXAMINER

SUBJECT: RULES OF PROCEDURE

Attached is a copy of the rules of procedure which have been prepared for the Office of the Hearing Examiner.

Basically these explain how the Examiner conducts hearings and prepared reports, and is intended to provide both the public and the staff information on the hearing process.

If there are any questions, please call me at 872-3390.

NB:ch
Enclosure
Scope of Rules of General Application: The rules in this part apply to all land use and zoning proceedings before the Hearing Examiner.

1.1. Expeditious Proceedings

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

1.2. Ex Parte Communications

(a) No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for an adjudicatory hearing 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.

(b) The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor his or her agent, employee or representative, interested in a particular petition or application which is designated for an adjudicatory hearing, with regard to the merits of that, or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters.

(c) If a substantial prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed and the Examiner shall, within his or her discretion, abstain from participating in any consideration of the matter and from voting.

(d) For purposes of this rule on ex parte communications, "ex parte communication" means a written or oral communication not included in the public record and made outside of a public hearing.

6/10/80
Article I
Rules of General Application

1.3 Affidavit of Notice
A notarized affidavit attesting to the written notice of a given public hearing shall be made a part of each official case record.

1.4 Presence of Legal Counsel at Public Hearings or Meetings
At the request and discretion of the Hearing Examiner, a representative of the City Attorney may be present at public hearings or meetings to advise on matters of law and procedure.

1.5 Evidence
Relevant material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence may be excluded. Section 1.5 Hearing Examiner Rules, should be referred to for additional rules of evidence regarding hearings before the Hearing Examiner.

1.6 Record
(a) Electronic Recordation. 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 public on request and the reasonable cost of such copying shall be paid by the requester.

(b) Copies of any written materials in the record may be obtained by any interested person, although that person shall be responsible for paying the cost of reproducing such material.

1.7 Oath
All testimony before the Hearing Examiner shall be taken under oath.

1.8 Computation of Time
Computation of any period of time prescribed or allowed by these rules shall begin with the first business day following that on which the act or event initiated such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday or National or State holiday, the period shall run until the end of the next following business day.
1.9 Definitions

The following definitions shall apply, unless context or subject matter otherwise requires:

(a) "Comprehensive Plan" means all development goals and policies which have been adopted by the City Council which are in effect at the time of submission of a petition or application.

(b) "Council" means the Kent City Council.

(c) "Examiner" means the Hearing Examiner.

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

(e) "Party of Record" means any of the following:

(1) Persons who testify at a hearing;
(2) the applicant; or
(3) persons submitting written arguments, dealing with the merits of the case: PROVIDED, that persons who do not qualify as a party of record may receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner's office with such a request.
ARTICLE II
OFFICE OF HEARING EXAMINER

Scope of Hearing Examiner Rules: The rules in this part govern procedure before the Hearing Examiner in proceedings involving the following: conditional uses, rezones, preliminary plans, planned unit developments, special use combining districts, shoreline permits and sign variances.

I. Rules of Practice for Public Hearings

Subpart A - Scope of Rules - Nature of Proceedings

1.1. Frequency

Hearings will normally be scheduled the 1st and 3rd Wednesday of each month. Hearings may be held on a more frequent basis, if it becomes necessary.

1.2. Format

The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need 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, reference to visual aids (maps or plans) and a summary of the recommendation of the Department; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

1.3. View Trip

When necessary to a full understanding of the case, the Hearing Examiner shall inspect the site prior or subsequent to the hearing. Failure to inspect the site will not render the Examiner's recommendation or decision void.
Article II
Office of Hearing Examiner

Subpart B - Hearings

1.4 Rights of Parties

Every party shall have the right of due notice, cross-examination (rebuttal), presentation of evidence, objection, and all other rights essential to a fair hearing. The Hearing 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.

1.5 Evidence

(a) Burden of proof. In each particular proceeding, the petitioner, applicant or the proponent of an individual petition or application shall have the burden of proof.

(b) 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 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.

(c) 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.

(d) 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 any 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 evidence of record, opportunity to disprove such facts so noted shall be granted any affected person making timely motion therefore. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
Article II
Office of Hearing Examiner

(e) Evidence received subsequent to the hearing. If additional evidence is submitted after the public hearing, 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.

1.6 Continuation of Hearing

(a) Cause. The Hearing Examiner may continue or reopen proceedings for any good cause he or she 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 good cause to continue such proceeding and specifies the date, time and place, no further notice is required. When determination for further hearing is made following 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 official newspaper.

1.7 Content of the Record

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

(a) the application or petition;
(b) the departmental staff reports;
(c) all evidence received or considered, which shall include all exhibits and other materials filed;
(d) a 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).
Article II
Office of Hearing Examiner

II. Departmental Staff Reports

2.1 Distribution of Departmental Staff Reports

(a) The report shall be transmitted or mailed to the Hearing Examiner and the applicant not less than seven (7) days prior to the date of the public hearing.

(b) The report shall also be made available at the department to persons interested in a particular case not less than seven (7) days prior to the date of the public hearing.

(c) Failure of the department to transmit, mail or make available the report within the required time period, may, within the discretion of the Hearing Examiner, constitute grounds for continuing the scheduled public hearing. The Hearing Examiner shall consider the particular circumstances of the case, the possible prejudice to the person failing to receive a copy of the report, and the justification, if any, for the failure to comply.

III. Recommendations and Decisions of the Hearing Examiner

3.1 Decisions on Conditional Uses, Shoreline Permits and Sign Variances

The Hearing Examiner shall mail a copy of the decision to the applicant and all parties of record within fourteen (14) calendar days after the public hearing and shall transmit a copy to all relevant City Departments. The decision is an administrative decision which is final unless appealed to City Council.

3.2 Recommendations on Rezones, Preliminary Plats, Planned Unit Developments and Special Use Combining Districts

The Hearing Examiner shall, within fourteen (14) days after the public hearing, mail a written recommendation to the applicant and all parties of record, and transmit a copy to the relevant City Departments.

The recommendation shall be forwarded to the City Council for a final determination after the expiration of the time permitted to file an appeal or request reconsideration.
Article II
Office of Hearing Examiner

3.3 Content of Recommendations and Decision

A recommendation or 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 question. 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. The conclusions shall make reference to the effect of the decision with reference to the Comprehensive Plan, as well as the effect of both approval and denial on property in the vicinity, business or commercial aspects, if relevant, and on the general public.

(d) The appropriate rule, order or relief. The decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

3.4 Reopening and Disclosure of Decisions

(a) Reopening of proceeding by Hearing Examiner and termination of jurisdiction.

(1) At any time prior to the filing of the recommendation or 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.

(2) Except for the correction of clerical errors, the jurisdiction of the Hearing Examiner is terminated upon the filing of the recommendation or decision, unless the matter is remanded to the Hearing Examiner, or a request for reconsideration is filed in a timely manner.

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Article II
Office of Hearing Examiner

(b) Disclosure of decision or recommendation.

The decision or recommendation of the Hearing Examiner is a public record and available for public review.

IV. Withdrawal of Application or Petition

The Hearing Examiner shall have the authority to authorize withdrawal of a petition or application in the following instances:

4.1 Withdrawal Prior to Service of Official Notice

If a withdrawal request is made before the official notice of the public hearing is published, the applicant or petitioner shall notify the Planning Department of the withdrawal request and the withdrawal shall be automatically permitted.

4.2 Withdrawal after Service of Official Notice but Prior to the Public Hearing

If an applicant or petitioner requests to withdraw after the official notice of the public hearing is published, the withdrawal request shall be directed to the Hearing Examiner. Upon a showing of good cause, the application or petition may be dismissed without prejudice.

4.3 Withdrawal at the Public Hearing or After the Hearing

In the event that a withdrawal request is received at the public hearing, the Hearing Examiner shall consider whether good cause exists and whether there are any objections from any interested person. Upon a showing of good cause, the application or petition may be dismissed without prejudice. Withdrawal requests filed subsequent to the public hearing are not to be encouraged and are to be permitted only when the applicant or petitioner satisfactorily meets a strong burden of demonstrating good cause and the absence of prejudice to interested persons.

4.4 Effect of Dismissal

Dismissal of a hearing item means that the matter is closed, and a new application must be filed with the City in compliance with all requisite procedures.
ORDINANCE NO. 2233

AN ORDINANCE of the City of Kent, Washington, creating office of Hearing Examiner; establishing qualifications for the position; providing for the appointment of a suitable person to the position; defining the duties of the position; providing basic procedures for hearings before the Examiner; providing for review and or appeal of Examiner's decision; providing for appeals from City Council actions following the review of decisions of the Examiner; and repealing Ordinance 2180 and any other conflicting ordinances.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. TITLE. This Ordinance shall be hereinafter known as the "Land Use Hearing Examiner Ordinance" or "Hearing Examiner", may be cited as such, will be hereinafter referred to as "This Ordinance" and the same shall be and constitute a new section of Chapter 2 of the Kent City Code.

Section 2. GENERAL OBJECTIVES. It is the general objective of this Ordinance to:

1. Provide a single, efficient, integrated land use regulatory hearing system.
2. Render land use regulatory decisions and recommendations to the City Council.
3. Provide a greater degree of due process in land use regulatory hearings.
4. Separate the land use policy formulation and the land use policy administration processes.

Section 3. CREATION OF LAND USE HEARING EXAMINER. The office of the Land Use Hearing Examiner, hereinafter referred to as Examiner, is hereby created. The Examiner shall interpret, review, and implement land use regulations as provided in this Ordinance and other ordinances. The term Examiner shall likewise include the Examiner Pro-tem.

Section 4. APPOINTMENT AND TERMS. The Hearing Examiner and Examiner Pro-tem shall be appointed by the City Administrator and shall serve at the pleasure of the City Administrator.

Section 5. COMPENSATION. The Examiner and Examiner Pro-tem may, at the discretion of the City Council, be classified
as permanent part-time employees, or the City may contract with the Examiner and Examiner Pro-tem for the performance of duties described herein. The compensation to be paid the Examiner and Examiner Pro-tem shall be that established in the Annual City Budget.

Section 6. QUALIFICATIONS. The Examiner and Examiner Pro-tem shall be appointed solely with regard to their qualifications for the duties of the office which shall include, but not be limited to persons with appropriate educational experience, such as an Urban Planner, or Public Administrator, with at least five years experience, persons who have extensive experience in planning work in a responsible capacity, persons with legal experience, particularly where that experience is in the area of land use management or administrative law.

Section 7. EXAMINER PRO-TEM - QUALIFICATIONS AND DUTIES

The Examiner Pro-tem shall, in the event of the absence or the inability of the Examiner to act, have all the duties and powers of the Examiner.

Section 8. HEARING EXAMINER-CONFLICT OF INTEREST AND FREEDOM FROM IMPROPER INFLUENCE. The 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 or her decision making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict.

Participants in the land use regulatory process have the right, insofar as possible, to have the Examiner free from personal interest or pre-hearing contacts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing public right to free access to public officials on any matter. If such personal or pre-hearing interest contact impairs the Examiner's ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness, unless all parties agree in writing to have the matter heard by said Examiner.

Section 9. FREEDOM FROM IMPROPER INFLUENCE. No Council member, City official, or any other person shall attempt to interfere with, or improperly influence the Examiner in the performance of his or her designated duties.
Section 10. DUTIES OF THE EXAMINER.

1. Applications. The Examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action on the application, unless appeal, as hereinbelow specified, for the following types of applications:

   a) Conditional Use Permits
   b) Shoreline Permits
   c) Sign Variances

The Examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions based upon those facts, together with a recommendation to the City Council, for the following applications:

   a) Rezones
   b) Preliminary Plats
   c) Planned Unit Developments
   d) Special Use Combining Districts (Including Mobile Home Park Combining Districts)

The Examiner shall also conduct public hearings when required under the provisions of the State Environmental Policy Act; conduct public hearings relative to possible revocation of any conditional use permit; conduct such other hearings as the Council may from time to time deem appropriate.

2. Recommendation or Decision.

   a) The Examiner's recommendation or decision may be to grant or deny the application, or the Examiner may recommend or require of the applicant such conditions, modifications and restrictions as the Examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the zoning code, the subdivision code, and other codes and ordinances of the City of Kent. Conditions, modifications and restrictions which may be imposed are, but are not limited to, additional setbacks, screenings in the form of landscap-
ing and fencing, covenants, easements and dedi-
cations of additional road rights-of-way; per-
formance bonds may be required to insure com-
pliance with conditions, modifications and re-
strictions.

b) In regard to applications for rezone, preliminary
plat approval, P.U.D.'s and Special Use Combining
Districts the Examiner's findings and conclusions
shall be submitted to the City Council, which
shall have the final authority to act on such
applications. The hearing by the Examiner shall
constitute the hearing by the City Council.

Section 11. APPLICATIONS. Applications for all matters
to be heard by the Examiner shall be presented to the Planning
Department. When it is found an application meets the filing re-
quirements of the Planning Department it shall be accepted. The
department shall be responsible for assigning a date of public
hearing for each application which date shall not be more than
100 days after the applicant has complied with all requirements
and furnished all necessary data to the Planning Department.

Section 12. REPORT BY PLANNING DEPARTMENT. When such
application has been set for public hearing, the Planning Depart-
ment shall coordinate and assemble the comments and recommen-
dations of other City departments and governmental agencies having
an interest in the subject application and shall prepare a report
summarizing the factors involved and the Planning Department find-
ings and supportive recommendations. At least seven (7) calendar
days prior to the scheduled hearing, the report shall be filed
with the Examiner and copies thereof shall be mailed to the appli-
cant and shall be made available for use by any interested party
for the cost of reproduction.

Section 13. PUBLIC HEARING. Before rendering a decision
or recommendation on any application, the Examiner shall hold at
least one public hearing thereon.

Notice of the time and place of the public hearing
shall be given as provided in the ordinance governing the applica-
tion. If none is specifically set forth, such notice shall be
given at least ten (10) days prior to such hearing.

The Examiner shall have the power to prescribe rules
and regulations for the conduct of hearings under this Ordinance
and also to administer oaths, and preserve order.

Section 14. EXAMINER'S DECISION AND RECOMMENDATION - FINDINGS REQUIRED. When the Examiner renders a decision or recommendation, the Examiner shall make and enter written findings from the record and conclusions therefrom which support such decision, which decision shall be rendered within fourteen (14) calendar days of the conclusion of the hearing. The copy of such decision including findings and conclusions shall be transmitted by certified mail, return receipt requested, to the applicant and other parties of record requesting the same.

In the case of applications requiring Council approval the Examiner shall file a decision with the City Council at the expiration of the period provided for a re-hearing or within fourteen (14) days of the conclusion of a re-hearing, if one is conducted.

Section 15. RECONSIDERATION. Any aggrieved person feeling that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within fourteen (14) days of the date the decision is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the Examiner may, after review of the record, take further action as he or she deems proper.

Section 16. APPEAL OF EXAMINER'S DECISION. Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Council within fourteen (14) calendar days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner, provided that new evidence which was not available at the time of the hearing held by the Examiner may be included in such appeal. The term "new evidence" shall mean only evidence discovered after the hearing held by the Examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.

Such written appeal shall allege specific errors of
fact, specific procedural errors, omissions from the record, errors in the interpretation of the Comprehensive Plan or new evidence which was not available at the time of the hearing held by the Examiner.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a hearing shall be held by the City Council. Such hearing shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

Section 17. COUNCIL ACTION. Any application requiring action by the City Council shall be taken by the adoption of a resolution or ordinance by the Council. When taking any such final action, the Council shall make and enter findings of fact from the record and conclusions therefrom which support its action. The City Council may adopt all or portions of the Examiner's findings and conclusions.

In the case of an ordinance for rezone of property, the ordinance shall not be placed on the Council's agenda until all conditions, restrictions, or modifications which may have been stipulated by the Council have been accomplished or provisions for compliance made to the satisfaction of the Council.

The action of the Council, approving, modifying, or rejecting a decision of the Examiner, shall be final and conclusive, unless within twenty (20) calendar days from the date of the Council action an aggrieved party or person applies for a writ of certiorari to the Superior Court of Washington for King County, for the purpose of review of the action taken.

Section 18. SEVERABILITY. The provisions of this Ordinance are hereby declared to be severable. If any word, phrase, clause, sentence, paragraph, section, or part of this Ordinance, or the application thereof to any person or circumstance, is declared invalid, the remaining provisions and the application of such provisions to other persons or circumstances shall not be affected thereby, but shall remain in full force and effect, the Mayor and City Council hereby declaring that they would have ordained the remaining provisions of this Ordinance without the word, phrase, clause, sentence, paragraph, section, or part, or the application thereof, so held invalid.

Section 19. REPEALING CONFLICTING ORDINANCES. Any and
all ordinances or parts of ordinances in conflict herewith are hereby repealed, and specifically Ordinance 2180.

Section 20. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

ISABEL HOGAN, MAYOR

ATTEST:

MARIE JENSEN, CITY CLERK

APPROVED AS TO FORM:

 DONALD E. MIRK, CITY ATTORNEY

PASSED the 16 day of June, 1980.
APPROVED the 17 day of June, 1980.
PUBLISHED the 20 day of June, 1980.

I hereby certify that this is a true copy of Ordinance No. 2233, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

(SEAL)

MARIE JENSEN, CITY CLERK