



**CITY OF KIRKLAND
PLANNING & BUILDING DEPARTMENT
123 5th Avenue, Kirkland, WA 98033
425-587-3600 ~ www.kirklandwa.gov**

KIRKLAND HEARING EXAMINER

A G E N D A

Council Chamber

August 2, 2018

Time: 9:00 AM

This meeting packet is also available online at the City of Kirkland Planning Department web page at http://www.kirklandwa.gov/depart/Planning/Hearing_Examiner_Meeting_Information.htm

**Paper copies of meeting packet materials will be provided at the meeting.
Free wireless internet service is provided in the Council Chamber.**

1. CALL TO ORDER

2. PUBLIC HEARINGS – Code Enforcement

A. Merit Homes

FILE NO: COM18-00302

ADDRESS: 10110 128th Avenue NE

STAFF CONTACT: Shannon Sedlacek, Code Enforcement Officer, 425-587-3290 or ssedlacek@kirklandwa.gov

3. PUBLIC HEARINGS – Land Use and Appeals

A. Lu Wetland Buffer Modification

FILE NO.: SAR16-02993

ADDRESS: 10265 124th Avenue NE

ISSUE: Proposal to modify a Type II wetland buffer through wetland buffer averaging using the Critical Areas Ordinance in effect at the time of application (Dec. 16, 2016).

STAFF CONTACT: Allison Zike, Planner, 425-587-3259 or azike@kirklandwa.gov

B. Yue Variance Appeal

FILE NO.: VAR17-00705

ADDRESS: 346 10th Avenue W. (now 1006 4th Street W.)

ISSUE: Appeal of Process I Planning Director Decision approving a variance for a front setback reduction associated with a new single-family residence in the Market Neighborhood.

STAFF CONTACT: Nick Cilluffo, Planner, 425-587-3263 or ncilluffo@kirklandwa.gov

3. **ADJOURNMENT**

Note: If you would like more information on an item on this agenda, please call the Planning Department at 425.587.3600. Please refer to the file number and the planner listed for that item.

Alternate Formats: People with disabilities may request materials in alternate formats.

Title VI: Kirkland's policy is to fully comply with Title VI of the Civil Rights Act by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with the City.

To request an alternate format, file a complaint or for questions about Kirkland's Title VI Program, contact the Title VI Coordinator at 425.587.3011 (TTY Relay: 711) or titlevicoordinator@kirklandwa.gov.

The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 425.587.3190, or for TTY Services call 425.587.3111 (by noon the work day prior to the meeting) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Chairperson by raising your hand.



CITY OF KIRKLAND

123 FIFTH AVENUE □ KIRKLAND, WASHINGTON 98033-6189 □□425-587-3600

Rules of Procedure for Code Enforcement Cases Before the City of Kirkland Hearing Examiner

1. Authority

Kirkland Municipal Code Section 3.34.050 requires that the Hearing Examiner adopt rules of procedure to govern hearings conducted by the Hearing Examiner pursuant to the Code.

2. Applicability

A. These Rules apply to all matters that are before the Hearing Examiner pursuant to a Notice of Civil Violation issued under Chapter 1.12 of the Kirkland Municipal Code. The Rules do not include all ordinance or Code requirements. Parties are responsible for familiarizing themselves with those requirements.

B. When questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process.

3. Definitions

A. "Code" or "KMC" – the Kirkland Municipal Code as adopted or hereafter amended.

B. "Department" – the department that issued a Notice of Civil Violation under Chapter 1.12 KMC.

C. "Discovery" – the exchange and sharing of information relevant to, or likely to lead to information relevant to a Notice of Civil Violation issued under Chapter 1.12 KMC.

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

E. "Notice of Civil Violation" – A notice issued pursuant to KMC 1.12.040 describing a violation of any of the City regulations listed in KMC 1.12.020.

F. "Order" - A ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative.

G. "Party" - the person, group or other entity served with a Notice of Civil Violation; the owner of the property that is the subject of the Notice of Civil Violation (if different from the person, group or entity served); and the Department.

4. Filing of Documents

Any documents intended for the Hearing Examiner shall be filed with the Hearing Examiner either by facsimile or electronically. Any documents intended for the Hearing Examiner but erroneously filed with the Department shall be immediately forwarded to the Hearing Examiner.

5. Service of Documents

All documents filed for consideration by the Hearing Examiner shall also be served by the party filing the documents on all other parties, during regular business hours, on the date they are filed. The Department is not responsible for copying a party's documents or delivering them to any other party. Documents shall be served electronically, or by facsimile or personal service.

6. Prehearing Conference

A. On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may hold a conference prior to the hearing to consider:

1. Identification, clarification and simplification of the issues;
2. Disclosure of witnesses to be called and exhibits to be presented;
3. Discovery;
4. Prehearing motions;
5. Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the appeal.

B. Prehearing conferences may be held by telephone conference call.

C. The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice may be written or oral.

D. All parties shall appear or be represented at a prehearing conference unless a party has waived the right to be present or represented and been excused by the Hearing Examiner.

E. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken and deadlines imposed, and ruling upon any motions made at the conference.

7. Presiding Official

The Hearing Examiner conducting the hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid delay in the proceedings, to gather facts necessary for making the decision, and to regulate the course of the hearing and the conduct of the parties and others so as to maintain order.

8. Burden of Proof

The City has the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable.

9. Party Representative Required

When a party consists of more than one person, or is a group or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the contact information for the designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is notice or communication to the party.

10. Expected Conduct

A. All parties appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to everyone involved in the hearing.

B. No one shall communicate with the Hearing Examiner outside the hearing in an attempt to discuss the merits or influence the outcome of an appeal.

11. Notice of Appearance

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and send a copy to the other parties.

12. Discovery

Appropriate prehearing discovery is permitted. Discovery is generally left to the parties, and unless otherwise provided by the Hearing Examiner, the Hearing Examiner should not be copied on discovery documents, or correspondence and electronic mail about discovery matters. In response to a motion, or on the Hearing Examiner's initiative, the Hearing Examiner may order discovery that is being withheld, or prohibit or limit discovery that the Examiner determines is unduly burdensome, harassing, or unnecessary.

13. Site Inspection

The Hearing Examiner will inspect the property subject to an appeal prior to the close of the record. Failure to conduct a site inspection shall not affect the validity of the Hearing Examiner's decision.

14. Evidence at Hearing

A. All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony and are subject to cross examination by the other party.

B. Evidence that is relevant to the Notice of Civil Violation and comes from a reliable source is admissible at hearing. Such evidence is that which responsible people would commonly rely upon in the conduct of their important affairs.

C. The Hearing Examiner may impose reasonable limits on the number of witnesses testifying at the hearing, and the nature and length of the testimony, and may allow for written testimony and other evidence to be submitted.

15. Continuing the Hearing

A. A scheduled hearing may be continued to a different date for good cause as determined by the Hearing Examiner. Written notice of the date, time and place of the continued hearing shall be provided to each party, but need not observe the time requirements for the original notice include in the Notice of Civil Citation.

B. If the Hearing Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time and place of the continued hearing, no further notice is required.

16. Hearing Format

The order of presentation at hearings on Notices of Civil Violation" is generally as follows:

- A. Examiner's introductory remarks;
- B. Parties' opening statements (optional);
- C. City's presentation of evidence;
- D. Presentation of evidence by party served with the Notice of Civil Violation;
- E. Property Owner's presentation of evidence (if applicable);
- F. Parties' rebuttal evidence;
- H. Parties' closing arguments (optional).

The Hearing Examiner may modify the order of hearing to promote the clear and fair presentation of evidence. With the Hearing Examiner's approval, the order of presentation may be modified by agreement of the parties.

17. Leaving the Record Open

At the conclusion of the hearing, the Hearing Examiner may close the hearing, but leave the record open to receive additional evidence from the parties or for other good purpose. Parties shall be provided notice of any evidence received after hearing and have the opportunity to review the evidence and file evidence or argument rebutting it.

18. Hearing Examiner Decision

A. Issuance. The Hearing Examiner shall issue a written decision within 10 working days of the hearing and provide a copy to each party representative. The Hearing Examiner's decision may affirm, vacate or modify the City's decision regarding the alleged violation and/or required corrective action and may include written conditions.

B. Contents. A decision of the Hearing Examiner shall include, but not be limited to, a statement regarding the following:

- 1. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and similar information.

2. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and matters officially noticed.

3. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.

4. Decision. The Hearing Examiner's decision as to the outcome of the matter based upon a consideration of the whole record and the applicable burden of proof.

5. Order. If the Notice of Civil Citation is affirmed, or affirmed with modifications, an order to the person responsible for the violation that includes all information required by KMC 1.12.050.D.2.

6. Information regarding any subsequent procedural steps for appealing the Hearing Examiner's decision.

19. Notice of Decision

The Hearing Examiner's decision shall be provided to the parties in accordance with the Code.

20. Subsequent Appeal

Hearing Examiner decisions may be appealed as provided by law.
(Adopted September 30, 2011 pursuant to KMC 3.34.050)



CITY OF KIRKLAND

123 FIFTH AVENUE □ KIRKLAND, WASHINGTON 98033-6189 □ 425-587-3600

Rules of Procedure for Applications Before the City of Kirkland Hearing Examiner

1. Authority
Kirkland Municipal Code (Code) Section 3.34.050 requires that the Hearing Examiner adopt rules of procedure to govern hearings conducted by the Hearing Examiner pursuant to the Code.
2. Applicability
Unless otherwise provided by Code, these Rules apply to all matters for which the Code requires the Hearing Examiner to hold a public hearing on an application. (Appeals to the Hearing Examiner from City decisions are covered by a different set of rules.) These Rules do not include all ordinance or Code requirements. Parties are responsible for familiarizing themselves with those requirements.
3. Nature of the Hearing
Applications are considered by the Hearing Examiner at a public hearing held for the purpose of gathering evidence from which the Hearing Examiner will prepare a decision, or a recommendation to the City Council, on an application.
4. Presiding Official
The Hearing Examiner conducting the hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid delay in the proceedings, to gather facts necessary for making the decision or recommendation, and to regulate the course of the hearing and the conduct of the parties and others so as to maintain order.
5. Public Participation
Unless otherwise provided by Code, any person may participate in the hearing by submitting written testimony to the Department processing the application, or by appearing at the hearing, in person or through a representative, and providing oral testimony.
6. Burden of Proof
Under the Kirkland Zoning Code, the applicant has the burden of demonstrating that the applicant is entitled to the requested decision.
7. Expected Conduct
 - A. Persons appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to everyone involved in the hearing.
 - B. No one shall communicate with the Hearing Examiner outside the hearing in an attempt to discuss the merits of, or influence the decision or recommendation on, an application.
8. Site Inspection
The Hearing Examiner will inspect the property that is the subject of an application prior to the close of the record. Failure to conduct a site inspection shall not affect the validity of the Hearing Examiner's decision.

9. Testimony and Written Materials at Hearing

- A. All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony.
- B. Testimony and written materials offered at the hearing should be relevant, reliable and non-repetitious.
- C. The Hearing Examiner may impose reasonable limits on the number of witnesses testifying at the hearing, and the nature and length of the testimony. However, written testimony and other written materials may also be submitted.

10. Continuing the Hearing

If the Hearing Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time and place of the continued hearing, no further notice of the hearing is required.

11. Hearing Format

The order of presentation at hearings on applications is generally as follows:

- A. Examiner's introductory remarks;
 - B. Report and recommendation by the Department
 - C. Testimony from the Applicant;
 - D. Testimony and/or questions from members of the public;
 - E. Opportunity for presentation of additional information from the Department and Applicant;
- The opportunity for cross-examination of witnesses may be provided at the discretion of the Hearing Examiner. The Hearing Examiner may also modify the order of hearing to promote the clear and fair presentation of evidence.

12. Leaving the Record Open

At the conclusion of the hearing, the Hearing Examiner may close the hearing, but leave the record open to receive additional written materials or for other good purpose.

13. Hearing Examiner Decision

- A. Issuance. The Hearing Examiner shall issue a written decision or recommendation on the application within the time required by the applicable Code provision.
- B. Contents. A decision of the Hearing Examiner on an application shall include, but not be limited to, a statement regarding the following:
 - 1. Background. The nature and background of the proceedings.
 - 2. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and matters officially noticed.
 - 3. Conclusions. Legal and factual conclusions based upon specific legal criteria and the findings of fact.
 - 4. Recommendation or Decision. The Hearing Examiner's recommendation or decision, as applicable, on whether the application should be granted, modified, or denied, and any conditions or restrictions that are recommended or imposed.
 - 5. Information regarding any subsequent procedural steps for appealing the Hearing Examiner's decision or challenging the Hearing Examiner's recommendation.

14. Notice of Decision

The Hearing Examiner's decision shall be provided to the parties in accordance with the requirements of the Code.

(Adopted June 6, 2007 pursuant to KMC 3.34.050)



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Rules of Procedure for Appeals Before the City of Kirkland Hearing Examiner

1. Authority

Kirkland Municipal Code Section 3.34.050 requires that the Hearing Examiner adopt rules of procedure to govern hearings conducted by the Hearing Examiner pursuant to the Code.

2. Applicability

A. Unless otherwise provided by the Kirkland Municipal Code, these Rules apply to all matters for which the Kirkland Municipal Code allows an appeal to the Hearing Examiner. The Rules do not include all ordinance or Kirkland Municipal Code requirements. Parties are responsible for familiarizing themselves with those requirements. (Note: Hearings on Notices of Civil Violation issued pursuant to Kirkland Municipal Code Chapter 1.12 are governed by the Rules of Procedure for Code Enforcement Cases before the City of Kirkland Hearing Examiner.)

B. When questions of practice and procedure arise that are not addressed by these Rules, the Hearing Examiner shall determine the practice or procedure most appropriate and consistent with providing fair treatment and due process.

3. Definitions

- A. "Appeal" – a challenge to a decision or other City action where the Code authorizes the Hearing Examiner to review and decide the challenge.
- B. "Appellant" – the person, organization or other entity who files a complete and timely appeal of a City decision or other appealable action.
- C. "Applicant" – the person, organization or other entity who files an application or otherwise formally requests a permit or other type of City action that is subject to an appeal to the Hearing Examiner.
- D. "Code" – Kirkland Municipal Code as adopted or hereafter amended.
- E. "Department" – the department or other City entity responsible for the decision or action that is subject to appeal to the Hearing Examiner.
- F. "Discovery" - the exchange and sharing of information relevant to, or likely to lead to information relevant to an issue included in an appeal to the Hearing Examiner.

- G. "Motion" - a request made to the Hearing Examiner for an order or other ruling.
- H. "Order" - A ruling, instruction, or other directive issued by the Hearing Examiner in response to a request or motion by a party, or on the Hearing Examiner's own initiative. Where allowed by law, an order may direct how the Hearing Examiner's decision is to be implemented and may be issued as part of that decision or separately.
- I. "Party" - the person, group or other entity that has filed an appeal; the City department or other agency that made the decision or took the action that is the subject of the appeal; the person, group or other entity who filed the application or request for a permit or other type of City authorization that is the subject of the appeal; and the owner of the property subject to the City decision or other action.

4. Filing of Documents

Any documents intended for the Hearing Examiner shall be filed during regular business hours with the City department that made the decision being appealed. Once an appeal is filed and set for hearing, the Hearing Examiner may allow for alternative methods of filing for subsequent documents.

5. Service of Documents

All documents filed for consideration by the Hearing Examiner, except for the initial appeal, shall also be served by the party filing the documents on all other parties, during regular business hours, on the date they are filed. The Department is not responsible for copying a party's documents or delivering them to any other party. The Hearing Examiner may allow for service of documents by methods other than personal service or service by mail

6. Prehearing Conference

- A. On the Hearing Examiner's own initiative, or at the request of a party, the Hearing Examiner may hold a conference prior to the hearing to consider:
 - 1. Identification, clarification and simplification of the issues;
 - 2. Disclosure of witnesses to be called and exhibits to be presented;
 - 3. Discovery;
 - 4. Prehearing motions;
 - 5. Other matters deemed by the Hearing Examiner appropriate for the orderly and efficient disposition of the appeal.
- B. Prehearing conferences may be held by telephone conference call.
- C. The Hearing Examiner shall give notice to all parties of any prehearing conference. Notice may be written or oral.
- D. All parties shall appear or be represented at a prehearing conference unless a party has waived the right to be present or represented and been excused by the Hearing Examiner.

- E. Following the prehearing conference, the Hearing Examiner may issue an order reciting the actions taken and deadlines imposed, and ruling upon motions made at the conference.

7. Presiding Official

The Hearing Examiner conducting the hearing has the duty to ensure a fair and impartial hearing, to take all necessary action to avoid delay in the proceedings, to gather facts necessary for making the decision, and to regulate the course of the hearing and the conduct of the parties and others so as to maintain order.

8. Burden of Proof

The burden of proof on appeal shall be as specified by the applicable Code provision or applicable state law.

9. Party Representative Required

When a party consists of more than one person, or is a group or other entity, the party shall designate an individual to be its representative and inform the Hearing Examiner of the contact information for the designated representative. The rights of such an appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is notice or communication to the party.

10. Expected Conduct

- A. All parties appearing before the Hearing Examiner shall conduct themselves with civility and courtesy to everyone involved in the hearing.
- B. No one shall communicate with the Hearing Examiner outside the hearing in an attempt to discuss the merits or influence the outcome of an appeal.

11. Clarification

On the motion of a party, or at the Hearing Examiner's own initiative, the Hearing Examiner may require that the appellant provide clarification, additional information, or other submittals that the Hearing Examiner deems necessary to make the appeal complete and understandable.

12. Amendment

An appellant may file one amendment to an appeal within 5 working days of the date the appeal was filed. An amendment may explain or clarify an issue already included in the appeal; it may not add a new issue. Amendment after the period provided by this Rule may be requested by motion. In determining whether to allow a later amendment, the Hearing Examiner shall consider whether the fair hearing opportunity of other parties would be prejudiced by the amendment.

13. Withdrawal

- A. An appeal may be withdrawn only by the appellant in writing.
- B. When an appeal is made by more than one person, or by a group or other entity, the appeal may be withdrawn only by the person designated as the party representative.
- C. An appellant's request to withdraw an appeal shall be granted as a matter of right and the appeal dismissed.

14. Notice of Appearance

When a party is represented by an attorney, the attorney shall file a notice of appearance with the Hearing Examiner and serve a copy on the other parties at the earliest possible time in the proceedings.

15. Discovery

Appropriate prehearing discovery is permitted. Discovery is generally left to the parties, and unless otherwise provided by the Hearing Examiner, the Hearing Examiner should not be copied on discovery documents, or correspondence and electronic-mail about discovery matters. In response to a motion, or on the Hearing Examiner's initiative, the Hearing Examiner may order discovery that is being withheld, or prohibit or limit discovery that the Examiner determines is unduly burdensome, harassing, or unnecessary.

16. Default

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

17. Site Inspection

The Hearing Examiner will inspect the property subject to an appeal prior to the close of the record. Failure to conduct a site inspection shall not affect the validity of the Hearing Examiner's decision.

18. Evidence at Hearing

- A. All witnesses testifying at hearing must take an oath or affirmation to be truthful in their testimony and are subject to cross examination by the other party.
- B. Evidence that is relevant to the appeal and comes from a reliable source is admissible at hearing. Such evidence is that which responsible people would commonly rely upon in the conduct of their important affairs.

- C. The Hearing Examiner may impose reasonable limits on the number of witnesses testifying at the hearing and the nature and length of the testimony, and may allow for written testimony and other evidence to be submitted.

19. Continuing the Hearing

- A. A scheduled hearing may be continued to a different date for good cause as determined by the Hearing Examiner. Written notice of the date, time and place of the continued hearing shall be provided to each party, but need not observe the time requirements for the original notice.
- B. If the Hearing Examiner determines at hearing that there is good cause to continue the hearing, and then and there specifies the date, time and place of the continued hearing, no further notice is required.

20. Hearing Format

The order of presentation at appeal hearings is generally as follows:

- A. Examiner's introductory remarks;
- B. Parties' opening statements (optional);
- C. City's presentation of evidence;
- D. Appellant's presentation of evidence;
- E. Applicant's presentation of evidence (if applicable);
- F. Testimony from others entitled to appeal (if applicable);
- G. Parties' rebuttal evidence;
- H. Parties' closing arguments.

The Hearing Examiner may modify the order of hearing to promote the clear and fair presentation of evidence. With the Hearing Examiner's approval, the order of presentation may be modified by agreement of the parties.

21. Leaving the Record Open

At the conclusion of the hearing, the Hearing Examiner may close the hearing, but leave the record open to receive additional evidence from the parties or for other good purpose. Parties shall be provided notice of any evidence received after hearing and have the opportunity to review the evidence and file evidence or argument rebutting it.

22. Hearing Examiner Decision

- A. Issuance. The Hearing Examiner shall issue a written decision and provide a copy to each party representative within the time required by the applicable Code provision. Unless otherwise prescribed by Code, the Hearing Examiner's decision may affirm, reverse, modify, or remand the decision or other action being appealed.

B. Contents. A decision of the Hearing Examiner on an appeal shall include, but not be limited to, a statement regarding the following:

1. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and similar information.
2. Findings. The individual facts that the Hearing Examiner finds relevant, credible, and requisite to the decision, based on the evidence presented at hearing and matters officially noticed.
3. Conclusions. Legal and factual conclusions based upon specific provisions of law and the findings of fact.
4. Decision. The Hearing Examiner's decision as to the outcome of the appeal based upon a consideration of the whole record and the applicable burden of proof.
5. Information regarding any subsequent procedural steps for appealing the Hearing Examiner's decision.

If applicable, the decision may also include an order disposing of contested issues and/or directing parties to take actions consistent with the decision.

23. Notice of Decision

The Hearing Examiner's decision shall be provided to the parties in accordance with the Code.

24. Subsequent Appeal

Hearing Examiner decisions may be appealed as provided by law.

(Adopted May 25, 2007 pursuant to KMC 3.34.050; revised February, 2013)