

**SNOHOMISH
HEALTH
DISTRICT**

Courthouse
Everett, Washington 98201
Area Code 206 259-9440

CLARIS HYATT, M.D., M.P.H.
Health Officer

ROBERT A. PEKICH, M.P.A.
Deputy Administrator

DISTRICT MEMBERS

COUNTY

Snohomish

CITIES AND TOWNS

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Darrington
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Everett
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SNOHOMISH HEALTH DISTRICT
RESOLUTION OF THE BOARD OF HEALTH

85 - 44

RESOLUTION NUMBER: 85 - 44

RESOLUTION SUBJECT: ESTABLISHING PROCEDURES FOR APPEAL HEARINGS

WHEREAS WAC 248-96-150 requires that local health departments implement an administrative appeals procedure related to the onsite sewage program, and

WHEREAS the Board of Health adopted such an appeals procedure July 10, 1984, and

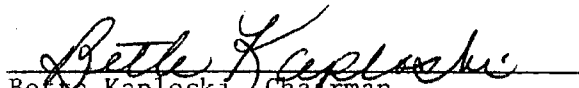
WHEREAS RCW 70.95.210 requires that there be an administrative appeals procedure when solid waste disposal permits are denied, suspended, or revoked, and

WHEREAS the Board of Health adopted such an appeals procedure July 10, 1984, and

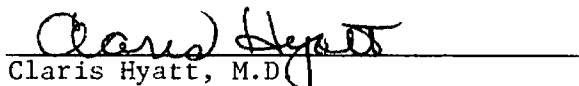
WHEREAS procedures for the conduct of appeals hearings are needed,

NOW THEREFORE the Board of Health adopts the attached document titled: "Rules of Procedure: Conduct of Hearings".

Adopted this 15th day of October 1985.


Bette Kaploski, Chairman
Board of Health

ATTEST:


Claris Hyatt, M.D.
Health Officer

October 15, 1985

CH: esh

Snohomish Health District
Environmental Health Appeals
Rules of Procedure: Conduct of Hearings

I. View Trip

- A. When necessary to a full understanding of the case, the Hearing Examiner may inspect the site prior to or subsequent to the hearing. Failure to inspect the site will not render the Examiner's decision void.
- B. When a view trip has been taken, the Examiner will so state both at the hearing and in the written decision.
- C. The view trip will be taken out of the presence of any interested party whenever feasible. When accompaniment by an interested party is necessary to fully view the property, no substantive discussion will occur during the view trip.

II. Format

- A. 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 the most readily and efficiently available to the Examiner. A public hearing will normally include, but need not be limited to, the following elements: a brief prefatory statement and introduction of exhibits by the Examiner; a presentation by the appellant which shall include an explanation of the appeal based solely on the existing records including the basis of the appeal as submitted in writing by the appellant, testimony of Snohomish Health District personnel, and opportunities for rebuttal.
- B. The Examiner may ask questions of any witness, including Health District staff, at any time during testimony to seek clarification or elaboration of testimony being given. Further, the Examiner may request submittal of additional information to better enable the Examiner to make a complete and accurate evaluation of the issues.
- C. The Examiner may indicate, at the outset of the hearing, that the Examiner has studied the materials relating to the case and has made a preliminary determination that there seems to be certain central issues which need to be addressed. The Examiner may request that these issues be addressed in testimony to be offered.
- D. The Examiner reserves the right to abbreviate the normal sequence of events at a hearing when it appears: that no one's rights would be infringed upon by such abbreviation; that detailed exposition of the case is not necessary to the Examiner's understanding of the case; and that no one present objects to such abbreviation.
- E. Each public hearing will be electronically recorded on magnetic tape to provide a permanent, verbatim record of the proceedings. Therefore, all parties wishing to offer verbal testimony will be required to speak into a microphone provided for that purpose, prefacing their remarks with their full name and area of residence.

III. Clerk

The Health District shall provide for a clerk to be present during hearings. The clerk shall be responsible for maintaining the register of parties of record, for marking exhibits, and keeping a list of exhibits and witnesses and to perform such other ministerial duties as may be assigned by the Examiner.

IV. Parties of Record

- A. Any interested person may become a party of record for a particular case by signing a register provided by the Examiner for that purpose. The register will include full name and complete mailing address. The Examiner is not responsible for illegible or incomplete entries on the register nor is the Examiner obligated to send materials to any illegible or incomplete address.
- B. The register for each case will be available for signing at the hearing and in the office of the Examiner on the next working day following the hearing.
- C. Persons must sign the register in person. Waiver of this requirement may be made by the Examiner in unusual hardship circumstances.

V. Rights of Parties

- A. General: Every party shall have the right of due notice, presentation of evidence, motion, argument, and all other rights essential to a fair hearing. The Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony.
- B. Cross Examination: Generally speaking, in hearings before the Examiner, cross examination of persons expressing their views would not be appropriate or contribute anything of value to the fact finding process. However, where the hearing assumes distinctly adversary proportions, the proponents and opponents are represented by counsel, expert witnesses are called, and complex, technical and disputed factors are involved, cross examination may be beneficial. Within the above guidelines, the allowance and scope of cross examination is within the discretion of the Examiner.

VI. Evidence

- A. Burden of Proof: The appellant shall have the burden of proof as to material factual issues unless applicable Health District rules and regulations or state law or regulations provide otherwise.
- 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 reasonable prudent people in the conduct of their affairs. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. The rules of privilege shall be effective to the extent recognized by law.

- C. Receipt and Retention: All documentary or other physical evidence submitted shall be sequentially numbered as an exhibit and retained by the Health District as a part of the official case record except laws, regulations, and other readily available public documents. Materials which the offering party is not willing to have become Health District property will not be accepted as evidence except, at the discretion of the Examiner, in unusual circumstances.
- D. Copies: Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.
- E. Official Notice: The Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within the Examiner's specialized knowledge. When any decision of the Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, the Examiner shall so state in the decision.
- F. Evidence Received Subsequent to the Hearing: No documentary material submitted after the close of the public hearing will be considered by the Examiner unless, at such hearing, the Examiner granted additional time to submit such material.

VII. Further Hearing

- A. Continuation or Postponement: The Examiner may continue or postpone proceedings for any good cause the Examiner deems reasonable and appropriate within the time limits imposed by relevant ordinances. If the Examiner determines at a hearing that there is good cause to continue such proceeding and specifies the date, time and place, no further notice will be required.
- B. Reopening of Hearing: When determination for further hearing is made by the Examiner and approved by the appellant following a hearing on a given appeal, notice of such further hearing shall be given in writing by the Examiner's office at least ten (10) days before the date for rehearing to all parties notified of the original hearing; PROVIDED, That all parties of record from the initial hearing shall be notified whether or not they received initial notice.

VIII. Termination of Jurisdiction

Except for the correction of clerical errors, the jurisdiction of the Examiner is terminated upon the issuance of the decision.

IX. Case Record

- A. Content: The official case record of a hearing conducted by the Examiner shall consist of:

1. A written case record including all documentary written materials and other exhibits submitted for consideration by the Examiner and the Examiner's decision, together with the register of parties of record and the list of exhibits and witnesses maintained by the clerk.
 2. An electronic recording on magnetic tape of the public hearing.
- B. Disposition: All materials which have become a part of the case record shall be maintained by the Health District as part of the Health District's official records.

X. Examiner Decision: Distribution

- A. One copy of the Examiner's decision in each case shall be transmitted or mailed to: the appellant, all parties of record who have requested a copy when signing the register and whose names and addresses are legible, the Health District, and any public agency or department deemed by the Examiner to be particularly affected by or interested in the instant case.
- B. The names of all recipients shall be listed in the Examiner's decision.

XI. Maintenance of Order during Hearings

- A. The Examiner shall have the power to maintain order and decorum during the conduct of all hearings before the Examiner.
- B. In the event that any person or persons interrupts any hearings before the Examiner such that it becomes not feasible to conduct an orderly hearing, and order cannot be restored by removal of the individual(s) interrupting the hearing, the following steps may be taken:
 1. The Examiner may order the hearing room cleared and continue in session; or
 2. The Examiner may adjourn the hearing and reconvene the hearing at another location.
- C. Whenever the Examiner deems it necessary to reconvene a hearing in a new location because of interruptions preventing an orderly hearing at the regular hearing room location:
 1. Final disposition may be taken only on matters appearing on the agenda at the time the disturbance arose leading to an adjustment.
 2. The Examiner may establish a procedure for readmitting any persons not responsible for the disturbance of the orderly conduct of the hearing.
- D. If necessary, law enforcement personnel may be summoned by the Examiner to carry out any of the provisions of this rule.

XII. Disqualification of Examiner

- A. When the Examiner deems himself/herself disqualified to preside in a particular proceeding, the Examiner shall withdraw by notice on the record.
- B. Any person may raise an issue of the partiality of the Examiner at any time. If, after considering the merits of the issue, the Examiner determines not to disqualify himself/herself, the raising of such issue shall in no way be considered by the Examiner in rendering a decision on the substantive case at hand.

Adopted by:
Board of Health
Snohomish Health District
Resolution #85 - 43
October 15, 1985

CH: gam