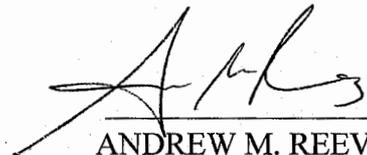


**City of Sedro-Woolley
Hearing Examiner**

I declare that the attached "Rules of Procedure for Proceedings before the Hearing Examiner of the City of Sedro-Woolley, Washington" were adopted by Sound Law Center, the City's appointed Hearing Examiner, on January 10, 2019.

Signed under the penalties of perjury of the laws of the State of Washington at Seattle, Washington this 10th day of January, 2019.

 1/10/19

ANDREW M. REEVES
Hearing Examiner
Sound Law Center

**RULES OF PROCEDURE FOR
PROCEEDINGS BEFORE THE HEARING EXAMINER
OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON**

**CHAPTER I:
HEARINGS ON PERMIT APPLICATIONS**

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

SECTION 1.1: DEFINITIONS

"SWMC" means the Sedro-Woolley Municipal Code.

"Applicant" means a person (or persons) 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.

"Calendar Day" means each day of the calendar week. When the last day of a stated period should fall on a Saturday, Sunday, or National, State, or City holiday, the stated period shall run until the end of the following working day.

"City" means the City of Sedro-Woolley, Washington.

"City Council" means the Sedro-Woolley City Council.

"Clerk of the Hearing Examiner" means a person designated by the City of Sedro-Woolley to assist the Hearing Examiner in his/her duties.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the City of Sedro-Woolley.

"County" means Skagit County, Washington.

"Ex parte communication" means written or oral communications to 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" means the Hearing Examiner or the Hearing Examiner Pro Tempore of the City of Sedro-Woolley.

"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. The City's administrative staff shall be considered an Interested Person and shall have the same rights as any other Interested Person.

"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 distributed by the City that communicates a decision or recommendation on an action before the Hearing Examiner. *RCW 36.70B.130*. The date on which a land use decision is issued is three days after a written decision or recommendation is mailed by the City or, if not mailed, the date on which the City provides notice that a written decision or recommendation is publicly available. *RCW 36.70C.040(a)*.

"Open Record Hearing" means a hearing held under chapter 36.70B RCW and conducted by the Sedro-Woolley 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.

"Order" means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

"Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

"Party of record" means:

- a. A person who has testified at the open record hearing on the application, or who submitted substantive written comments on the application (excluding persons who have only signed petitions or mechanically produced form letters), or has requested to be a party of record. *RCW 36.70B.130*.
- b. The applicant, or applicant's representative;
- c. The property tax payer as identified by the records available from the Skagit County assessor's office;
- d. The City's administrative staff.

"Record" means the oral testimony and written exhibits submitted at a hearing. The electronic recording of the proceeding shall be included as part of the record. At the discretion and order of the Hearing Examiner, the record may be supplemented after the closing of testimony.

"RCW" means the Revised Code of Washington.

"Staff Report" means the document prepared by the City's planning manager.

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

SECTION 1.2: JURISDICTION

The City Council has authorized the Hearing Examiner to prescribe rules and regulation for the conduct of hearings.

The Hearing Examiner's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Examiner the authority to hold hearings, make decisions or recommendations, and issue orders.

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 Hearing Examiner shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a related petition or application. This rule shall not prohibit ex parte communication concerning procedural matters. All allowed ex parte procedural communications shall be directed to the City Clerk. Any material not submitted in this manner will not be considered a part of the record established on that application or petition.
- 1.3.2 The Hearing 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 that is pending before the Hearing Examiner, or a factually related petition or application.
- 1.3.3 If prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed, and proper discretion shall be exercised by the Hearing 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 conducted expeditiously. 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
The City planner shall schedule hearings in coordination with the Hearing Examiner. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Examiner shall have discretion in setting the agenda.
- 1.4.3 Format
The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding become 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 in the judgment of the Hearing Examiner, the Hearing Examiner may inspect a 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 decision void.
- 1.4.5 Record of Hearing
a. The City shall make an electronic recording of all hearings in an audio format. Hearings shall be electronically recorded and such recordings shall be a part of the record. No minutes of the hearing will be kept. Copies of the electronic recordings

of a particular proceeding shall be made available to the public within five (5) working days of a request. The requester shall pay the reasonable cost of such copying.

- b. Copies of any written materials in the record may be obtained by any interested person who shall be responsible for paying the cost of reproducing such material.

1.4.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules, ordinances of the City of Sedro-Woolley, and laws of 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 national, state, or City holiday, the period shall run until the end of the next following working day.

SECTION 1.5: RIGHTS AND RESPONSIBILITIES OF PARTIES

1.5.1 Rights of City

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

1.5.2 Rights of Applicant

Every applicant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. Further, an applicant shall have the right to timely access to the City staff report.

The Hearing Examiner may limit the time allowed to parties testifying on an equal basis, may establish time limits for initial or rebuttal evidence, and may limit the number of witnesses to be heard. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Examiner shall control the amount and style of cross-examination.

1.5.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of persons to cross-examine, object, and 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.

1.5.4 Responsibilities of City Staff

The City staff shall provide a report consistent with the provisions of Rule 1.7.6, provide notice of hearings, present materials at the hearings, and provide documentation relevant to the case. Staff reports should be available to the public at least seven (7) calendar days before the hearing.

1.5.5 Responsibilities of Applicant

Whenever possible the Applicant shall provide the Hearing Examiner with material that supports his or her case prior to the hearing, be prepared for questions by the Hearing Examiner, and treat all who participate in these proceedings courteously. All supporting

materials shall be provided to the Hearing Examiner a minimum of seven (7) calendar days before the hearing.

1.5.6 Responsibilities of All Participants, Witness and Observers

Parties, witnesses, or observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner.

SECTION 1.6: PRESIDING OFFICIALS

1.6.1 Presiding Officials

a. The Hearing Examiner shall preside over the hearings.

b. The Hearing Examiner shall have all of the authority and duties as granted to him or her in state statutes, the SWMC, and other local 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. The Hearing Examiner shall have all powers necessary to that end, including the following:

1. Receive and examine available information;
2. Hold and conduct public hearings in accordance with SWMC Chapter 2.90, RCW Chapter 42.32, and all other applicable law, and to prepare a record thereof;
3. Make recommendations and decisions on all applications, permits or approvals as described in SWMC Chapter 2.90;
4. Hear and make final decisions on appeals made pursuant to SWMC Chapter 2.90;
5. Administer oaths and affirmations;
6. Issue subpoenas and examine witnesses; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;
7. Regulate the course of hearings;
8. Make and enter written findings of fact and conclusions to support his or her decisions;
9. At the examiner's discretion, hold conferences for the settlement or simplification of the issues;
10. Conduct discovery;
11. Dispose of procedural requests of similar matters;
12. Take official notice of matters of law or material facts;
13. Issue summary orders in supplementary proceedings; and
14. Take any other action authorized by or necessary to carry out this chapter and those matters within the jurisdiction of the Hearing Examiner.

SWMC 2.34.080.

c. In the performance of his or 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.

1.6.2 Presence of Legal Counsel at Open Record Hearings

- a. All parties participating in the hearings may be represented at the hearings by legal counsel of their choice.
- b. At the request of any department and discretion of the Hearing Examiner, a representative of the City Attorney's Office may be present at the hearings or public 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.
- d. All forms of legal authority including briefs, staff reports, and other legal memoranda upon which a party of record will be relying or presenting at the hearing must be submitted to the Hearing Examiner's office at least one (1) week in advance of the scheduled hearing date. The above mentioned documents shall be available to the public, subject to payment, at least one (1) week in advance of the scheduled hearing date.

SECTION 1.7: CONDUCT OF HEARINGS

1.7.1 Notice Requirements of Hearings and Filings

- a. All notice, time requirements, and methods of notification shall be consistent with the provisions as set forth in the SWMC, as applicable, in addition to the provisions of this Section.
- b. Affidavit of Notice: An affidavit attesting to the notice given of a hearing (including dates and places of publication, and list of addresses) shall be part of each record.

1.7.2 Oath or Affirmation

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

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

1.7.3 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;
- b. The departmental staff report;
- c. All evidence received, which shall include oral testimony given at the hearing, all exhibits, other materials admitted as evidence, and any written material submitted pursuant to Hearing Examiner order;
- d. A statement of all materials 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

A hearing usually will include, but not be limited to, the following elements:

- a. A brief introductory statement of the Hearing Examiner's process;
- b. A report by the departmental staff that may include introduction of the request, reference to visual aids, and a summary of the recommendation of the department;
- c. Testimony by the applicant and cross-examination of the witnesses;
- d. Testimony of interested parties;
- e. Opportunity for cross-examination and rebuttal; and
- f. An opportunity for questions by the Hearing Examiner.

1.7.6 Content and Form of Staff Reports

The City staff report on a land use application should include the following, if relevant to the application:

- a. A list of the names and addresses of the owner and applicant of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the ordinance controlling the request.
- c. A common description of the subject property and a legal description of the subject property.
- d. A statement identifying applicable City zoning code regulations.
- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property; and any other relevant scientific, environmental or engineering information.
- f. The current access to the subject property and the proposed access to the subject property.
- g. An in-depth analysis of the proposed project. This analysis may include, but not be limited to, the following elements of review:
 - 1. natural features;
 - 2. character and design, including population figures;
 - 3. human resources;
 - 4. housing;
 - 5. economic development;
 - 6. transportation;
 - 7. community facilities, services and institutions;
 - 8. government jurisdiction boundaries;
 - 9. neighborhoods;
 - 10. land use plans; and
 - 11. land use regulations.

- h. A history of the requested action and a history and vicinity map of the development in the surrounding properties. In making the analysis, the staff shall refer to applicable ordinances as often as possible.
- i. A summary of any other requested land use permits in the area.
- j. A description of the compatibility and impact of the proposal on the existing development and the probable character of the proposal.
- k. A summary of the reports or recommendations of any other agencies consulted.
- l. Appropriate maps of the subject property. If photographs of the site are available the applicant is encouraged to provide color reproductions that shall be part of the staff report.
- m. The result of the determination pursuant to the State Environmental Policy Act.
- n. Staff's conclusions and recommendations.

The staff report shall be filed with the Hearing Examiner at least seven (7) calendar days prior to the scheduled hearing and copies thereof mailed to the applicant and made available for public inspection. Copies thereof shall be provided to all interested parties upon payment of reproduction costs.

1.7.7 Continuances of Hearings

a. Hearing Examiner:

If the Hearing Examiner finds that more information is necessary in order to make a decision or recommendation, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of the SWMC but shall be granted for a period of no longer than thirty (30) calendar days, unless agreed to by all parties.

b. At the Request of a Party

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing to the Hearing Examiner and to the City and state reasonable grounds for a continuance. 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 Sedro-Woolley.
- b. Admissibility. The hearing generally will not be conducted in strict adherence to 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 of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. It is advisable to provide extra copies of all documents to the Hearing Examiner.
- d. Judicial notice. The Hearing Examiner may take judicial notice of judicially cognizable facts and 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. The Hearing Examiner may request a document to be filed after the close of public testimony. Only those documents referred to at the hearing may be submitted and only those specifically requested by the Hearing Examiner. Additional evidence may only be submitted upon a Request for Reconsideration based on new evidence not reasonably 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.
- f. All parties will be allowed 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

1.8.1 Withdrawal Prior to Notice of Hearing

If an applicant provides written notification to the City of a request to withdraw the application the withdrawal shall be automatically permitted.

SECTION 1.9: DECISIONS AND RECOMMENDATIONS

1.9.1 Written Decisions or Recommendation

For applications on which the Hearing Examiner has final approval authority, a written report of findings, conclusions, and decision shall be sent to all parties of record. The Hearing Examiner's decision or recommendation shall be submitted within ten (10) working days following the conclusion of all testimony and hearings, unless a longer period is mutually agreed to by the City, Applicant, and Hearing Examiner. The findings, conclusions and decision or recommendation may indicate how the decision or recommendation carries out the goals, policies, plans, and requirements of the SWMC, and other policies and objectives of the City.

1.9.2 Content of Decision or Recommendation

A decision or recommendation shall include a statement of:

- a. The Hearing Examiner's decision;
- b. The nature and background of the proceeding.
- c. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The findings shall consist of a concise statement of each fact found to support the review criteria. A statement of any threshold determination made under chapter 43.21 RCW shall be included.

- d. Conclusions. Conclusions shall include a resolution of the review criteria based upon the findings. The conclusions may reference legal criteria, if applicable. The conclusions may make reference to the Comprehensive Plan, as well as to the effect of both approval and denial on property in the vicinity, on businesses, if relevant, and on the general public.
- e. The appropriate rule, order, or relief. The decision or recommendation shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence. All decisions may include conditions of approval, including the time limit after which any approval shall expire if not utilized.

1.9.3 Procedure for Reopening Hearing

- a. 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.
- b. If within ten (10) 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.
- c. Reconsideration. Any interested person who believes that the decision of the Hearing Examiner is based on an erroneous procedure, 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 review by the Hearing Examiner within fourteen days after the written decision of the Hearing Examiner has been rendered or within fourteen days of the publication of decision, if required. The request shall set forth the specific errors relied upon by such appellant, and the Hearing Examiner may, after review of the record, take further action as the Hearing Examiner deems proper. The Hearing Examiner may request further information which shall be provided within ten days of the request. The Hearing Examiner's written decision on the request for reconsideration shall be transmitted to all parties of record within ten days of receipt of the request for reconsideration or receipt of the additional information requested, whichever is later. The Hearing Examiner's written decision on the request for reconsideration shall constitute the final decision for any further appeals.

SECTION 1.10: APPEALS OF DECISIONS

The decision of the hearing examiner shall be final unless an appeal is filed pursuant to the SWMC.

SECTION 1.11: CONFLICTS

These Rules of Procedure are adopted under the authority granted by the Sedro-Woolley Council to supplement the requirements set forth in the SWMC. Any conflict between the rules and the provisions of the SWMC will be decided consistent with the provisions of the SWMC.

CHAPTER II:
RULES OF APPEAL OF ADMINISTRATIVE DECISIONS

This chapter applies to appeals of administrative decisions that affirm, reverse, or remand a land use permit application.

SECTION 2.1: DEFINITIONS

"SWMC" means the Sedro-Woolley 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 in accordance with the Sedro-Woolley Municipal Code.

"Applicant" means a person (or persons) 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.

"Calendar Day" means each day of the calendar week. When the last day of a stated period should fall on a Saturday, Sunday, or National, State, or City holiday, the stated period shall run until the end of the following working day.

"City" means the City of Sedro-Woolley, Washington.

"City Council" means the Sedro-Woolley City Council.

"Clerk of the Hearing Examiner" means a person designated by the City of Sedro-Woolley to assist the Hearing Examiner in his/her duties.

"Comprehensive Plan" means the Comprehensive Plan that has been adopted by the City of Sedro-Woolley.

"County" means Skagit County, Washington.

"Ex parte communication" means written or oral communications to 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" means the Hearing Examiner or the Hearing Examiner Pro Tempore of the City of Sedro-Woolley.

"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 distributed by the City that communicates a decision or recommendation on an action before the Hearing Examiner. *RCW 36.70B.130*. The date on which a land use decision is issued is three days after a written decision or recommendation is mailed by the City or, if not mailed, the date on which the City provides notice that a written decision or recommendation is publicly available. *RCW 36.70C.040(a)*.

"Open Record Appeal Hearing" means an administrative hearing that creates the record on appeal through written and oral testimony and submission of evidence and information.

"Open Record Hearing" means a hearing held under chapter 36.70B RCW and conducted by the Sedro-Woolley 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.

"Order" means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

"Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

"Party of record" means:

- (a) A person who has testified at the open record hearing on the application, or who submitted substantive written comments on the application (excluding persons who have only signed petitions or mechanically produced form letters), or who requested to be a party of record. *RCW 36.70B.130*.
- (b) The applicant, or applicant's representative;
- (c) The property tax payer as identified by the records available from the Grays Harbor County assessor's office;
- (d) The City's administrative staff.

"Record" means the oral testimony and written exhibits submitted at a hearing. The electronic recording of the proceeding shall be included as part of the record. At the discretion and order of the Hearing Examiner, the record may be supplemented after the closing of testimony.

"RCW" means the Revised Code of Washington.

"Staff Report" means the document prepared by the City's planning manager.

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

SECTION 2.2: FILING

2.2.1 Compliance with Rules

All appeals must comply with the Rules and with the requirements established in the applicable SWMC ordinance(s) and/or RCW 36.70C.040 (as it exists now or as amended) under which the appeal is filed.

2.2.2 Timeliness

To be considered timely, an appeal from an administrative decision must be received no later than fourteen (14) calendar days after written notice of the decision is mailed. Such an appeal must be filed with the City Planning Director.

2.2.3 Fee

Appeals shall be accompanied by the appropriate filing fee as required by the SWMC Fee Schedule.

2.2.4 Contents

All appeals shall be filed in accordance with the SWMC. An appeal shall be in writing and should contain the following:

- a. A heading in the words: "Before the Hearing Examiner, or City Council", whichever is appropriate.
- b. A caption reading: "Appeal of _____" giving the names of all appellants participating in the appeal;
- c. A brief statement setting forth the legal interest of each of the appellants; including the specific permit number under review being appealed; and a single representative or contact person if multiple parties file an appeal.
- d. A brief statement in concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;
- e. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested action is an error of fact or law and why the decision should be reversed, modified or otherwise set aside;
- f. The signatures of all parties named as appellants, and their official mailing addresses;
- g. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

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 (1) primary brief not exceeding fifteen (15) double-spaced pages in length. In addition, the appellant may submit a reply brief not exceeding ten (10) pages in length. The Hearing Examiner may, at his or her 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.

2.2.6 Motions

Motions and responses to motions are not to exceed fifteen (15) 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 to secure 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 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 or her own order, or at the request of a party, hold a conference prior to the hearing to consider:
 - a. Identification, clarification, and simplification of the issues;
 - b. Disclosure of witnesses to be called and exhibits to be presented;
 - c. Motions; and
 - d. Other matters deemed by the Hearing Examiner 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 written or oral notice to all parties of any prehearing conference.
- 2.4.4 All parties of record have the right to be represented at any prehearing conference. Representation 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 In the event that a prehearing conference is not held, the Hearing Examiner may issue a prehearing order with procedural information including identification of the parties; date and time of the hearing appeal; issues identified in the appeal statement; a request and date for submission of lists of witnesses and documents; cross-examination of witnesses; and an order of presentation.
- 2.4.8 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 and an appellant's Request to Withdraw shall be granted as a matter of right and the appeal dismissed.
- 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 who had been designated as the party representative.

SECTION 2.6: PARTY REPRESENTATIVE

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 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 considered to be notice or communication to party.

SECTION 2.7: NOTICE OF HEARING

2.7.1 Contents

The Notice of Hearing should include:

- a. Appellant name and project name (if applicable)
- b. The legal authority and jurisdiction for the hearing;
- c. The street address of the subject property or a description in non-legal terms of the property's location.
- d. A brief description of the decision of the Director that is being appealed.
- e. A statement of the scope of the appeal including a summary of the specific errors alleged in the letter of appeal.
- f. The date, time and place of the appeal hearing before the Hearing Examiner.

2.7.2 Time

Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for Notice of Hearing is not specified by the applicable ordinance(s), or applicable ordinances conflict, minimum notice shall be fourteen (14) calendar days before the scheduled hearing date.

2.7.3 Responsibility

The City shall be responsible for serving the Notice of Hearing for appeals.

2.7.4 Record of Notice

A copy of the Notice of Hearing shall be made part of each record.

SECTION 2.8: PARTIES' RIGHTS AND RESPONSIBILITIES

- 2.8.1 Although appellants and applicants have the right to be represented by an attorney, representation by an attorney 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 Parties, witnesses, and observers shall conduct themselves with civility and deal courteously with all who participate in the proceedings. Failure to do so will result in removal from the hearing at the discretion of the Hearing Examiner.

SECTION 2.9: CONTINUANCES

2.9.1 Hearing Examiner

If the Hearing examiner finds that more information is necessary in order to make a decision or recommendation, or he or she is unable to hear all of the public comments on the matter, the hearing may be continued to a specified date. If the hearing is continued and the Hearing Examiner publicly announces the specific date, time, and place before adjournment, no further notice of the hearing need be given. Continuances shall be consistent with the provisions of the SWMC but shall be granted for a period of no longer than thirty (30) calendar days.

2.9.2 At the Request of a Party or Parties

Any party of record may request continuance of a hearing.

- a. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance.
- b. The request for continuance must be submitted to the Hearing Examiner and all parties of record a minimum of two (2) weeks prior to the date of the hearing. Other parties may submit a response to the request for continuance a minimum of one (1) week prior to the date of hearing.
- c. The parties may submit a joint request for continuance to the Hearing Examiner a minimum of three (3) working days prior to the date of the hearing.
- d. More than one request for continuance per party is disfavored.
- e. If the request is made orally at the hearing it must be based on reasonable grounds.
- f. The Hearing Examiner shall have discretion to grant or deny the request for continuance.

SECTION 2.10: DEFAULT

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 2.11: HEARING FORMAT

2.11.1 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.

2.11.2 The order of an appeal hearing will generally be as follows:

- a. Examiner's introductory statement;
- b. Background presentation by department staff;
- c. Appellant's argument;
- d. Department's presentation;
- e. Applicant's presentation;
- f. Rebuttal; and

- h. Closing argument of parties.
- 2.11.3 Notwithstanding the provisions of the SWMC, 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.
- 2.11.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

SECTION 2.12: HEARING EXAMINER DECISION

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 Hearing 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 wholly or in part, reverse, or modify the decision appealed) based upon a consideration of the whole record and supported by substantial evidence in the record.
- e. The Hearing Examiner shall hear evidence from all affected parties and shall render a decision on the appeal within ten (10) working days of the close of the hearing record.

SECTION 2.13: RECORD

- 2.13.1 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 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).
- 2.13.2 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 2.14: RECONSIDERATION (Reserved)

CHAPTER III
RULES OF PROCEDURE FOR APPEALS OF NOTICE OF CIVIL VIOLATION

Application of these Rules

This Chapter applies to open record appeal hearings in response to a notice of violation. See *Chapter 18.10 SWMC*.

SECTION 3.1: PURPOSE

The purpose of this Chapter is to provide all parties to an appeal hearing with a clear description of the order of procedure. The following rules are intended to provide all parties with the ability to participate in an appeal hearing in a manner that will facilitate an expeditious, just and fair result.

SECTION 3.2: DEFINITIONS

“Appellant” means a person who is accused of being responsible for the violation. The appellant may be any person who has titled ownership of the property or structure which is subject to the regulation, an occupant in control of the property or structure which is subject to the regulation, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to the regulation and/or any person who created the violation or any person who has control over the property and allows the violation to continue.

“SWMC” means Sedro-Woolley Municipal Code

“Business Day” means any day for which the City’s offices are open for normal business matters.

“Calendar Days” means each day of the calendar week. When the last day of a stated period should fall on a Saturday, Sunday, or National, State, or City holiday, the stated period shall run until the end of the following business day.

“City” means the City of Sedro-Woolley, Washington

“Clerk of the Hearing Examiner” means a person designated by the City of Sedro-Woolley Department of Community Development to assist the Hearing Examiner in his/her duties.

“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 Examiner” or “Examiner” means the Hearing Examiner or the Hearing Examiner Pro Tem of the City of Sedro-Woolley.

“Open record appeal hearing” means an administrative hearing that creates the record on appeal through written and oral testimony and submission of evidence and information.

“Order” means a written determination of the Hearing Examiner, which directs a party to the proceedings to act or to refrain from acting.

“Person” means any individual, firm, association, partnership, corporation or any entity, public or private.

“Person(s) responsible” means the person who caused the code violation, if that can be determined, and/or the owner, lessor, tenant or other person entitled to control, use, and/or occupy property where the civil code violation occurs.

“Record” means the oral testimony and written exhibits submitted at the open record appeal hearing. The audio recording of the proceeding shall be included as part of the record. At the discretion and order of the Hearing Examiner, the record may be supplemented after the closing of testimony.

SECTION 3.3: JURISDICTION

The Hearing Examiner has jurisdiction to hear and decide appeals of notice of civil violations issue orders and assess monetary penalties. See *SWMC 18.15.030.C*.

SECTION 3.4: EX PARTE COMMUNICATION

- 3.4.1 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.
- 3.4.2 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.
- 3.4.3 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 3.5: NATURE OF PROCEEDINGS

- 3.5.1 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 conducted expeditiously. 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.
- 3.5.2 Format

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

3.5.3 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.

3.5.4 Record of Hearing

- a. Record. Hearings shall be electronically recorded in an audio format and such recordings shall be part of the record.
- b. Copies of any written materials in the record may be obtained by any interested person who may be responsible for paying the cost of reproducing such material.

**SECTION 3.6: RIGHTS AND RESPONSIBILITIES
OF ALL INVOLVED PARTIES**

3.6.1 Rights of City

The City staff shall have the right to present evidence and testimony, cross-examine witnesses, make recommendations to the Hearing Examiner, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violation(s).

3.6.2 Rights of Appellant

The Appellant shall have the right to receive notice of the hearing, present evidence and testimony, cross-examine witnesses, and exercise all other rights essential to a fair appeal hearing. The Hearing Examiner may limit testimony to material that is relevant and pertinent to the alleged violations.

3.6.3 Responsibilities of City Staff

The City staff shall provide the Hearing Examiner with documentation relevant to the case, and treat all who participate in the proceeding courteously.

3.6.4 Responsibilities of Appellant

The Appellant shall provide the Hearing Examiner with material that supports his/her case, prepare for questions from the Hearing Examiner, and treat all who participate in the proceedings courteously.

3.6.5 Responsibilities of all participants, witness and observers

All participants, witness and observers shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

3.6.6 Failure to Appear

Absent a voluntary agreement (See Rule 3.8.8), parties who are named in the notice of civil violation must appear at the open record appeal hearing. If adequate notice has

been given, and a named party fails to appear at a scheduled hearing, the Hearing Examiner may issue an order of default, assess an appropriate penalty, and order abatement of the violation at the expense of the person responsible for the violation. See SWMC 118.15.040).

SECTION 3.7: PRESIDING OFFICIALS

3.7.1 Presiding Officials

- a. Open record appeal 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, SWMC and other 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. Receive and examine available information;
 2. Hold and conduct public hearings in accordance with SWMC Chapter 2.90, RCW Chapter 42.32, and all other applicable law, and to prepare a record thereof;
 3. Make recommendations and decisions on all applications, permits or approvals as described in SWMC Chapter 2.90;
 4. Hear and make final decisions on appeals made pursuant to SWMC Chapter 2.90;
 5. Administer oaths and affirmations;
 6. Issue subpoenas and examine witnesses; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;
 7. Regulate the course of hearings;
 8. Make and enter written findings of fact and conclusions to support his or her decisions;
 9. At the examiner's discretion, hold conferences for the settlement or simplification of the issues;
 10. Conduct discovery;
 11. Dispose of procedural requests of similar matters;
 12. Take official notice of matters of law or material facts;
 13. Issue summary orders in supplementary proceedings; and
 14. Take any other action authorized by or necessary to carry out this chapter and those matters within the jurisdiction of the Hearing Examiner.

SWMC 2.34.080.
- 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.

3.7.2 Presence of Legal Counsel at Open Record Appeal Hearings or Meetings

- a. Although representation by legal counsel is not required at the open record appeal hearings, all parties participating in the hearings may be represented at the hearings by legal counsel of their choice.
- b. At the request of any department and in the discretion of the Hearing Examiner, a representative of the City of Sedro-Woolley Attorney's Office may be present at the open record appeal hearings.
- c. To the extent practicable, any legal memoranda upon which a party of record will be relying shall be submitted to the Hearing Examiner's office (care of the Clerk of the Hearing Examiner) at least one week in advance of the scheduled hearing date.

SECTION 3.8: CONDUCT OF HEARINGS

3.8.1 Notice Requirements of Hearings and Filings

- a. A person to whom a notice of civil violation is issued will be scheduled to appear before the Hearing Examiner not less than 10 calendar days from the date of service of the notice of violation or entrance into a voluntary correction agreement.
- b. Affidavit of Notice. The City shall provide an affidavit or testimony attesting to the notice given of a hearing.

3.8.2 Oath or Affirmation

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

3.8.3 Content of the Record

The record of the appeal hearing conducted by the Hearing Examiner should include the testimony presented at the appeal hearing and those written materials submitted as exhibits at the appeal hearing. In addition, the record should include the following:

- a. A decision or order containing the findings and conclusions of the Hearing Examiner;
- b. Recordings of the appeal hearing made on electronic equipment; and
- c. Other related materials.

3.8.4 Development of Record at the Hearing

- a. City
The City shall present its case first by describing the nature of the alleged violation and the documents that it proposes to submit into the appeal record. The City has the burden of proof, which requires it to show by a preponderance of the evidence that the violation occurred. Once the City has described the

violation, it should recommend corrective action reasonably calculated to correct the violation. The recommended corrective action should include all actions that would be necessary to remedy the alleged violation, and a time schedule within which the actions must be complete. Monetary penalties may be recommended at the close of the City's presentation. Testimony will only be allowed from members of the City staff or individuals that the City calls as witnesses. The City may submit proposed Findings and Conclusions to support a decision.

b. Appellant

After the City presents its case, the Appellant will have an opportunity to respond. The Appellant's response should consist of information that is related to the alleged violation and addresses the City's contentions. The Appellant may testify and/or provide exhibits that support his or her position. The Appellant may submit evidence that describes any corrective action that he or she has taken to improve the condition of the subject property. Testimony will only be accepted from the Appellant or individuals that the Appellant has called as witnesses. The Appellant may submit proposed Findings and Conclusions to support a decision.

3.8.5 Content and Form of Staff File

The staff file for an appeal hearing should include at least the following

- a. Exhibit list containing names of appellants, file number, location of violation including address and tax parcel number, and a list of exhibits;
- b. Notice of Violation containing description of violation, recommended corrective action and hearing notice;
- c. Return of Service Affidavit; and
- d. Property profile showing ownership of the subject property.

3.8.6 Continuance of Appeal Hearing

a. Hearing Examiner

If, in the opinion of the Hearing Examiner, more information is necessary in order to make a decision or issue an order, the appeal hearing may be continued to a date certain with notice to the Appellant and City.

b. At the request of a Party

Any party of record may request continuance of an appeal hearing. The request, if made prior to the appeal hearing, must be in writing and state reasonable grounds for a continuance. 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.

3.8.7 Evidence

- a. The open record appeal hearing will not be conducted in strict adherence to the Rules of Evidence. However, in the spirit of providing an expeditious appeal process, all evidence that the parties to the proceeding submit should be related to the alleged violation(s).

- b. Copies. Three copies of each document submitted shall be provided at the hearing. If copies are not provided at the open record appeal hearing, the Appellant may be charged for the cost of copying exhibits that are admitted during the hearing. Any documents submitted at the appeal hearing shall become part of the permanent record and shall not be returned to the party. Copies of documents may be submitted in lieu of originals in accordance with Rule 1.7.8(c).
- c. Any person submitting photographs in support of his or her case, must be prepared to identify (1) the subject of the photograph, (2) the date the photograph was taken, and (3) the individual who took the photograph.
- d. 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.

3.8.8 Voluntary Compliance Agreement

At any time prior to the close of the appeal hearing, the Appellant may voluntarily offer to improve the condition of the subject property and correct the alleged violation, pursuant to a voluntary compliance agreement. SWMC 18.20.010 dictates how voluntary compliance agreements function in the City and any such offer of voluntary compliance must satisfy the criteria of SWMC 18.20.010 to the City's satisfaction.

3.8.9 Presentation of Motions

A party to the proceeding may present a motion to the Hearing Examiner. All motions must be presented in writing, clearly noted as a motion, and be presented with notice to all other parties at a scheduled hearing or by telephone conference with consent of the Hearing Examiner.

SECTION 3.9: DECISIONS OF THE HEARING EXAMINER

3.9.1 Written Decisions

The Hearing Examiner shall issue a written decision or order within 30 calendar days from the close of the open record appeal hearing. Copies of the Hearing Examiner's decision shall be made available to the City and the Appellant.

3.9.2 Content of Decision or Order

The decision should include at least the following:

- a. Findings. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed.
- b. Conclusions. The conclusions shall include a resolution of the issue(s) based upon the findings. The conclusions may reference legal criteria, if applicable.

- c. The appropriate rule, order or relief. In the event that the Hearing Examiner determines that a violation occurred or is occurring, the Hearing Examiner shall issue an order to the person responsible for the violation, which contains the following information:
1. The decision regarding the alleged violation including findings of fact and conclusion based thereon in support of the decision;
 2. The required corrective action;
 3. The date and time by which the correction must be completed;
 4. The monetary penalties and costs of enforcement, if any, and costs of abatement, if any; and
 5. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

SECTION 3.10: APPEALS OF DECISIONS

- 3.10.1 The decision or order of the Hearing Examiner may be appealed to Superior Court in accordance with the provisions set forth in the Revised Code of Washington, Chapter 36.70C.

SECTION 3.11: CONFLICTS

- 3.11.1 In the event of a conflict between these rules and the provisions of the SWMC, the provisions of the SWMC shall prevail.