Introduced by: Bill Reams

79-428

ORDINANCE NO. 0004461

AN ORDINANCE relating to appeal procedures before the Zoning and Subdivision Examiner, establishing a uniform system for the processing of all applications and appeals heard by the Examiner, transferring authority to hear certain appeals to the Examiner from the Board of Appeals, amending Ordinance 263, Article 5, Sections 11, 12, 13 and 18, and KCC 20.24.130, 20.24.140, 20.24.150, 20.24.170 and 20.24.200, repealing Ordinance 263, Article 5, Sections 7, 10, 14, 15, 16, 17 and 19, and Ordinance 453, Section 1 and KCC 20.24.070, 20.24.080, 20.24.120, 20.24.160, 20.24.170, 20.24.180, 20.24.190 and 20.24.210 and substituting new sections therefor and adding new sections to KCC 20.24.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 263, Article 5, Section 7 (part) and KCC 20.24.070 and 20.24.080 are each hereby repealed and the following substituted:

Recommendations to the Council.

(a) The Examiner shall receive and examine available information, conduct public hearings and prepare records and reports thereof and issue recommendations to the Council based upon findings and conclusions in the following cases:

(1) Applications for reclassifications of property;

(2) Applications for unclassified use permits;

(3) Applications for planned unit developments;

(4) Applications for preliminary plats;

(5) Applications for shoreline environment redesignations;

(6) Applications for boundary adjustments of local sewer service areas in accordance with the County

Sewerage General Plan, Ordinance 4035, Chapter 6, required for development proposals (including but not limited to short subdivisions and building permits) which seek or need sewer service but are located outside of existing designated local sewer service areas;

(7) Applications for agricultural land variances;

(8) Applications for review of designations of agricultural lands of county significance of King County agricultural districts;

(9) Applications to revise the boundaries of agricultural lands of county significance;

(10) Applications for current use assessment on open space or timber lands except as provided in KCC 20.36.140;

(11) Appeals from denials by the county assessor of applications for current use assessments on farm and agricultural lands;

(12) Appeals of permit denials or conditions imposed on environmental grounds pursuant to KCC 20.44.010;

(13) Appeals from threshold determinations concerning actions subject to Council approval;

(14) Other applications or appeals which the Council may prescribe by ordinance.

(b) The Examiner's recommendation may be to grant or deny the application or appeal, or the Examiner may recommend that the Council adopt the application or appeal with such conditions, modifications and restrictions as the Examiner finds necessary to make the application reasonably compatible with the environment and carry out applicable state laws and regulations

and the regulations, policies, objectives and goals of the comprehensive plan, the community plans, the sewerage general plan, the zoning code, the subdivision code and other official laws, policies and objectives of King County.

NEW SECTION. SECTION 2. There is added to KCC 20.24 a new section to read as follows:

Final Decisions by the Examiner.

(a) The Examiner shall receive and examine available information, conduct public hearings and prepare records and reports thereof, and issue final decisions based upon findings and conclusions in the following cases:

(1) Appeals from the decisions of the administrator for short subdivisions;

(2) Appeals from threshold determinations concerning actions not subject to Council approval;

(3) Appeals from notices and orders issued pursuant to KCC Title 23 or the Rules and Regulations VII of the King County Department of Public Health;

(4) Appeals from decisions of the Department of Public Works regarding permits or licenses in flood hazard areas pursuant to KCC 21.54.090;

(5) Appeals from conditions imposed on final approvals of subdivisions receiving extensions pursuant to KCC 19.28.050(e) or (f);

(6) Appeals from decisions of the Zoning Adjustor on conditional use permits or variances;

(7) Appeals from decisions regarding site plan approvals pursuant to KCC 21.46.180 and pursuant to Ordinance 4122;

(8) Appeals from decisions regarding the abatement of nonconforming uses;

(9) Applications for shoreline substantial development permits when combined with other land use applications pursuant to KCC 25.32.080.

(10) Other applications or appeals which the Council may prescribe by ordinance.

(b) The Examiner's decision may be to grant or deny the application or appeal, or the Examiner may grant the application or appeal with such conditions, modifications and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, the community plans, the sewerage general plan, the zoning code, the subdivision code and other official laws, policies and objectives of King County.

NEW SECTION. SECTION 3. A new section is hereby added to KCC 20.24 as follows:

Notice of Appeal to Examiner - Contents. All notices of appeal regarding any decision being appealed to the Zoning and Subdivision Examiner pursuant to this chapter shall be filed with the County department or division issuing the original decision within ten (10) calendar days from the date of issuance of such decision. All notices of appeal shall state with specificity the decision being appealed and the reasons why the appealed decision should be reversed or modified.

SECTION 4. Ordinance 263, Article 5, Section 10 and KCC 20.24.120 are each hereby repealed and the following substituted:

Public Hearing. When it is found that an application meets the filing requirements of the responsible County department or an appeal meets the filing rules of the Examiner, it shall be

accepted and a date assigned for public hearing. For purposes of proceedings identified in Section 1, the public hearing by the Examiner shall constitute the hearing by the Council. Before rendering a recommendation or decision on any application or appeal the Examiner shall hold at least one public hearing thereon, provided that the Examiner's review of appeals regarding variances and conditional use permits shall be based upon the record before zoning adjustor as provided by KCC 21.58.100.

NEW SECTION. SECTION 5. There is added to KCC 20.24 a new section to read as follows:

Consolidation of Hearings. Whenever a project requires more than one county permit or approval, the Hearing Examiner may in his discretion order a consolidation of and conduct the required public hearings to avoid unnecessary costs or delays. Decisions of the Examiner to order and conduct consolidated hearings shall be final in all cases.

SECTION 6. Ordinance 263, Article 5, Section 11 and KCC 20.24.130 are hereby amended to read as follows:

Report by Department. When ((~~such~~)) an application or appeal has been set for public hearing, the responsible county department shall coordinate and assemble the reviews of other departments and governmental agencies having an interest in the subject application or appeal and shall prepare a report summarizing the factors involved and the department findings and recommendation or decision. At least ((~~seven~~)) fourteen calendar days prior to the scheduled hearing the report, and in the case of appeals any written appeal arguments submitted to the county, shall be filed with the Examiner and copies thereof shall be mailed ((~~to the applicant and shall be made available~~

~~for use by any interested party~~)) to all persons of record who have not previously received said materials.

SECTION 7. Ordinance 263, Article 5, Section 12 and KCC 20.24.140 are each hereby amended to read as follows:

Notice. Unless otherwise provided by ordinance, the responsible county department shall cause ((~~Notice~~)) notice of the time and place of the public hearing ((~~shall~~)) to be mailed to all persons of record at least fourteen calendar days prior to the scheduled hearing. Additional notice shall be given as provided in the ordinance governing the particular type of application or appeal.

SECTION 8. Ordinance 263, Article 5, Section 13 and KCC 20.24.150 is hereby amended to read as follows:

Rules and Regulations. The examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him subject to confirmation of the council; and also to issue summons ((~~for~~)) and subpoena to compel the appearance of witnesses and production of documents and materials, to order discovery, to administer oaths, and to preserve order. The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with the rules of the examiner.

SECTION 9. Ordinance 263, Article 5, Section 14 and KCC 20.24.160 are each hereby repealed and the following substituted:

Examiner findings. When the Examiner renders a decision or recommendation, he shall make and enter findings of fact and conclusions from the record which support his decision and the findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent

with, carries out and helps implement applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, the community plans, the sewerage general plan, the zoning code, the subdivision code and other official laws, policies and objectives of King County, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

NEW SECTION. SECTION 10. There is added to KCC 20.24 a new section to read as follows:

Additional Examiner Findings - Reclassifications and Shoreline Redesignations. When the Examiner issues a recommendation regarding an application for a reclassification of property or for a shoreline environment redesignation, the recommendation shall include additional findings which support the conclusion that at least one of the following circumstances applies:

(1) The property is potentially zoned for the reclassification being requested and conditions have been met which indicate the reclassification is appropriate; or

(2) An adopted community plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification application; or

(3) Where a community plan has been adopted but subsequent area zoning has not been adopted, that the proposed reclassification or shoreline redesignation is consistent with the adopted community plan; or

(4) The applicant has demonstrated with substantial evidence that (a) since the last previous area zoning or shoreline environment designation of the subject property, authorized public

improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the community plan or area zoning; (b) the impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area rezoning or redesignation is not appropriate; and (c) the requested reclassification or redesignation is required in the public interest.

SECTION 11. Ordinance 263, Article 5, Section 16 and KCC 20.24.180 are each hereby repealed and the following substituted:

Written Recommendation or Decision.

(a) Within ten (10) days of the conclusion of a hearing or rehearing, the Examiner shall render a written recommendation or decision and shall transmit a copy thereof to all persons of record.

(b). Recommendations of the Examiner in cases identified in Section 1 may be appealed to the Council by an aggrieved party party by filing a notice of appeal with the clerk of the Council within fourteen (14) calendar days of the date the Examiner's written recommendation is mailed. A copy of the notice shall also be delivered to the Examiner. If no appeal is filed within 14 calendar days, the clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting for adoption, provided the Council by motion may refer the matter to a Council committee or remand to the Examiner for the purpose of further hearing, receipt of additional information or further consideration when determined necessary prior to the Council's taking final action thereon.

(c) Decisions of the Examiner in cases identified in Section 2 shall be final and reviewable pursuant to Section 15.

SECTION 12. Ordinance 453, Section 1 and Ordinance 263, Article 5, Section 17 and KCC 20.24.190 are hereby repealed and the following substituted:

Appeal to Council. If an appeal has been filed pursuant to KCC 20.24.180(b), the appellant shall file within 21 calendar days of the date of the Examiner's written recommendation a written appeal statement specifying the basis for the appeal and any arguments in support of the appeal. If no written appeal statement or arguments are filed within the 21 calendar days, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the Agenda of the next available Council meeting. The Clerk of the Council shall cause notice to be given to other parties of record that a notice of appeal and appeal statement have been filed and that written appeal statements or arguments in response thereto may be submitted to the Clerk within fourteen (14) calendar days of the date of such notification by the Clerk.

Consideration by the Council of the appeal shall be based upon the record as presented to the Examiner at the public hearing and upon written appeal statements based upon the record, provided the Council also may allow parties a period of time for oral argument based on the record. The Examiner may conduct a conference with all parties to the appeal for the purpose of clarifying or attempting to resolve certain issues on appeal, provided that the deputy examiner who conducted the public hearing on the proposal may not conduct the conference. Such conference shall be informal and shall not be part of the public record.

If after consideration of the record, written appeal statements and any oral argument the Council determines that: (1) An error in fact or procedure may exist or additional information or clarification is desired, the Council shall remand the matter to the Examiner; or (2) The recommendation of the Examiner is based on an error in judgment or conclusion, the Council may modify or reverse the recommendation of the Examiner; provided the Council's Land Use Appeal Committee may retain the matter, refer it to another Council/Committee or remand to the Examiner for the purpose of further hearing, receipt of additional information or further consideration when determined necessary prior to the Council's taking final action thereon.

SECTION 13. Ordinance 263, Article 5, Section 18 and KCC 20.24.200 are each amended to read as follows:

Council Action. The Council shall take final action on any ((~~decision~~)) recommendation of the Examiner by motion of concurrence approved by at least 5 members of the Council or by adoption of an ordinance or motion and when so doing, it shall make and enter findings of fact and conclusions from the record ((~~and conclusions therefrom~~)) which support its action. Said findings and conclusions shall set forth and demonstrate the manner in which the action is consistent with, carries out and helps ((~~to~~)) implement ((~~the goals and objectives~~)) applicable state laws and regulations and the regulations, policies, objectives and goals of the comprehensive plan, the community plans, the sewerage general plan, the zoning code, the subdivision code and other official laws, policies and objectives for the development of King County. The Council may adopt as its own all or portions of the Examiner's findings and conclusions.

Any ordinance may contain reasonable conditions regarding the manner of development or other aspects regarding use of the property. Any ordinance also may contain conditions which must be satisfied before the ordinance becomes effective and the official zoning maps shall not be amended until said conditions have been satisfied; provided, the ordinance shall also designate the time period within which any such conditions must be satisfied. All authority pursuant to such ordinance shall expire if any of said conditions are not satisfied within the designated time period and the property shall continue to be subject to all laws, regulations and zoning as if the ordinance had not been adopted; provided, the Council may extend the period for satisfaction of said conditions if after a public hearing by the Examiner the Council finds an extension will be in the public interest and the extension was requested by applicant within the initial time period. As an alternative to the adoption of an ordinance containing conditions, the Council may adopt an ordinance subject to the execution of a concommitant agreement between the County and the applicant regarding the manner of development of the property, any required improvements or any aspect regarding use of the property.

NEW SECTION. SECTION 14. There is added to KCC 20.24 a new section to read as follows:

Reconsideration of Final Action. The Council may reconsider any action after it has become final if: (a) the action was based in whole or in part on erroneous facts or information; (b) the action when taken failed to comply with existing laws or regulations applicable thereto; or (c) an error of procedure occurred which prevented consideration of the interests of persons directly affected by the action. The

Council upon reconsideration shall refer the matter to the Land Use Appeal Committee to review the matter pursuant to the procedures and authority for appeals pursuant to KCC 20.24.190.

SECTION 15. Ordinance 263, Article 5, Section 19 and KCC 20.24.210 are each hereby repealed and the following substituted:

Review of Final Decisions.

(a) Decisions of the Council in cases identified in Section 1 shall be a final and conclusive action unless within twenty calendar days (or within thirty calendar days for decisions approving or denying plats) from the date of the Council's adoption of an ordinance an aggrieved person applies for a writ of certiorari from the Superior Court in and for the county of King, state of Washington, for the purpose of review of the action taken, provided no development or related action may occur during said 20-day (or 30-day for plat approvals) appeal period.

(b) Decisions of the Examiner in cases identified in Section 2 shall be a final and conclusive action unless within twenty calendar days from the date of issuance of the Examiner's decision an aggrieved person applies for a writ of certiorari from the Superior Court in and for the county of King, state of Washington, for the purpose of review of the action taken, provided no development or related action may occur during said 20-day appeal period.

SECTION 16. Ordinance 263, Article 5, Section 15 and KCC 20.24.170 are hereby repealed.

INTRODUCED and READ for the first time this 26th day of March, 1979.

PASSED this 27th day of August, 1979.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Ruby Chow
Chairman

ATTEST:

John L. Hammond
Clerk of the Council

APPROVED this ____ day of _____, 19___.

_____
King County Executive

DEEMED ENACTED WITHOUT
COUNTY EXECUTIVE'S SIGNATURE
DATED: September 6, 1979