July 20, 1994
HEAREXAM.720
9/26/94 clerk

Introduced by: Jane Hague, Pete von Reichbauer, Cynthia Sullivan, Chris Vance

Proposed No: 94-324

ORDINANCE NO. 11502

AN ORDINANCE relating to the Zoning and Subdivision Examiner, modifying requirements for hearings and appeals, amending Ordinance No. 263, Sections 2, 12 and 13, as amended, Ordinance No. 4461, Sections 2-5, 12 and 15, as amended, K.C.C. 20.24.020, 20.24.070, 20.24.090, 20.24.130, 20.24.140, 20.24.160, 20.24.170, 20.24.220 and 20.24.240, and adding new Sections to K.C.C. 20.24.

FINDINGS OF FACT:

1. The county has a strong interest in regulatory reform and efficient permitting to achieve affordable housing, economic vitality and other county goals.
2. The examiner system is an important part of the county's permitting and approval process.
3. The council desires to eliminate delays to the fullest extent possible arising from lengthy and continued hearings and decisions.
4. The council desires the hearing examiner to use active case management techniques.
5. The county should provide the opportunity for a mediation process to facilitate the expeditious resolution of land use and environmental disputes in a less adversarial manner than the traditional public hearing process.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance No. 263, Section 2 and K.C.C. 20.24.020 are hereby amended to read as follows:

Office created. The office of ((~~zoning and subdivision~~)) Hearing Examiner is created. The examiner shall act ((~~in~~)) on behalf of the council in considering and applying adopted county policies and regulations ((~~regulatory enactments to the land~~)) as provided herein.

SECTION 2. K.C.C. 20.24.070, is hereby amended to read as follows:

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, including findings and conclusions to the

council based on the issues and evidence in the record ((~~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; including those variance decisions made by the road engineer pursuant to K.C.C. 14.42.060 with regard to road circulation in the subject preliminary plat proposal;

5. Applications for shoreline environment redesignations;

6. Applications for boundary adjustments or 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 public benefit rating system assessed valuation on open space land and current use assessment on timber lands except as provided in Section 20.36.090;

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

12. Appeals from decisions regarding residential condominium binding site plan applications pursuant to Section 19.34.050;

13. Applications for a public agency exception pursuant to K.C.C. 21.54.050;

14. Applications for the vacation of county roads;

15. Appeals of a recommendation by the department of public works to deny the petition for vacation of a county road;

16. Appeals of a recommendation by the department of public works of the compensation amount to be paid for vacation of a county road;

17. 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.

SECTION 3. Ordinance No. 4461, Section 2 as amended and K.C.C. 20.24.080, are hereby amended 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, including findings and conclusions, based ((~~upon findings and conclusions~~)) on the issues and evidence in the record, which shall be appealable to superior court as provided by Section 20.24.240, or to other designated authority in the following cases:

1. Appeals from the decisions of the administrator for short subdivisions, including those variance decisions of the

road engineer made pursuant to K.C.C. 14.42.060 with regard to road circulation in the subject short divisions;

2. Appeals of threshold determinations;

3. Appeals from notices and orders issued pursuant to Title 23 of this code or the Rules and Regulations VII of the King County department of public health;

4. Appeals from decisions to require sensitive areas studies or to condition or deny pursuant to chapter 21.54 development proposals which do not otherwise have an appeal process available;

5. Appeals from conditions imposed on final approvals of subdivisions receiving extensions pursuant to Section 19.28.050.E. or F.;

6. Appeals from decisions of the zoning adjustor on administrative conditional use permits, conditional use permits or variances;

7. Appeals from decisions regarding site plan approvals pursuant to Section 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 Section 25.32.080;

10. Appeals from decisions regarding modification of landscaping requirements pursuant to Section 21.51.050;

11. Appeals from decisions of the director of the department of public works on requests for rate adjustments to surface and storm management rates and charges;

12. Appeals from decisions regarding the reuse of public schools pursuant to Section 21.08.040.H;

13. Appeals from decisions to condition or deny applications pursuant to RCW 43.21C.060, as provided in Section 20.44.120 ~~((2.C.))~~ C.2.;

14. Appeals from department of public safety seizures and intended forfeitures, when properly designated by the chief law enforcement officer of that department as provided in RCW 69.50.505;

15. Appeals from decisions of the manager of building and land development division on variances;

16. Appeals from notices and certifications of junk vehicles to be removed as a public nuisance as provided in Chapter 23.10;

17. Applications for a reasonable use exception pursuant to K.C.C. 21.54.050;

18. Appeals from denials under K.C.C. 23.08.120;

19. Appeals from decisions of the director of the department of development and environmental services on commercial site development permits;

20. 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 <u>and federal</u> 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.

<u>SECTION 4</u>. Ordinance No. 4461, Section 3 as amended and K.C.C. 20.24.090, are hereby amended to read as follows:

Notice of appeal to examiner - <u>Filing</u> ((~~Contents~~)). <u>Except as otherwise provided,</u> ((~~A~~))<u>a</u>ll 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 with a copy provided to the office of the Hearing Examiner. Notice of appeal, together with the required appeal fee, shall be filed within ten calendar days from the date of issuance of such decisions except as follows:

A. Notices of appeal of State Environmental Policy Act threshold determinations shall be filed within fifteen days of the lead agency determination; and

B. Notices of appeal of the recommendation to deny vacation of a county road by the department of public works, shall be filed along with the required two hundred dollar administrative fee with the clerk of the county council within thirty days of an issuance of said denial.

C. Statements of Appeal - appeal arguments. If a notice of appeal has been filed, the appellant shall file a ((~~All notices~~))statement of appeal with the county department or division issuing the original decision or action within 15 calendar days from the date of issuance of such decision or action. Department or division staff shall: 1) be available within a reasonable time to persons wishing to file a statement of appeal subsequent to an agency ruling, and to respond to queries concerning the facts and process of the agency decision; and 2) make available within a reasonable time a complete set of files detailing the facts of the department or division ruling in question to persons wishing to file a statement of appeal, subsequent to an agency ruling. If a department or division is unable to comply with these provisions, the hearing examiner may authorize amendments to a statement of appeal to reflect information not made available to an appellant within a reasonable time due to a failure by a county agency to meet the foregoing requirements. The statement of appeal shall ((~~state with specificity the decision being appealed and the reasons why the appealed decision should be reversed or modified~~)) identify the decision being appealed and the alleged errors in that decision. Further, the

statement of appeal shall state: 1) specific reasons why the decision should be reversed or modified; and 2) the harm suffered or anticipated by the appellant, and the relief sought. The scope of an appeal shall be based principally on matters or issues raised in the statement of appeal. Failure to timely file a notice of appeal, appeal fee or statement of appeal deprives the examiner of jurisdiction to consider the appeal.

SECTION 5. Ordinance 4461, Section 4 and K.C.C. 20.24.130 are hereby amended to read as follows:

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. If for any reason testimony on any matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the matter shall be continued to the soonest available date. A matter should be heard, to the extent practicable, on consecutive days until it is concluded. For purposes of proceedings identified in Section 20.24.070, 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 Section 21.58.070.

SECTION 6. Ordinance 4461, Section 5 and K.C.C. 20.24.140 are hereby amended to read as follows:

Consolidation of hearings. Whenever a project requires more than one county permit or approval~~((,))~~ for which a public hearing is required, the hearings and any appeals of procedural or preliminary determinations shall be consolidated to the extent feasible into a single proceeding using the hearing

officer and processes applicable to the primary permit or appeal. The examiner's decision concerning consolidation of hearings shall be final.((~~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 7. Ordinance 263, Section 12 as amended and K.C.C. 20.24.160 are hereby amended to read as follows:

Notice. Unless otherwise provided by ordinance, the responsible county department shall cause notice of the receipt of completed applications for the cases identified in K.C.C. 20.24.070A.1-5 to be posted not more than 10 days after the applicant has been advised by certified mail that the application is determined to be complete, and notice of the time and place of the public hearing to be mailed to all persons of record at least fourteen calendar days prior to the scheduled hearing. The applicant shall not be held responsible for a failure to post the site in the absence of the department's certified notice to the applicant that the application has been determined to be complete. Additional notice shall be given as provided in the ordinance governing the particular type of application or appeal.

SECTION 8. Ordinance 263, Section 13 as amended and K.C.C. 20.24.170 are hereby amended to read as follows:

Rules and ((~~regulations~~)) conduct of hearings. The examiner shall ((~~have the power to prescribe~~)) adopt rules ((~~and regulations~~)) for the conduct of hearings and for any mediation process ((~~before him~~)) consistent with this chapter, within 90 days of the effective date of this ordinance. The rules shall be reviewed by the council, and remain in effect during this review. Any modifications made by the council by motion shall be incorporated by the hearing examiner, and shall become effective 10 days after adoption of the motion ((~~subject~~

~~to confirmation of the council; and also~~)). Such rules shall be published and available upon request to all interested parties. The examiner shall have the power to issue summons 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.~~))

To avoid unnecessary delay and to promote efficiency of the hearing process, the examiner shall limit testimony, including cross examination, to that which is relevant to the matter being heard, in light of adopted county policies and regulations, and shall exclude evidence and cross examination that is irrelevant, cumulative or unduly repetitious. The examiner may establish reasonable time limits for the presentation of direct oral testimony, cross examination and argument. Any written submittals will be admitted only when authorized by the examiner under pertinent and promulgated administrative rules.

SECTION 9. Ordinance 4461, Section 12 and K.C.C. 20.24.220 are hereby amended to read as follows:

Appeal to Council. If an appeal has been filed pursuant to Section 20.24.210 B, the appellant shall file with the office of the Clerk of the County Council within twenty-one 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 twenty-one 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 and statements have been filed and that written appeal statements or arguments in response thereto may be submitted to the clerk within fourteen 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 individual ((~~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:

A. 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

B. 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 other 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 10. Ordinance 4461, Section 15 and K.C.C. 20.24.240 are hereby amended to read as follows:

Review of final decisions. A. Decisions of the council in cases identified in Section 20.24.070 shall be 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 twenty-day, or thirty-day for plat approvals, appeal period.

B. Decisions of the examiner in cases identified in Section 20.24.080 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 twenty-day appeal period; provided further, that examiner decisions on appeals of threshold determinations are not appealable to Superior Court prior to final action on the underlying proposal.

NEW SECTION. SECTION 11. There is added to K.C.C. 20.24 a new section to read as follows:

Pre-Hearing Conference. A pre-hearing conference may be called by the Examiner pursuant to Section 20.24.070 upon the request of a party, or on the Examiner's own motion. A pre-hearing conference shall be held in every appeal brought pursuant to Section 20.24.080 if timely requested by any party. The pre-hearing conference shall be held at such time as ordered by the examiner, but not less than fourteen (14) days prior to the scheduled hearing on not less than fourteen (14) days notice to those who are then parties of record to the proceeding. The purpose of a pre-hearing conference shall be to identify to the extent possible, the facts in dispute, issues, laws, parties and witnesses in the case. In addition the pre-hearing conference is intended to establish a timeline

for the presentation of the case. The examiner shall establish rules for the conduct of pre-hearing conferences.

Any party who does not attend the pre-hearing conference, or anyone who becomes a party of record after notice of the pre-hearing conference has been sent to the parties, shall nevertheless be entitled to present testimony and evidence to the examiner at the hearing.

NEW SECTION. SECTION 12. There is added to K.C.C. 20.24 a new section to read as follows:

On its own motion, or on the motion of a party, the examiner shall dismiss an appeal for untimeliness or lack of jurisdiction.

NEW SECTION. SECTION 13. There is added to K.C.C. 20.24 a new section to read as follows:

In all matters heard by the examiner, the examiner shall use case management techniques to the extent reasonable including: 1) Limiting testimony and argument to relevant issues and to matters identified in the pre-hearing order (if applicable); 2) pre-hearing identification and submission of exhibits (if applicable); 3) stipulated testimony or facts; 4) pre-hearing dispositive motions (if applicable); 5) use of pro tempore examiners; and 6) other methods to promote efficiency and to avoid delay.

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

Appeals shall be processed by the examiner as expeditiously as possible, giving appropriate consideration to the procedural due process rights of the parties. Unless a longer period is agreed to by the parties, or the examiner determines that the size and scope of the project is so compelling that a longer period is required, a pre-hearing conference or a public hearing shall occur within 45 days from the date the office of the Hearing Examiner is notified that a complete statement of appeal has been filed. In such cases

where the examiner has determined that the size and scope warrant such an extension, the reason for the deferral shall be stated in the examiner's recommendation or decision. The time period may be extended by the examiner at the examiner's discretion for no more than 30 days.

NEW SECTION. SECTION 15. There is added to K.C.C. 20.24 a new section to read as follows:

Time limits. In all matters where the examiner holds a hearing on applications under K.C.C. 20.24.070, the hearing shall be completed and the examiner's written report and recommendations issued within thirty (30) days from the date the hearing opens. In every appeal heard by the examiner pursuant to K.C.C. 20.24.080, the appeal process including a written decision, shall be completed within ninety (90) days from the date the examiner's office is notified of the filing of a notice of appeal pursuant to K.C.C. 20.24.090. When reasonably required to enable the attendance of all necessary parties at the hearing, or the production of evidence, or to otherwise assure that due process is afforded and the objectives of this chapter are met, these time periods may be extended by the examiner at the examiner's discretion for an additional 30 days. With the consent of all parties, the time periods may be extended indefinitely. In all such cases, the reason for such deferral shall be stated in the examiner's recommendation or decision. Failure to complete the hearing process within the stated time shall not terminate the jurisdiction of the examiner.

NEW SECTION. SECTION 16. There is added to K.C.C. 20.24 a new section to read as follows:

The chief examiner may hire qualified persons to serve as examiner pro tempore, as needed, to expeditiously hear pending applications and appeals.

NEW SECTION. SECTION 17. There is added to K.C.C. 20.24 a new section to read as follows:

Digest of decisions. The examiner shall maintain and publish on a quarterly basis a digest of all decisions and recommendations of the examiner. Decisions reported in the digest shall not be construed to establish any legal precedent.

NEW SECTION. SECTION 18. There is added to K.C.C. 20.24 a new section to read as follows:

Citizens Guide. The examiner shall issue a citizen's guide on the office of hearing examiner including making an appeal or participating in a hearing.

NEW SECTION. SECTION 19. There is added to K.C.C. 20.24 a new section to read as follows:

Semi-annual report. The chief examiner shall prepare a semi-annual report to the King County council detailing the length of time required for hearings in the previous six months, categorized both on average and by type of proceeding. The report shall provide commentary on examiner operations and identify any need for clarification of county policy or development regulations. The semi-annual report shall be presented to the council by March 1st and September 1st of each year.

NEW SECTION. SECTION 20. There is added to K.C.C. 20.24 a new section to read as follows:

Voluntary mediation. As to any application or appeal pursuant to K.C.C. 20.24 which is or could become the subject of a public hearing, the responsible county department, the council or the hearing examiner, may at their own discretion or at the request of the applicant or any person with standing to the application or appeal, at any stage of the proceedings on the application or appeal, initiate a mediation process to resolve disputes as to such application or appeal. The mediation process shall be voluntarily agreed to by all participants to the hearing process, and conducted by an independent impartial mediator who shall not be a county employee or any person who will have any role in making any

recommendation or decision on the application or appeal. The mediation shall be conducted in accordance with rules of mediation prepared by the hearing examiner.

NEW SECTION. SECTION 21. There is added to K.C.C. 20.24 a new section to read as follows:

Effective date. This ordinance shall become effective January 1, 1995. No later than January 1, 1997, the County Council shall analyze the results of the ordinance, and prior to March 1, 1997 shall either re-enact this chapter with, or without modifications. Unless re-enacted, except for complete applications filed before March 1, 1997, this ordinance shall expire March 1, 1997.

INTRODUCED AND READ for the first time this 31st day of May, 1994.

PASSED by a vote of 12 to 0 this 26th day of September, 1994.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Kent Pullen
Chair

ATTEST:

Janet Masuo
Deputy Clerk of the Council

APPROVED this 6th day of October, 1994.

King County Executive

Attachments:

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