PP-97-001

Shoreline City Clerk Receiving Number 3962

RESOLUTION NO. 130

A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON, REVISING RESOLUTION NO. 88 TO CLARIFY THE RULES OF PROCEDURE FOR OPEN AND CLOSED RECORD HEARINGS BEFORE HEARING BODIES

WHEREAS, the City Council wishes to revise and clarify unintended ambiguities and clerical errors in the rules of procedure by which proceedings before the Shoreline Hearing Examiner, Planning Commission, City Council and other designated hearing bodies are conducted;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON AS FOLLOWS:

Section 1. Establishment of Rules of Procedure. The City Council hereby amends those "Rules of Procedure for Open and Closed Record Hearings before the Hearing Examiner, Planning Commission, City Council and other designated hearing bodies of the City of Shoreline, Washington", a copy of said amended rules being attached hereto as "Exhibit A".

ADOPTED BY THE CITY COUNCIL ON APRIL 28, 1997.

Connie King

Mayor Connie King

ATTEST:

Sharon Mattioli

Sharon Mattioli, CMC
City Clerk

RES130.DOC

EXHIBIT A

RULES OF PROCEDURE FOR PROCEEDINGS BEFORE THE HEARING EXAMINER, PLANNING COMMISSION, CITY COUNCIL OR OTHER DESIGNATED HEARING BODIES OF THE CITY OF SHORELINE, WASHINGTON

CHAPTER I: OPEN RECORD HEARINGS ON LAND USE APPLICATIONS AND APPEALS, AND OTHER DESIGNATED MATTERS

Application of these Rules

These Rules apply to pre-decision public hearings on land use applications and open record appeals of SEPA threshold determinations, and administrative decisions that approve, condition, or deny a land use application and any other matters designated by the City Council.

SECTION 1: DEFINITIONS

1.1 **"Appeal Authority"** means the hearing body that is authorized to conduct a hearing and issue a decision on an administrative appeal.

"Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a decision that provides for an open record appeal hearing.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for land use permits.

"City Council" means the City of Shoreline City Council.

"City" means City of Shoreline, Washington.

"Comprehensive Plan" means all policies, resolution, and ordinances of the City that govern or apply to land use in the City.

"Closed Record Appeal" means an administrative appeal on the record to the Hearing Body following an open record hearing on a project permit application when the appeal is on the record with no new evidence or information allowed to be submitted and only appeal argument allowed.

"Decision Making Body" means the Director or other hearing body designated by the City to hear and decide land use applications or other matters.

"Director" means the Director of the Development Services Group.

"Ex parte communication" means written or oral communications to any member of the Hearing Body about a matter pending before the Hearing Body not included in the public record and made outside of a public hearing.

"Hearing" means the proceeding at which testimony and exhibits of evidence are presented to the Hearing Body.

"Hearing Body" means either the Hearing Examiner, Planning Commission, City Council or other person or body designated by the City Council to hear and make recommendations or decisions on land use applications, administrative appeals and other matters.

"Hearing Examiner" means the Hearing Examiner or the Hearing Examiner Pro Tem of City of Shoreline.

"Issued" means the date the recommendation or decision is mailed to the parties of record.

"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 Body and shall include any party of record.

"Land Use Application" means any application for a land use action undertaken in accordance with the Development Code of the City of Shoreline.

"Land Use Decision" means a final determination by the City as defined by RCW 36.70C.020.

"Motion" means a written request made to the Hearing Body, for an order or other ruling.

"Non-project Action" means a decision on policies, plans or programs as defined in WAC 197-11-704(b).

"Open Record Hearing" means a hearing that creates the record through testimony and submission of evidence and information. An open record hearing may be either a pre-decision hearing or an appeal of a decision made without an open record hearing.

"Party of record" means:

a. A person who testifies at a hearing;
b. The applicant;
c. Persons submitting written testimony about a matter pending before the Hearing Body.
d. The appellant(s) and respondent(s) in an administrative appeal.

"Record" means the oral testimony and written exhibits submitted at the hearing. The tape recording of the proceeding shall be included as part of the record.

"Responsible Official" means the person or persons designated by the City's SEPA procedures to undertake its procedural responsibilities as lead agency.

"SCC" means Shoreline City Code.

"SEPA" means the State Environmental Policy Act, Ch. 43.21C RCW.

"SEPA Threshold Determination" means the decision by the responsible official of the lead agency whether or not an Environmental Impact Statement is required for a proposal that is not categorically exempt.

SECTION 2: JURISDICTION

The Hearing Body's jurisdiction is limited to those issues where ordinance or other appropriate authority grants the Hearing Body the authority to make a decision, recommendation, or issue an order.

SECTION 3: DISMISSAL

3.1 An appeal may be dismissed without a hearing if the Appeal Authority determines that it fails to state a claim for which the Appeal Authority has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Appeal Authority may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

SECTION 4: EX PARTE COMMUNICATION

4.1 a. No person, nor his or her agent, employee, or representative, who is interested in a particular application or appeal currently pending before the Hearing Body shall communicate ex parte, directly or indirectly, with any member of the Appeal Authority concerning the merits of that or a factually related application or appeal. All procedural questions should be directed to the Director, City Clerk or City Attorney.

b. No member of the Hearing Body shall communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular application or appeal that is pending before the Hearing Body with regard to the merits of that, or a factually related petition or application.

c. If a prohibited ex parte communication is made to or by any member of the Hearing Body, such communication shall be publicly disclosed, and proper discretion shall be exercised by the decision maker on whether to disqualify himself or herself from the Hearing Body for that particular hearing.

SECTION 5: NATURE OF PROCEEDINGS

5.1 Expeditious Proceedings

It is the policy of the City of Shoreline that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Body, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

5.2 Frequency

Except for hearings before the City Council, hearings will normally be scheduled on Wednesday evenings at 7:00 pm. Each case shall be noted to commence at a particular time. There may be more than one case scheduled to commence at the same time, and in such event the Hearing Body shall have discretion in setting the agenda.

5.3 Format

The format for a public hearing will be of an informal nature designed in such a way that the evidence and facts relevant to a particular proceeding will become available to the Hearing Body and easily ascertainable by a reviewing body. The format will allow development of a record by parties.

5.4 View Trip

When necessary, the Hearing Body may inspect the site prior or subsequent to the hearing. The view trip is not part of the record. Failure to inspect the site will not render the Hearing Body's recommendation or decision void.

5.5 Record of Hearing

a. Record. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings, or transcripts thereof, of a particular proceeding shall be made available to the public on request. The reasonable cost of such copying or transcript shall be paid by the requester.

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.

5.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules 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 City, national or State holiday, the period shall run until the end of the next following business day.

SECTION 6: RIGHTS AND RESPONSIBILITIES OF PARTIES

6.1 Rights of City

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

6.2 Rights of Applicant

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

The Hearing Body may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Hearing Body shall control the amount and style of cross-examination.

6.3 Rights of Parties of Record

Every party of record shall have the right to present evidence and testimony at hearings. The right of parties of record to cross-examine, object, submit motions and arguments shall be at the discretion of the Hearing Body. The Hearing Body may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

6.4 Responsibilities of City Staff

The City Staff shall: provide a staff report consistent with Section 9.6 of these rules; provide notice of hearings; present materials at the hearings; provide the Hearing Body with documentation relevant to the case; provide revised plans if received with 15 days of hearing.

6.5 Responsibilities of Applicant

Whenever possible the applicant shall, prior to the hearing, provide the Hearing Body with material that supports his/her application; be prepared for questions by the Hearing Body; and be courteous to all who participate in these proceedings.

6.6 Responsibilities of Parties of Record and All Others at Hearing

Parties, witnesses or observers shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so will result in removal from the hearing.

SECTION 7: FILING AN APPEAL

7.1 Compliance with Rules

All appeals must comply with these Rules and with the requirements established in the applicable City of Shoreline ordinance(s) under which the appeal is filed.

7.2 Timeliness

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period.

7.3 Fee

Any filing fee as required by City resolution or ordinance shall accompany the appeal.

7.4 Contents

An appeal must be in writing and contain the following:

a. A brief statement as to how the appellant is specifically affected by or interested in the matter appealed;

b. A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;

c. The relief requested, such as reversal or modification;

d. Signature, address, and day phone number of the appellant, and name and address of appellant's designated representative, if any.

SECTION 8: HEARINGS

8.1 Hearings

a. Hearings shall be presided over by the Hearing Examiner or the presiding officer of the Hearing Body, hereinafter collectively referred to as the "Presiding Officer."

b. The Presiding Officer shall have all of the authority and duties as granted in state statutes, SCC and other City rules or ordinances. Included in the duties of the Presiding Officer 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 Presiding Officer shall have all powers necessary to that end, including the following:

1. To administer oaths and affirmations;
2. To issue subpoenas;
3. To rule upon offers of proof and receive evidence;
4. To regulate the course of the hearings and the conduct of the parties and their agents;
5. To question any party presenting testimony at the hearing;
6. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
7. To require briefs on legal issues;
8. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
9. To make and file recommendations or decisions.

c. Interference. In the performance of adjudicative functions, the Hearing Body shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.

8.2 Presence of Legal Counsel at Public Hearings or Meetings

a. Although representation by legal counsel is not required at the 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 a representative of the City of Shoreline City Attorney's Office may be present at the public hearings or meetings to advise on matters of law and procedure. If there is no representative of the City Attorney's office at the hearing, the Hearing Body shall have authority to seek a memorandum on legal issues raised at hearing from the City Attorney.

c. Unless otherwise specified, 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 Body at least seven days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public in advance of the scheduled hearing date.

SECTION 9: CONDUCT OF HEARINGS

9.1 Notice Requirements of Hearings and Filings

a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in City ordinances.

b. Certificate of Notice: An affidavit or declaration attesting to the notice given of a public hearing, including dates and places of publication and list of those mailed to, shall be made part of each official case record.

9.2 Prehearing Conference

a. The Hearing Body may hold a conference prior to the hearing to structure the scope of the hearing. The Hearing Body may use the conference for:

1. Identification, clarification, and simplification of the issues;
2. Disclosure of witnesses to be called and exhibits to be presented;
3. Argument of motions based on law;
4. Other matters deemed by the Body appropriate for the orderly and expeditious disposition of the proceedings.

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

c. The Hearing Body shall give reasonable notice to parties of any prehearing conference. Notice may be written or oral.

d. All parties shall be represented at any prehearing conference unless they waive the right to be present or represented.

e. Following the prehearing conference, the Hearing Body may issue an order reciting the actions taken or ruling on motions made at the conference.

f. At the hearing the Hearing Body shall develop for the record the time, purpose and result of the conference.

9.3 Oath or Affirmation

All testimony before the Hearing Body shall be given under oath or affirmation to tell the truth. Either the Presiding Officer or the clerk shall administer the oath or affirmation.

9.4 Content of the Record

The record of a hearing conducted by the Hearing Body shall include, but not be limited to, the following materials:

a. The application or appeal;

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 Body;

f. Recordings made on electronic equipment; and

g. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

9.5 Development of Record at the Public Hearing

A public hearing usually will include, but not be limited to, the following elements: a brief introductory statement of the Hearing Body's process by the Presiding Officer; a report by the departmental staff that shall include introduction of the official file, reference to visual aids and a summary of the recommendation of the Department; testimony by the applicant or petitioner and cross examination of these witnesses; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and, opportunity for questions by the Hearing Body.

9.6 Content and Form of Staff Reports

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

a. Names and addresses of the owner(s) and applicant(s) 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 as to which zoning code regulations for City of Shoreline apply to the request.

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 germane to the case.

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 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. 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.

m. The results of the determination pursuant to the State Environmental Policy Act.

n. Staff's conclusions and recommendations.

The staff report shall be distributed to the Hearing Body, the applicant and made available to the public.

9.7 Continuances of Hearings

a. Hearing Body

If, in the opinion of the Hearing Body, more information is necessary in order to make a recommendation or decision, or the Hearing Body is unable to hear all of the public comments on the matter, the hearing may be continued with a certain date. If continued to a specific time and place, and posted on the door of the hearing room, no further notice of that hearing need be given. Continuances shall be consistent with the provisions of the SCC.

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 and state reasonable grounds for a continuance. The request must be reasonable. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearing Body shall have discretion to grant or deny the request for continuance.

9.8 Evidence

a. Burden of proof. For an application, the applicant shall have the burden of establishing that the application is in compliance with applicable city and state ordinances, statutes and laws and regulations. For an appeal, the appellant shall have the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence.

b. Admissibility. The hearing generally will not be conducted according to strict legal rules relating to evidence and procedure. 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 Body 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 an extra copy of all documents to the Hearing Body as a working copy.

d. Judicial Notice. The Hearing Body may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. The Hearing Body shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.

e. The Hearing Body may allow a document to be filed after the close of testimony but before the hearing Record is closed.

f. Additional evidence may only be submitted upon a Request for Reconsideration based on a new evidence not available at the time of the public 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.

g. 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 10: WITHDRAWAL OF APPLICATION OR APPEAL

10.1 Withdrawal Prior to Service of Official Notice

If a withdrawal request relating to an application or appeal is made before the official notice of the public hearing is given, the applicant or appellant shall notify the City of the withdrawal request and the withdrawal shall be automatically permitted.

10.2 Withdrawal Made Any Other Time

If a withdrawal request is made at any time other than that mentioned in 10.1, the Hearing Body shall use its discretion in allowing or disallowing the request.

SECTION 11: RECOMMENDATIONS AND DECISIONS

11.1 Written Recommendations and Decisions

For permits that require City Council approval, within 10 working days after the close of the hearing, the Hearing Body shall issue a written report of findings, conclusions and recommendation to the City Council. The findings, conclusions and recommendation shall indicate how the recommendation carry out the goals, policies, plans and requirements of the SCC and other City or State regulations. The recommendation shall be mailed to all parties of record.

11.2 Content of Recommendation or Decision

A recommendation or decision shall include a statement of:

a. The nature and background of the proceeding.

b. Findings of Fact. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of facts necessary to support conclusions and each fact found upon each contested issue of fact.

c. Conclusions. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall make reference to the effect of the recommendation or decision with reference to the Comprehensive Plan, as well as the effect of both approval and denial on property in the vicinity, business or commercial aspects, if relevant, and on the general public.

d. The appropriate rule, order or relief. The recommendation or decision shall be based upon a consideration of the whole record and supported by substantial evidence. All decisions and recommendations may include conditions of approval.

11.3 Procedure for Reopening Hearing, Reconsideration and Clarification

a. At any time prior to the filing of the final decision or recommendation, the Hearing Body 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 five (5) days after the public hearing any party of record petitions the Hearing Body for a reopening of the hearing, the Hearing Body 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 or clarification.

1. Any party of record may file with the Hearing Body a written request for reconsideration. The request must be filed within five (5) working days of the date of the Hearing Body's recommendation or decision. The request shall specifically set forth alleged errors of fact, law or procedure as addressed in the Hearing Body's decision or recommendation. The request may also include direction to a specific issue that was inadvertently omitted from the Hearing Body's recommendation or decision.

2. The Hearing Body shall act within five (5) working days after the date of the filing of the request for reconsideration or clarification at its next regular meeting, by either denying or approving the request.

3. If the Hearing Body approves the request, the original recommendation or decision shall be corrected, clarified, or amended, or, the Hearing Body can reopen the hearing to consider correcting or clarifying the record or any deficiencies of the recommendation or decision. If the hearing is reopened, the notice of said hearing shall be mailed to all parties of record not less than five (5) working days from the issuance of the order of the Hearing Body reopening the hearing.

SECTION 12: APPEALS

12.1 When the Hearing Body has issued a recommendation or decision, the recommendation or decision may be appealed to the Appeal Authority or the Superior Court as specified by City ordinance. Any appeal must clearly state the alleged errors of fact or law and include a specific request for relief.

SECTION 13: CONFLICTS

13.1 These rules of procedure are adopted to supplement the requirements set forth in a City ordinance. Any conflicts between these rules and the provisions of a City ordinance will be decided consistent with the provisions of the ordinance.

RULES OF PROCEDURE FOR CLOSED RECORD HEARINGS BEFORE AN APPEAL AUTHORITY OF THE CITY OF SHORELINE, WASHINGTON

CHAPTER II: RULES OF APPEAL FOR LAND USE APPLICATION RECOMMENDATIONS AND DECISIONS, AND OTHER DESIGNATED MATTERS

Application of these Rules

These Rules apply to closed record appeals of recommendations and decisions that approve, deny, or condition a land use application and any other matters designated by the City Council. A closed record appeal is one where no additional evidence or information is allowed to be submitted and only appeal argument is allowed.

SECTION 1: DEFINITIONS

The definitions contained in Chapter I, "Open Record Hearings on Land Use Applications And Appeals And Other Designated Matters," shall apply to this Chapter.

SECTION 2: FILING AN APPEAL

2.1 Compliance with Rules

All appeals must comply with these Rules and any supplementary requirements established in the applicable City of Shoreline ordinance(s) under which the appeal is filed.

2.2 Timeliness

To be considered timely filed, an appeal must be received no later than 5 p.m. on the last day of the appeal period.

2.3 Fee

Any filing fee as required by City resolution or ordinance shall accompany the appeal.

2.4 Contents

An appeal must be in writing and contain the following:

a. A brief statement as to how the appellant is specifically affected by or interested in the matter appealed;

b. A brief statement of the appellant's issues on appeal, noting appellant's specific exceptions and objections to the decision or action being appealed;

c. The relief requested, such as reversal or modification;

d. Signature, address, and day phone number of the appellant, and name and address of appellant's designated representative, if any.

SECTION 3: DISMISSAL

3.1 An appeal may be dismissed without a hearing if the Appeal Authority determines that it fails to state a claim for which the Appeal Authority has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

3.2 Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Appeal Authority may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

SECTION 4: EX PARTE COMMUNICATION

4.1 a. No person, nor his or her agent, employee, or representative, who is interested in a particular appeal or application currently pending before the Appeal Authority shall communicate ex parte, directly or indirectly, with any member of the Appeal Authority concerning the merits of that or a factually related appeal or application. All procedural questions should be directed to the Director, City Clerk or City Attorney.

b. No member of the Appeal Authority shall communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular appeal or application that is pending before the Appeal Authority with regard to the merits of that, or a factually related appeal or application.

c. If a prohibited ex parte communication is made to or by any member of the Appeal Authority, such communication shall be publicly disclosed and proper discretion shall be exercised by that person on whether to disqualify himself or herself from the Appeal Authority for that particular matter.

SECTION 5: WITHDRAWAL

5.1 An appeal may be withdrawn only by the appellant.

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.

5.3 An appellant's request to withdraw shall be granted as a matter of right and the appeal dismissed.

SECTION 6: PARTIES REPRESENTATIVE REQUIRED

6.1 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 Appeal Authority of the name, address and telephone number of that 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 7: NOTICE OF HEARING

7.1 Contents

The notice of hearing shall be mailed to the applicant, appellant, and respondent, and shall include:

a. The time, place, and nature of the hearing;

b. The file number, address, or other identifying information for the underlying decision or action being appealed;

c. A brief statement as to the issue(s) to be considered;

d. The name and phone number of the Department official responsible for the appeal.

e. The deadline for submitting any written argument to the Appeal Authority.

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 10 calendar days.

7.3 Responsibility for Mailing

The City Clerk shall be responsible for mailing the notice of a closed record appeal hearing.

7.4 Certificate of Notice

An affidavit or declaration attesting to the notice given of the hearing, including dates and places of publication and a list of those mailed to, shall be made part of each official case record.

SECTION 8: PARTIES' RIGHTS AND RESPONSIBILITIES

8.1 Parties have the right to be represented by an attorney. Representation by an attorney is not required.

8.2 Where a party has designated a representative, the representative shall exercise the rights of the party.

8.3 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

SECTION 9: DEFAULT

9.1 The Appeal Authority 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 10: HEARING FORMAT

10.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Appeal Authority to make the relevant evidence most readily and efficiently available to the Appeal Authority and to provide the parties a fair opportunity for hearing. The Appeal Authority may impose reasonable limitations on the length of argument.

10.2 The order of hearing will generally be as follows:

a. Presiding Officer's introductory statement;

b. Background presentation by Department;

c. Appellant's argument;

d. Respondent's argument;

e. Appellant's rebuttal argument;

10.3 Notwithstanding the provisions of the Shoreline City Code, the order of hearing may be modified or a different order established as the Appeal Authority 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 Appeal Authority's approval.

10.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

SECTION 11: BURDEN OF PROOF

11.1 The appellant shall have the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence.

SECTION 12: RECORD

12.1 The record on an appeal shall include:

a. Land use application decision or action being appealed;

b. Appeal statement;

c. Record of open record hearing proceedings including the tape recording of open record hearing;

d. Transcript of open record hearing. The reasonable costs of preparing the transcript shall be paid by the appellant;

e. Written arguments submitted by parties (optional).

SECTION 13: DECISION

13.1 A decision of the Appeal Authority on the 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 Appeal Authority finds relevant, credible, and requisite to the decision, based on the record of proceedings.

c. Conclusions. Conclusions based upon the evidence and specific provisions of law.

d. Decision. The Appeal Authority's decision as to outcome of the appeal to grant, deny or remand based upon a consideration of the whole record.

SECTION 14: RECONSIDERATION

14.1 Any party of record may file with the Appeal Authority a written request for reconsideration or clarification. The request must be filed within five (5) working days of the date of the issuance of the Appeal Authority's written decision. The request shall specifically set forth alleged errors of fact, law or procedure as addressed in the Appeal Authority's decision. The request may also include direction to a specific issue that was inadvertently omitted from the Appeal Authority's decision.

14.2 The Appeal Authority shall act upon the request at its next regular meeting by either denying or approving the request.

14.3 If the Appeal Authority approves the request, the original decision shall be corrected, clarified or amended, or, the Appeal Authority can reopen the hearing to consider correcting or clarifying the record or any deficiencies of the decision. If the hearing is reopened, the notice of said hearing shall be mailed to all parties of record not less than five (5) working days from the issuance of the order of the Appeal Authority reopening the hearing.

SECTION 15: JUDICIAL APPEALS

15.1 The final decision of the Appeal Authority may be appealed to the Superior Court as provided by RCW 36.70C.

SECTION 16: CONFLICTS

16.1 These rules of procedure are adopted to supplement the requirements set forth in the City ordinances. Any conflicts between these rules and the provisions of City ordinance will be decided consistent with the provisions of the ordinance.