

# **E . NEW BUSINESS**

- 3. Ordinance 2025-03: Amending KPB Chapter 21.20 relating to hearing and appeals to a hearing officer.**

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Peter Ribbens, Assembly President  
Members, KPB Assembly

**THRU:** Peter A. Micciche, Mayor *PM*  
Robert Ruffner, Planning Director *RR*  
Sean Kelley, Borough Attorney *SK*

**FROM:** A. Walker Steinhage, Deputy Borough Attorney *AWS*

**DATE:** January 9, 2025

**SUBJECT:** Ordinance 2025-\_\_\_\_, Amending KPB Chapter 21.20 Relating to Hearings and Appeals to a Hearing Officer (Mayor)

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The Ordinance amends KPB Chapter 21.20, Hearings and Appeals.

A new section (KPB 21.20.225) establishes the criteria for standing to appeal quasi-judicial decisions of Planning Department Staff and/or the Planning Director, the Planning Commission, and the hearing officer. Additionally, the Ordinance provides a process for appealing quasi-judicial decisions of Planning Department Staff and/or the Planning Director to the Planning Commission. Presently, KPB Code lacks a process even though various KPB Code provisions mandate such an appeal.

Other Code changes reflected in the Ordinance require the appellant to pay a record transcription fee; authorize the hearing officer to dismiss an appeal upon motion by an appeal party if the appellant's notice of appeal is deficient for lack of standing, specificity, or reasoning; and provide the KPB clerk the authority to administratively consolidate appeals filed on the same decision and which involve a common question of law or fact.

The Ordinance also replaces the current model of filing simultaneous opening and reply statements with a staggered, more traditional appellant opening/appellee response/appellant reply format. Finally, the current time period for the hearing officer to file a decision with the clerk is extended from fifteen to forty-five days.

Your consideration is appreciated.

Introduced by: Mayor  
Date: 01/21/25  
Hearing: 02/25/25  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2025-XX**

**AN ORDINANCE AMENDING KPB CHAPTER 21.20 RELATING TO HEARINGS  
AND APPEALS TO A HEARING OFFICER**

**WHEREAS**, various KPB Code provisions provide for appeals of a quasi-judicial staff decision to be heard by the Planning Commission without setting forth an appeal procedure to allow for such appeals; and

**WHEREAS**, this ordinance amends KPB Chapter 21.20 to provide that the Planning Commission will sit as the Hearing Officer for appeals of the Planning Director and/or staff decisions; and

**WHEREAS**, this ordinance further amends KPB 21.20 to provide for administrative consolidation when multiple appeals are filed on the same decision, and adds a section regarding standing, specifies filing and transcript fees, updates hearing procedure, timelines, and other clarifying edits to improve administration of KPB Chapter 21.20; and

**WHEREAS**, the Planning Commission at its regularly scheduled meeting held on January 27, 2025, recommended \_\_\_\_\_;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That KPB Chapter 21.20, Hearings and Appeals, is hereby amended as follows:

**CHAPTER 21.20. - HEARINGS AND APPEALS**

**21.20.210. Definitions.**

A. For the purposes of this chapter, the following definitions [shall] apply unless the context clearly indicates or requires a different meaning:

[1.] "Aggrieved party or person" means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.

[2.]The "appellant" is the party who files the notice of appeal and pays the filing and transcription fees [AND INITIALLY FILES THE NOTICE OF APPEAL].

[3.]The "applicant" is the party that made application with the planning department for a permit, plat, variance or other entitlement subject to a quasi-judicial process under KPB Title 20 or 21.

[4.]"Ex parte" means by or for one party; done for, on behalf of, or on the application of, one party only.

"Good cause" means adequate grounds based on a serious condition or event beyond a party's control to justify a party's request or failure to act; or, the party was not provided a prior opportunity to act.

[5.]"Party of record" means:

- a. The applicant [BEFORE THE PLANNING COMMISSION],
- b. Any party or person aggrieved by the decision where the decision has or could have a[N] material adverse effect on value, use or enjoyment of real property [OWNED BY THEM] in which they have a vested private property interest within the notification radii and who appeared before the planning commission with either an oral or written presentation, and who owns lands within the notification radii. A signature on a petition does not qualify the signatory as a party of record.
- c. A government agency affected by the decision which appeared before the planning commission with either a written or oral presentation.

[6.]"Quasi-judicial decisions" are those decisions where general law or policy are applied or affect an individual's property interests. Such decisions include but are not limited to preliminary and final plat approvals, conditional use permits, and exception and variance applications.

[7.]"Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

### **21.20.225. – Standing.**

A. Only the following have standing to appeal a quasi-judicial staff decision to the Planning Commission:

1. The applicant;

2. A government agency affected by the decision and which has received notice of the application or decision required by relevant borough code or other; and

3. Any party or person who: 1) was affected by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property in which they have a vested private property interest; and 2) has received notice of the application or decision required by relevant borough code or other applicable law.

B. Only a "party of record" as defined in KPB 21.20.210 has standing to appeal a final decision of the Planning Commission to a hearing officer.

C. Standing to appeal the final decision of a hearing officer is governed by KPB 21.20.360.

**21.20.220. Hearing officer—Established.**

[~~A. ESTABLISHED.~~] The hearing officer performs the appellate functions required by AS 29.40.050.

[~~B. QUALIFICATIONS. THE HEARING OFFICER SHALL HAVE THE QUALIFICATIONS SET FORTH IN KPB 21.50.110.~~]

**21.20.230. Jurisdiction.**

A. Unless a different appellate procedure is provided by this Code, the hearing officer is authorized to hear and decide appeals from quasi-judicial planning commission decisions.

B. Unless a different appellate procedure is provided by this Code, the planning commission is authorized to hear and decide appeals from quasi-judicial staff decisions. For purposes of this chapter, the term “hearing officer” includes the planning commission when the planning commission sits as a body to decide appeals from staff decisions. The procedure set forth under this chapter applies when the planning commission sits as the hearing officer under this section and the chair of the planning commission will serve as presiding officer and will sign the decision.

**21.20.240. Conflict of interest—Ex parte contact.**

A. Conflict. A hearing officer may not hear or decide a case:

1. In which the hearing officer:

- a. Has a direct or indirect financial interest in the property that is the subject of the case, or that is located within 500 feet of property that is the subject of the case;
- b. Is related by blood, adoption, or marriage to any party to the case or to an owner of property that is the subject of the case, or who resides at or owns property within 500 feet of property that is the subject of the case.

2. In which either:

- a. A party demonstrates that, due to factors external to the case, the ability of the hearing officer to make an impartial decision is actually impaired, or
- b. Reasonable persons would conclude the ability of the hearing officer to make an impartial decision is impaired due to circumstances of the proceeding, including without limitation instances in which the hearing officer or an immediate family member is a party, material witness or represents a party.

B. Ex parte contact. A hearing officer shall be impartial in all administrative decisions, both in fact and in appearance. A hearing officer may not receive or otherwise engage in ex parte contact with any party of record, or members of the public, concerning an application filed pursuant to KPB Title 20 or 21 from the time the application is submitted through any

period of time the matter is submitted for decision or subject to reconsideration before the hearing officer.

**21.20.250. Appeal of planning commission decision to hearing officer.**

- A. *Time; fees; preparation of record and transcript.* Any party of record may file an appeal of a decision of the planning commission or planning department within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing, transcription, and records preparation fees in the amounts listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees. An appeal may be filed by personal delivery or mail as long as it is complete and received in the clerk's office by 5:00 p.m. on the day the notice of appeal is due. Unless the borough and the appellant agree otherwise, or the hearing officer orders otherwise, the appellant must pay the borough for preparation of the record and transcripts of the proceedings. The borough will notify the appellant of the total cost. The appellant must pay the fee for record and transcript preparation within thirty days of the borough's notice of cost, otherwise the appeal may be dismissed.
- B. An application to proceed with an appeal as an indigent may be filed with the borough clerk's office on a form provided by the borough clerk in lieu of the filing fee and fee for record and transcript preparation. The hearing officer may allow an applicant who qualifies as an indigent a reduced filing fee, a payment plan, or a waiver of the filing fee where the hearing officer is able to make a written finding, based on information provided by the applicant, that payment of the appeal fee would be a financial hardship for the appellant. Based upon the information provided, the fee may be reduced or waived in accordance with the following schedule:

| Annual income as a Percent of current Health and Human Services (HHS) Poverty Guidelines for Alaska | Percent of fee reduced |
|---|------------------------|
| 1—100%  | 100% Waiver            |
| 101—149%  | 75% Waiver             |
| 150—174%  | 50% Waiver             |
| 175—199%  | 25% Waiver             |
| 200% plus   | No Waiver              |

Any appellants with income equal to or less than 200 percent of the HHS poverty guidelines for Alaska for the year in which the appeal is filed may apply for a payment plan in which the filing fee shall be paid in full within in six months of the date of filing.

- C. All appeals [SHALL]will be to the hearing officer, and [SHALL]will be conducted in accordance with the provisions of this chapter, unless otherwise provided by the Kenai Peninsula Borough Code.
- D. *Notice of appeal.* The notice of appeal must:
  - 1.[.] State the decision from which the appeal is taken;
  - 2. state the grounds for standing as a party of record as defined in this chapter to bring the appeal;

[2)] 3. State, with specificity, the errors asserted in the findings of fact or conclusions of law;

[3)]4. State the relief sought on appeal, including a statement of whether the decision should be reversed, modified, or remanded for further proceedings; and

5. Provide an e-mail address for electronic service of pleadings, notices, and orders.

E. Dismissal by Hearing Officer. Upon motion by a party to the appeal, an appeal must be dismissed by the hearing officer if the notice of appeal:

1. Fails to satisfy the grounds for standing as a party of record as defined in this chapter to bring the appeal;

2. Fails to identify specific errors in the findings of fact, conclusions of law; or

3. Fails to identify the reason the decision is contrary to applicable law.

[E]E. *Entry of appearance.* The borough clerk [SHALL]will e-mail, mail or otherwise deliver copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of [FILING THE NOTICE OF APPEAL] the deadline to file an appeal under KPB 21.20.250(A) above. All parties of record must provide an e-mail address that may be used for electronic service of pleadings, notices, and orders. Proof of service upon each party [SHALL]will accompany the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address and signature, or the name and address of the party and the name and address and signature of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. If borough staff is not participating in the appeal beyond providing the required staff overview, a notice of non-participation will be filed with the borough clerk. Proof of service of the entry of appearance upon each party [shall]will be made in the manner prescribed in KPB 21.20.280(D). Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

G. Consolidation. In the event multiple appeals are filed on the same decision and involve a common question of law or fact, the clerk will administratively consolidate the appeals. For consolidated appeals, the records preparation and transcription fee under KPB 21.20.250(A) will be prorated according to the number of appellants. Upon motion by a party, to avoid prejudice or to economize, the hearing officer may separate the appeals or separate the hearing on appeal.

**21.20.260. Stay on appeal.**

Upon commencement of an appeal, any entitlement granted is stayed until a final decision is issued by the hearing officer. If an entitlement has conditions associated with it that must be performed within a certain time period, the time frame for performance or compliance does not start until the hearing officer's final decision is distributed or as otherwise specified by the hearing officer.

**21.20.270. Record on appeal.**

A. *Record; contents.* For the purposes of appeal, the record shall include:

1. The filed application or complaint which initiated the proceedings before staff or the planning commission;
2. All informational materials supplied to staff or the commission or relied upon by the planning director or staff in making its report or recommendations to the planning commission;
3. All informational materials which were entered into the record or minutes of the proceeding before the commission;
4. The report of the initial investigation by the planning department, and where applicable the enforcement order or decision of the planning director;
5. All testimony and all documents or other evidence received by the planning commission from the parties or other witnesses during the proceedings;
6. The decision of the planning commission;
7. The planning commission's findings of fact; and
8. The minutes of the planning commission and a verbatim transcript of the planning commission hearing.

B. *Record; preparation.* The planning department [SHALL]will complete and file the transcript with the borough clerk within 30 days after the deadline for filing entries of appearance. The planning director [shall] must certify the paginated and indexed record and minutes on appeal within 30 days after the deadline for filing entries of appearance. [ONE COPY OF THE RECORD SHALL] BE PROVIDED A PARTY PAYING THE RECORD PREPARATION AND TRANSCRIPTION FEE. AN ELECTRONIC COPY SHALL ALSO BE PROVIDED TO THE APPLICANT IF THE APPLICANT IS NOT THE APPELLANT] A notice of certification of record and electronic copy of the record [SHALL]will be provided to all parties who have timely entered an appearance in the case. For records too large to send by e-mail, the record will be posted online or made available through a file sharing service. A paper copy [Copies] of the record may be provided [to other parties or any other persons] upon request and payment of a \$100 flat labor fee and [HANDLING CHARGE]per page charge for copies in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.

C. *Appeal on the record; new evidence.* Appeals to the hearing officer [SHALL]will be on the record and based on the information and evidence before the original decisionmaker. No new evidence, or illustrative documents or attachments to written statements, may be filed without prior approval of the hearing officer after a showing by the moving party that there exists cause for supplementing the record and that even with due diligence the new evidence could not have been provided at the public hearing before the planning commission and a reasonable opportunity is provided for all other parties of record to submit comments on the request prior to the hearing officer's decision. Evidence or documentary information submitted to the clerk upon filing the notice of the appeal will not be accepted.



**21.20.280. Written statements.**

- A. Appellant's *Opening statement*. Appellant(s) must submit a written statement to the hearing officer as an opening statement within 30 days of the clerk notice of certification of record. All other parties of record who entered an appearance in the appeal must submit a written response statement to the hearing officer [WHICH SHALL BE FILED WITH THE BOROUGH CLERK] within [20]15 days of the date of submission of the appellant's opening statement. [CLERK ISSUING NOTICE THAT A COMPLETED RECORD AND TRANSCRIPT HAVE BEEN FILED]. The written statement may include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the [PLANNING COMMISSION] original decisionmaker, a list of asserted errors, and any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Failure to timely submit [the] a written opening or response [WRITTEN] statement will result in dismissal of that party from the appeal. Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. The hearing officer may waive irregularities in the content of the notice of appeal or written statements. In appeals where staff does not enter an appearance, the staff overview may be provided in writing when opening statements are due.
- B. *Reply statement*. [EACH PARTY FILING AN OPENING STATEMENT] Appellant(s) may submit a reply statement within [2]10 days of the [FILING DEADLINE FOR THE INITIAL WRITTEN STATEMENTS] filing of the [OPPOSING] response statements. The reply [SHALL] must be limited to response to matters specifically raised in the other parties' response [OPENING] statement. A party may only file a single reply statement [IN RESPONSE TO ALL OPENING STATEMENTS FILED].
- C. *Extension*. The hearing officer, upon good cause shown, may grant a motion for an extension of time to any party or legal representative for the completion of any act required under this section, except for the filing of the notice of appeal, where the remaining parties will not appear to be unduly prejudiced by the delay. [AN EXTENSION PERMITTED ONE PARTY SHALL BE EXTENDED TO ALL PARTIES BY NOTICE FROM THE BOROUGH CLERK. MOTIONS FOR EXTENSIONS SHALL COMPLY WITH THE PROVISIONS OF KPB 21.20.280(D) AND 21.20.300.]
- D. *Service*. [SERVICE OF WRITTEN STATEMENTS SHALL BE MADE ON ALL PARTIES OF RECORD FOR BRIEFS AND ON PARTIES PERMITTED TO FILE MOTIONS AND RESPOND TO MOTIONS BY KPB 21.20.300. SERVICE SHALL BE MADE BY THE BOROUGH CLERK EITHER BY MAIL OR PERSONAL DELIVERY WITHIN TWO BUSINESS DAYS OF THE FILING DEADLINE. SERVICE BY EMAIL OR FACSIMILE IS PERMITTED WHEN THE PARTY TO BE SERVED HAS AFFIRMED IN WRITING THE ACCEPTANCE OF ALTERNATE FORMS OF SERVICE.] All notices, orders, or service of other documents required under this chapter will be served by electronic mail (email). All parties must provide an email address for service and parties will be considered to have received documents sent to the email address they provide. Parties are responsible for serving documents filed with the clerk or the hearing officer on all other parties who have entered in appearance in the case. Any document, pleading, or written statement filed with the clerk or the hearing officer must be served by the filing party on all other parties to

the appeal by email delivery. The filing party must certify on the document that the document and all attachments have been served on the other parties. Certificates of service must be signed by the individual who cause the document to be served on the party as provided. The following certificate of service may be used:

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document including a total of \_\_\_\_\_ pages was served via email delivery on the following parties and at the email address listed below:

{list all parties and corresponding email address for the parties }

{Signature or electronic signature of filing party }

- E. *Additional written statements.* Unless the hearing officer requests supplemental written statements from the parties of record or staff, no additional written statements [shall] may be accepted. If the hearing officer requests supplemental written statements after the hearing, the hearing officer will provide a deadline for submission of the supplemental written statements. The time for decision under KPB 21.20.340(C) will toll for the duration of time from the hearing to the deadline for submission of supplemental written statements.

**[21.20.290. Reserved.]**

**21.20.300. Motions.**

- A. *Parties.* Motions for continuances, shortened time, or other matters may be filed by a party who timely enters an appearance in the matter [the following parties and served in the manner prescribed by KPB 21.20.280(D).]:
  1. THE APPELLANT;
  2. THE APPLICANT IF THAT PARTY IS NOT THE APPELLANT;
  3. A BOROUGH OFFICIAL IF BOROUGH STAFF ENTERS AN APPEARANCE IN THE MATTER. ]
- B. *Response.* Any nonmoving party may file a response to a motion within 5 business days of the motion being filed. The response must be served in the manner prescribed by KPB 21.20.280(D). The hearing officer may shorten or extend the time to file a response for good cause. [THE HEARING OFFICER SHALL ALLOW A TIME FOR RESPONSE TO A MOTION BY THE NONMOVING PARTIES SET FORTH IN KPB 21.20.300(A). ANY RESPONSE SHALL BE IN WRITING AND MADE WITHIN THE TIME FRAME REQUIRED BY THE HEARING OFFICER. THE RESPONSE SHALL BE SERVED IN THE MANNER PRESCRIBED BY KPB 21.20.280(D).]
- C. Reply
- D. *Ruling.* The hearing officer [SHALL] will consider and rule on the motion within 30 days of the reply statement being due or on the scheduled hearing date, whichever occurs first.

**21.20.310. Hearing procedure.**

- A. *Time.* [THE HEARING OFFICER SHALL ESTABLISH THE DATE FOR CONSIDERATION OF THE APPEAL ON A DATE THAT IS NOT LESS THAN 40 DAYS NOR MORE MORE THAN 90 DAYS AFTER THE SERVICE OF THE NOTICE OF CERTIFICATION OF THE RECORD. THE HEARING OFFICER MAY FOR GOOD CAUSE SHORTEN OR EXTEND THE HEARING DATE.] The hearing officer will set the hearing date. The hearing date must be set for a date within 90 days of the date the appellant's opening statement is due. The hearing officer may extend the hearing date for good cause.
  
- B. *Participants.* The hearing officer [SHALL]will permit oral argument by any party who either filed the appeal or an entry of appearance and has filed a written argument. [IF MORE THAN ONE APPEAL IS FILED FROM THE SAME PLANNING COMMISSION DECISION THE APPEALS SHALL BE CONSOLIDATED AS A SINGLE APPELLATE PROCEEDING. EACH PARTY SHALL BE ENTITLED TO FILE MOTIONS, WRITTEN STATEMENTS, AND PRESENT ARGUMENTS AS SET FORTH IN KPBB 21.20.280-310.]
  
- C. *Agenda.* Argument [SHALL]will be conducted in the following order:
  - [1] STAFF OVERVIEW—EXPLANATION OF PROCEEDINGS AND DECISION BEFORE THE PLANNING COMMISSION, 10 MINUTES.]
  - [2]1. Appellant, 15 minutes.
  - [3]2. KPBB, if participating in the appeal, 10 minutes.
  - [4]3. Applicant, if the applicant is not an appellant, 15 minutes.
  - [5]4.[Persons filing entries of appearance supporting applicant's position]All other parties, 5 minutes each.
  - [6]5. Applicant rebuttal, if the applicant is not an appellant, 5 minutes
  - [7]6. Appellant's rebuttal, 5 minutes.
  
- D. *Agenda flexible.* The hearing officer may question any party at any time. [but the time for questions and answers shall not count against the time allotted to that party for argument. The hearing officer may revise the agenda set forth in section C. for good cause] The time for questions and answers will not count against the time allotted to that party of argument. The hearing officer may revise the agenda for good cause, fairness to the parties, and so long as all the parties are provided an opportunity to be heard. The hearing officer may limit argument by any person to reduce cumulative or repetitive argument. [THE HEARING OFFICER FOR GOOD CAUSE SHOWN MAY GRANT ADDITIONAL TIME FOR ORAL ARGUMENT TO THE APPELLANT OR APPLICANT. IN SUCH EVENT, THE OPPOSING PARTY, IF ANY, SHALL BE GRANTED EQUAL ADDITIONAL TIME. FAILURE TO OBSERVE THE PROCEDURES SET FORTH IN SECTION C. MAY NOT AFFECT THE VALIDITY OF THE HEARING OFFICER'S DECISION SO LONG AS THE PARTIES HAVE HAD REASONABLE OPPORTUNITY TO BE HEARD.]
  
- E. *Deliberations.* The hearing officer may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement. Deliberations and development of findings may be done by or in consultation with legal counsel.

**21.20.320. Scope of appellate review.**

After the hearing the hearing officer shall apply the following rules to its decision:

1. The hearing officer may exercise independent judgment on matters that relate to the interpretation or construction of ordinances or other provisions of law; however, due consideration shall be given to the expertise and experience of the planning commission in its interpretations of KPB titles 20 and 21.
2. The hearing officer shall defer to the judgment of the planning commission regarding findings of fact if they are supported in the record by substantial evidence.
3. The hearing officer may revise and supplement the planning commission's findings of fact. Where the hearing officer decides that a finding of fact made by the planning commission is not supported by substantial evidence, the hearing officer may make a different finding on the factual issue, based upon the evidence in the record developed before the planning commission if it concludes a different finding was supported by substantial evidence, or may remand the matter to the planning commission as provided in KPB 21.20.330(B).

**21.20.330. Remand by hearing officer.**

- A. *Changed circumstances.* An appeal alleging changed circumstances or new relevant evidence, which with due diligence could not have been presented to the planning commission, shall be remanded to the planning commission.
- B. *Lack of findings.* Appeals from planning commission decisions which lack findings of fact and conclusions by the planning commission or contain findings of fact and conclusions which are not supported by substantial evidence shall be remanded to the planning commission with an order to make adequate findings of fact and conclusions.
- C. *Findings for remand.* The hearing officer shall make findings of fact and conclusions setting forth the basis for the remand and shall include instructions to the planning commission regarding whether additional evidence, notice, hearing or findings are required.

**21.20.340. Decision.**

- A. *Scope of decision.* The hearing officer shall base the hearing officer's decision upon the record. The hearing officer may remand, affirm, or reverse, or modify, in whole or in part, the appealed decision or order. The decision, where appropriate, may include further instructions to staff or the planning commission to affect the hearing officer's decision. If the hearing officer does not remand the decision or order appealed, the decision or order of the hearing officer is final.
- B. *Written decision.* The hearing officer's decision shall be in writing and shall state that it is a final decision, include the hearing officer's findings of fact and conclusions, and notify the parties of their right to appeal. The findings shall be reasonably specific so as to provide the

parties, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.

- C. *Time.* The decision shall be filed with the clerk within [15]45 calendar days after the completion of the hearing.
- D. *Service.* The hearing officer's decision [SHALL BE MAILED OR PERSONALLY DELIVERED, WITHIN 10 DAYS AFTER THE WRITTEN DECISION IS SIGNED BY THE HEARING OFFICER, TO THE PARTIES OF RECORD WHO FILED A WRITTEN ARGUMENT]will be emailed to all parties who entered an appearance and filed an opening statement in the matter.
- E. *Similar petitions.* An applicant aggrieved by a hearing officer's decision may not submit a substantially similar petition to the lower level decision maker as that which was appealed to the hearing officer unless a significant change of circumstances has occurred. The mere passage of time is not a change in circumstances.

**21.20.350. Reconsideration by hearing officer.**

- A. Within 14 days of issuance of the written decision a party that participated in the hearing may request reconsideration of a hearing officer's decision based only on the following criteria:
  - 1. The hearing officer overlooked, misapplied, or failed to consider a code provision directly controlling;
  - 2. The hearing officer overlooked or misconceived a material fact;
  - 3. The hearing officer overlooked or misconceived a material question in the case; or
  - 4. Fraud or misrepresentation by a party.
- B. Motions for reconsideration are prohibited more than 14 days after the hearing officer's written decision is issued.
- C. The hearing officer shall rule on a motion for reconsideration or request the other party to respond within 10 days after the date of filing the motion with the borough clerk. If 10 days pass without the hearing officer issuing a decision on the motion or providing the other parties an opportunity to respond, the motion is considered denied. The motion for reconsideration shall not be granted without giving the parties not filing the motion an opportunity to respond to the motion. Where an opposition to the motion for reconsideration has been requested by the hearing officer and filed with the borough clerk by the respondent, the hearing officer shall issue a written decision on the matter within 10 days of the deadline for filing an opposition or the date the opposition is filed, whichever occurs first.
- D. The filing of a motion for reconsideration suspends the time in which an appeal must be taken to superior court. The time period in which to file an appeal shall begin when the hearing officer issues the decision on reconsideration or 10 days after the motion for reconsideration is filed if the hearing officer does not issue a decision on the motion.
- E. An appeal from a hearing officer decision under this section may be filed in the superior court within 30 days after the date of distribution of the hearing officer decision to the parties, and is governed by Part 6 of the Alaska Rules of Appellate Procedure. A hearing officer decision remains in effect while an appeal is pending unless stayed by the superior court.

**21.20.360. Appeal from hearing officer.**

- A. Pursuant to AS 29.40.060, appeals by an aggrieved party from the final written decisions of the hearing officer shall be filed with the State of Alaska Superior Court at Kenai, Alaska, and shall conform with the Rules of Appellate Procedure of the State of Alaska, Part VI.
- B. The borough clerk shall estimate the cost of preparing the transcript of the proceeding and compiling the record on appeal. The appellant to the court shall deposit the estimated costs with the clerk in advance. Upon completion of the record on appeal, the clerk shall refund

any excess deposit or charge the appellant for costs exceeding the deposit. The record may not be released to the appellant until full payment is made.

**SECTION 6.** That this ordinance shall be effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \* 2025.**

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Peter Ribbens, Assembly President

ATTEST:

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Michele Turner, CMC, Borough Clerk