



# TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

**PREPARATION DATE:** August 1, 2018  
**MEETING DATE:** August 6, 2018

**SUBMITTING DEPARTMENT:** Legal  
**DEPARTMENT DIRECTOR:** Audrey Cohen-Davis  
**PRESENTER:** Lea Colasuonno

**SUBJECT:** Resolution 18-16: Amended Contested Case Rules for Administrative Practice in the Town

## STATEMENT/PURPOSE

The purpose of this item is to amend the Contested Case Rules for the Town that govern administrative practice.

## BACKGROUND/ALTERNATIVES

On January 1, 2015, when the Town enacted new Land Development Regulations, the Town adopted Contested Case Rules by Resolution to govern administrative proceedings. For consistency purposes the Town adopted the Rules in existence in the County at that time, specifically the 2003 County Rules.

In March 2017 the Legal Department provided an updated version of the Rules and, ultimately, Council adopted a revised version in June 2017.

In practically working with the Rules over the last year Legal, Police and Planning staff identified an area where minor amendments would improve contested case practice at the Town, specifically that the timeframes for Hearing Officer appointment, Recommended Decision issuance, and Final Decision issuance be flexible to meet the variability in the Land Development Regulations.

## ALIGNMENT WITH COUNCIL'S STRATEGIC INTENT

This item aligns with providing effective and efficient service to the community.

## ATTACHMENTS

- Resolution 18-16.
- Redline version of the Contested Case Rules (Exhibit A).
- Clean version of the Contested Case Rules (Exhibit A).

## FISCAL IMPACT

Resolutions are published as part of the minutes. The cost of publishing minutes in the newspaper ranges from \$200.00 - \$1000.00, depending on the length. The Contested Case Rules are fifteen (15) pages and therefore will likely be on the higher end of this range.

## STAFF IMPACT

The staff impact of amending the Contested Case Rules was minimal for the Legal Department and required minimal coordination between the Legal and the Planning and Police Departments.

## LEGAL REVIEW

Complete.

## RECOMMENDATION

Staff recommends amending the Contested Case Rules as presented.

## SUGGESTED MOTION

I move to approve Resolution 18-16 amending the Contested Case Rules in the Town of Jackson.

**RESOLUTION 18-16**  
**TOWN OF JACKSON CONTESTED CASE RULES**

WHEREAS, Sections 8.8.3.F, 8.8.4.F, 8.9.3.D, and 8.9.4.E of the Town of Jackson Land Development Regulations effective January 1, 2015 provide that decisions shall be governed by the Contested Case Rules adopted by the Town;

WHEREAS, on January 1, 2015 when the Town enacted new Land Development Regulations, the Town adopted Contested Case Rules by Resolution to govern administrative proceedings;

WHEREAS, the Town adopted a revised set of Contested Case Rules to govern administrative proceedings as set forth by certain ordinances of the Town and appeals from any administrative decisions or interpretations on June 19, 2017; and

WHEREAS, the Town desires to amend the Contested Case Rules adopted on June 19, 2017.

NOW, THEREFORE be it hereby resolved by the Mayor and Town Council of the Town of Jackson, Wyoming, in regular session duly assembled, that:

The Town of Jackson Contested Case Rules as set forth in Exhibit A attached hereto are hereby amended and adopted effective August 6, 2018.

PASSED and APPROVED this 6th Day of August, 2018.

TOWN OF JACKSON

BY: \_\_\_\_\_

Pete Muldoon, Mayor

ATTEST:

BY: \_\_\_\_\_

Sandy P. Birdyshaw, Town Clerk

## GENERAL PROVISIONS

### Chapter 1

**Section 1-1. Authority and Scope.** These rules are promulgated by authority of Wyoming Statute § 16-3-102. These rules shall govern all contested case proceedings within the Town to the extent they are adopted, and shall be relied upon by hearing officers and parties in all contested cases.

**Section 1-2. Purpose.** These Rules are intended to set forth clear and comprehensive procedures for Contested Cases with the guidance of the Wyoming Administrative Procedure Act Wyo. Stat. Ann. §16-3-101 *et seq.*, as amended.

**Section 1-3. Construction.** These Rules are to be liberally construed to assure unbiased, fair, expeditious and impartial Contested Case proceedings. In the absence of a rule, the Hearing Officer may proceed in any manner consistent with the intent of these Rules.

**Section 1-4. Citation.** Citation to these Rules shall be “Town of Jackson Contested Case Rules.” These Rules should be cited as “TOJ CCR. Sec.\_\_\_\_.”

**Section 1-5. Severability.** If any portion of these Rules is found to be invalid or unenforceable, the remainder shall remain in effect.

**Section 1-6. Effective Date.** These Rules are effective as of June 19, 2017.

**Section 1-7. Incorporation by Reference.**

- a) The code, standard, rule, or regulation below is incorporated by reference.
  - i. Rule 12(b)(6), Wyoming Rules of Civil Procedure, as amended;
  - ii. Rule 24, Wyoming Rules of Civil Procedure, as amended;
  - iii. Rule 45, Wyoming Rules of Civil Procedure, as amended;
  - iv. Rule 52, Wyoming Rules of Civil Procedure, as amended;
  - v. Rule 56, Wyoming Rules of Civil Procedure, as amended;
  - vi. Rule 56.1, Wyoming Rules of Civil Procedure, as amended;

## CONTESTED CASE PRACTICE AND PROCEDURE

### Chapter 2

**Section 2-1. Definitions.** The following definitions shall apply to these Rules:

- a) "Affidavit" means a written, notarized statement of facts made voluntarily under oath.
- b) "Agency" means any authority, board, commission, department, division, officer or employee of the Town, except the governing body of the Town.
- c) "Attorney" means an attorney licensed to practice law in the State of Wyoming or, an attorney who is licensed to practice law in another state and who is associated with an attorney licensed to practice law in the State of Wyoming.
- d) "Clerk" means the Town Clerk of The Town of Jackson
- e) "Contest" means the adjudicative proceedings or trial type hearings required in contested cases.
- f) "Contestant" the petitioner in a Contest.
- g) "Contestee" the respondent in a Contest.
- h) "Contested Case" means a proceeding in which legal rights, duties, or privileges of a party are required by law to be determined by a Hearing Officer after an opportunity for hearing.
- i) "Hearing officer" means the judge presiding over the Contest and appointed in accordance with ordinances as set forth in the Jackson Municipal Code and Town of Jackson Land Development Regulations.
- j) "License" includes the whole or part of any permit, certificate, approval, registration, charter, or similar form of permission required by law.
- k) "Licensing" includes the process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
- l) "Party" means each person named or admitted as a party; or properly seeking and entitled as of right to be admitted as a party.
- m) "Registrar of Rules" means the Town Clerk of the Town of Jackson.
- n) "Representative" means an individual other than an attorney who is authorized to function in a representative capacity on behalf of a party to a contested case.
- o) "Town" means Town of Jackson, Wyoming
- p) "Wyoming Administrative Procedure Act" means Wyoming Statute §§ 16-3-101 through -115.

**Section 2-2. Informal Proceedings and Alternative Dispute Resolution.**

- a) Nothing in these rules shall be construed so as to prevent any Agency from establishing informal procedures or from establishing procedures which are intended to occur prior to an agency's referral for or the initiation of a Contested Case.
- b) Parties to a Contested Case are encouraged to resolve it through settlement, informal conference, mediation, arbitration, or other means throughout the duration of a Contested Case.
- c) If both Parties desire to pursue nonbinding alternative dispute resolution, including settlement conference and mediation, the Hearing Officer shall stay the Contested Case proceedings and such settlement conference or mediation shall be conducted in accordance with the procedures

prescribed by the person conducting the settlement conference or mediation, to which the Parties consented.

### **Section 2-3. Commencement of Contested Case Proceedings.**

- a) A Contested Case shall be commenced by filing a timely request for a hearing of any Agency action or inaction which, as a matter of law, entitles a Contestant an opportunity to be heard.
- b) Any person desiring to institute a hearing, must file a petition in writing with the Town Clerk setting forth:
  - i. The name and address of parties;
  - ii. A statement in ordinary and concise language, of the facts upon which the petition is based,
  - iii. Any instruments or documents at issue and involved in the allegations set forth,
  - iv. Whenever applicable, particular reference to the statute, regulation, rule, or order upon which the petition is based, and
  - v. Proof of service.
- c) The petition shall be served on all Parties by personal service according to Wyoming Rule of Civil Procedure Rule 5.
- d) The Town Clerk shall assign a docket number to each Contested Case. All papers, pleadings, motions, and orders filed thereafter shall contain:
  - i. A conspicuous reference to the assigned docket number;
  - ii. A caption setting forth the title of the Contested Case and a brief designation describing the document filed;
  - iii. The name, address, telephone number, and signature of the person who prepared the document; and
  - iv. Proof of Service.
- e) At the commencement of every Contested Case, the Hearing Officer shall issue a notice of hearing within the timelines prescribed in the applicable Land Development Regulation or, if the Contested Case is commenced pursuant to a Jackson Municipal Code provision, within twenty (20) days of the petition being filed including a statement of:
  - i. The time, place and nature of the hearing;
  - ii. The legal authority and jurisdiction under which the hearing is to be held;
  - iii. The particular sections of the statutes and rules involved; and
  - iv. A short and plain statement of the matters asserted. If the Hearing Officer is unable to state matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and, thereafter, upon application, a more definite and detailed statement shall be furnished.

### **Section 2-4. Appearances and Withdrawals.**

- a) A Party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a Contested Case under Rule 24 of

the Wyoming Rules of Civil Procedure may appear through an attorney or representative prior to a ruling on the motion to intervene.

- b) The filing of a pleading by an attorney constitutes his or her appearance for the Party for whom the pleading is filed.
- c) Prior to withdrawing from a Contested Case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The Hearing Officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:
  - i. The attorney wishes to withdraw;
  - ii. The client has the burden of keeping the Hearing Officer informed of the address where notices, pleadings, or other papers may be served;
  - iii. The client has the obligation to prepare, or to hire another attorney or representative to prepare, for the Contested Case and the dates of proceedings;
  - iv. The client may suffer an adverse determination in the Contested Case if the client fails or refuses to meet these burdens;
  - v. The pleadings and papers in the case shall be served upon the client at the client's last known address; and
  - vi. The client has the right to object within fifteen (15) days of the date of notice.

#### **Section 2-5. Hearing Officer Authority.**

- a) Hearing Officers shall have all powers necessary to conduct a fair and impartial hearing, including but not limited to, the following authority:
  - i. To administer oaths and affirmations;
  - ii. To subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry;
  - iii. To rule upon offers of proof and relevant evidence;
  - iv. To provide for discovery and determine its scope;
  - v. To regulate the course of the hearing;
  - vi. To hold conferences for the settlement or simplification of the issues;
  - vii. To dispose of procedural requests or similar matters;
  - viii. To make a recommended decision in Contested Cases; and
  - ix. To take any other action authorized by these Rules.

#### **Section 2-6. Hearing Officer Recusal.**

- a) At any time while a Contested Case is pending, a Hearing Officer may withdraw from a Contested Case by filing written notice of recusal. From and after the date the written notice of recusal is entered, the recused Hearing Officer shall not participate in the Contested Case.
- b) Upon motion of any Party, recusal of a Hearing Officer shall be for cause. Whenever the grounds for such motion become known, any Party may move for a recusal of a Hearing Officer on the ground that the Hearing Officer:

- i. Has been engaged as counsel in the action prior to being appointed as Hearing Officer;
- ii. Has an interest in the outcome of the action;
- iii. Is related by consanguinity to a Party;
- iv. Is a material witness in the action;
- v. Is biased or prejudiced against the Party or the Party's attorney or representative; or
- vi. Any other grounds provided by law.

- c) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts to show the existence of grounds for the motion. Prior to a hearing on the motion, any Party may file counter-affidavits. The motion shall be heard by the Hearing Officer or, at the discretion of the Hearing Officer, by another Hearing Officer. If the motion is granted, the Hearing Officer shall immediately designate another Hearing Officer to preside over the Contested Case.
- d) A Hearing Officer shall not be subject to a voir dire examination by any party.

**Section 2-7. Ex Parte Communications.** Except as authorized by law, a Party or a Party's attorney or representative shall not communicate with the Hearing Officer in connection with any issue of fact or law concerning any pending Contested Case, except upon notice and opportunity for all Parties to participate. Should ex parte communication occur, the Hearing Officer shall advise all Parties of the communication as soon as possible thereafter and, if requested, allow any Party an opportunity to respond prior to ruling on the issue.

**Section 2-8. Filing and Service of Papers.**

- a) In all Contested Cases, the Parties shall file all original documents, pleadings, and motions with the Town Clerk with true and correct copies of the particular document, pleading, or motion properly served on all Parties, accompanied by a certificate of service.
- b) All filings must be made either by hand delivery to the Town Clerk or by certified mail received by the Town Clerk by the filing deadline.
- c) Service must be accomplished in accordance with Wyoming Rule of Civil Procedure Rule 5.

**Section 2-9. Computation of Time.**

- a) In computing any period of time prescribed or allowed by these rules, by order or by any applicable statutes or regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the Town Hall inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days. As used in this rule, "legal holiday" includes any federal holiday and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

**Section 2-10. Burden of Proof.** The Hearing Officer shall assign the burden of proof in accordance with applicable law.

**Section 2-11. Discovery.**

- a) In all Contested Cases the taking of depositions and discovery shall be available to the Parties in accordance with the provisions of Rules 26 and 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure. All references therein to the "court" shall be deemed to refer to the "Hearing Officer"; all references to the use of the subpoena power shall be references to subsections (b) and (c) of this section; all references to "trial" shall be deemed references to "hearing"; all references to "plaintiff" shall be deemed references to "a party".
- b) In all Contested Cases the Hearing Officer shall have the authority to administer oaths and affirmations, subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry. Requests for the issuance of a subpoena shall be accompanied by a completed subpoena, which shall conform to Rule 45 of the Wyoming Rules of Civil Procedure. Parties may utilize the form subpoena in the Appendix to these Rules.
- c) In case of refusal to obey a subpoena issued by the Hearing Officer in a Contested Case, deposition or discovery relating thereto, to any person, the district court for the district in which the hearing or deposition or other proceeding is being conducted, or for the district where the person may be served, may upon application by the Hearing Officer issue to the person refusing to obey the subpoena an order requiring the person to show cause for the refusal or to appear before the Hearing Officer to produce documentary evidence if so ordered or there to give evidence touching the matter in question. Any failure to show cause or obey the order of court may be punished by the court as a contempt thereof.
- d) Unless the Hearing Officer orders otherwise, Parties shall not file discovery requests, discovery answers, and deposition notices with the Town Clerk.

**Section 2-12. Motions and Motion Practice.**

- a) The Contestee shall be allowed twenty (20) days from the date of service to file an Answer or other pleading with the Town Clerk.
- b) In the event a Party fails to Answer or otherwise plead within the twenty (20) day time period, and provided the foregoing rules as to service have been complied with, the Party shall be considered in default and the Hearing Officer may enter an order of default or an order affirming the Agency final decision.
- c) Deadlines for the filing of motions other than the Petition and Answer are to be filed in accordance with Wyoming Rule of Civil Procedure or at the discretion of the Hearing Officer.

**Section 2-13. Setting Hearings, Other Proceedings, and Location of Hearings.**

- a) The Hearing Officer shall set the course of proceedings, which may include, but is not limited to, scheduling informal conferences, confidentiality issues, summary disposition deadlines, motion practice, settlement conferences, and the evidentiary hearing.
- b) Prehearing conferences may be held at the discretion of the Hearing Officer. Any Party may request a prehearing conference to address issues such as discovery, motion deadlines, scheduling orders, or status conferences.
- c) At the Hearing Officer's discretion telephone or videoconference calls may be used to conduct any proceeding.
- d) The Hearing Officer shall determine the location for proceedings.

**Section 2-14. Consolidation.** A Party may seek consolidation of two or more Contested Cases by filing a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the Hearing Officer, all subsequent filings shall be in the case first filed, and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on a Hearing Officer's own motion.

**Section 2-15. Continuances, Extensions of Time, and Duty to Confer.**

- a) A motion for a continuance of any scheduled hearing must be in writing and state the reasons for the motion. A request for a continuance filed less than five (5) days before a scheduled hearing shall be granted only upon a showing of good cause.
- b) A motion for an extension of time for performing any act prescribed or allowed by these Rules or by order of the Hearing Officer must be filed and served on all parties and the hearing officer prior to the expiration of the applicable time period. A motion for extension of time shall be granted only upon a showing of good cause.
- c) A moving party shall make reasonable efforts to contact all Parties, representatives, and attorneys before filing a motion for continuance or extension of time. A motion for continuance or extension of time shall include a statement concerning efforts made to confer with the other Party(s) on the motion.
- d) Continuances relating to mediation shall be made no later than thirty (30) days prior to the date of the hearing, as referenced in Section 4(b) of this Chapter, or as determined by the Hearing Officer.

**Section 2-16. Expedited Contested Case.**

- a) Upon written request and consent of all Parties, made prior to the date set for an evidentiary hearing, any Contest may be heard as an expedited Contested Case.

- b) Expedited Contested Cases shall be decided on written arguments, evidence, and stipulations submitted by the parties. A Hearing Officer may permit oral arguments upon the request of any party.
- c) The Hearing Officer may require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined by an expedited hearing.

**Section 2-17. Summary Disposition.** Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure apply to Contested Cases.

## **EVIDENTIARY HEARING AND DECISION**

### **Chapter 3**

#### **Section 3-1. Prehearing Procedures.**

- a) Unless otherwise ordered by the Hearing Officer, each Party to a Contested Case shall file and serve on all other Parties a prehearing disclosure statement setting forth:
  - i. A statement of the specific claims, defenses, and issues which the Party asserts are before the Hearing Officer for hearing;
  - ii. A statement of the burden of proof to be assigned in the Contested Case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;
  - iii. A complete list of all witnesses who will or may testify, together with information on how that witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Town Clerk;
  - iv. A statement identifying stipulated facts. If the Parties are unable to stipulate to facts, the Parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated; and
  - v. A complete list and copies of all documents, statements, etc., which the Party will or may introduce into evidence.
- b) Parties shall file and serve prehearing disclosure statements on or before the date established by the Hearing Officer.
- c) The information provided in a prehearing disclosure statement shall be binding on each Party throughout the course of the Contested Case unless modified for good cause.
- d) Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not unfairly prejudice other Parties, and good cause is shown.
- e) The Hearing Officer may modify the requirements of a prehearing disclosure statement.
- f) Failure to file a prehearing disclosure statement may result in the Hearing Officer striking witnesses, exhibits, claims and defenses, or dismissal of the Contested Case.
- g) If a prehearing order is entered, the prehearing order shall control the course of the hearing.

#### **Section 3-2. Order of Hearing Procedure.**

- a) The following order of procedure shall be followed:
  - i. The Hearing Officer shall announce the hearing is open and call by docket number and title the Contest to be heard. The Hearing Officer shall ask if Parties are ready to proceed and will allow Parties an opportunity to dispose of any preliminary matters;

- ii. The Hearing Officer shall administer the oath/affirmation to all witnesses who will present testimony;
- iii. The opening statements will be made by the Party bearing the burden of proof first;
- iv. Evidence will be presented by the Party bearing the burden of proof first. All other parties shall be allowed to cross-examine witnesses in an orderly fashion. When the Party bearing the burden of proof rests, other parties shall then be allowed to present their evidence;
- v. Rebuttal and surrebuttal evidence shall be allowed only at the discretion of the Hearing Officer;
- vi. The Hearing Officer may examine witnesses at the close of either Party's direct or cross examination;
- vii. No testimony shall be received by the Hearing Officer unless given under oath/affirmation;
- viii. Closing statements will be made by the Party bearing the burden of proof first, then after the Party without the burden of proof presents a closing statement, the Party bearing the burden of proof will have the final response;
- ix. The Hearing Officer may limit the time for opening and closing statements;
- x. The Hearing Officer may recess the proceedings as appropriate;
- xi. After all Parties have had an opportunity to be heard, the Hearing Officer may excuse all witnesses and adjourn the hearing;
- xii. The hearing may be reopened only upon a motion by a Party to the proceeding on a showing of good cause.

### **Section 3-3. Evidence.**

- a) The Hearing Officer shall rule on the admissibility of evidence in accordance with the following:
  - i. Evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence may be excluded;
  - ii. Evidence may be offered through witness testimony or in documentary form;
  - iii. Live testimony shall be given under oath/affirmation administered by the Hearing Officer;
  - iv. Deposition testimony and other pre-filed testimony may be submitted as evidence, provided the testimony is given under oath/affirmation administered by an appropriate authority, and is subject to cross-examination by all parties;
  - v. The rules of privilege recognized by Wyoming law shall be given effect; and
  - vi. A Hearing Officer may take administrative notice of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.
- b) Each party shall have the opportunity to cross-examine witnesses. The Hearing Officer may allow cross-examination on matters not covered on direct examination.
- c) The Hearing Officer, agency staff, or other persons delegated to do so by the Hearing Officer, when applicable, may ask questions of any party or witness.

**Section 3-4. Settlements.** Parties shall promptly notify the Hearing Officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a hearing. When the Contested Case has settled, the Hearing Officer will enter an order dismissing the case.

**Section 3-5. Recommended Decision.**

- a) The Hearing Officer shall file the recommended decision and a proposed order with the Town Clerk and serve copies of both on all Parties to the Contested Case within the timelines prescribed in the applicable Land Development Regulation or, if the Contested Case is commenced pursuant to a Jackson Municipal Code provision, within forty-five (45) days of the hearing. the Hearing Officer shall file the recommended decision and a proposed order with the Town Clerk and serve copies of both on all Parties to the Contested Case.
- b) A recommended decision shall include:
  - a. Statements of the findings of fact and conclusions of law, separately stated, with a concise and explicit statement of the underlying facts supporting the findings. When the Hearing Officer allows the Parties to submit a proposed final order, the Parties shall forward the original to the Town Clerk and serve copies of the proposed order on all other Parties.
  - b. The appropriate rule, order, relief, or denial thereof. The decision shall be based upon a consideration of the whole contested case record or any portion stipulated to by the Parties.
- c) Unless otherwise ordered, Parties shall have ten (10) days to file written exceptions to the Hearing Officer's recommended decision and proposed order.
- d) Unless otherwise ordered, Parties shall have ten (10) days to move that clerical errors or other parts of the record be corrected.
- e) Within fourteen (14) days of the issuance of the recommended decision and proposed order the Hearing Officer may correct clerical errors in recommended decisions or other parts of the record.

**Section 3-6. Final Decision.**

- a) A hearing before the Town Council or Board of Adjustment as required by and in accordance with the Town of Jackson Land Development Regulations Div. 8.8.3, 8.8.4, 8.9.3, and 8.9.4, respectively, shall be held within the timelines prescribed in the applicable Land Development Regulation Division (30) days of the issuance of the Hearing Officer's recommended decision.
- b) A final decision shall be rendered by the Town Council or Board of Adjustment as required by and in accordance with the Town of Jackson Land Development Regulations Div. 8.8.3, 8.8.4, 8.9.3, and 8.9.4, respectively, within the timelines prescribed in the applicable Land Development Regulation Division forty-five (45) days of the hearing set forth in Sec. 3-6(a).
- b) A final decision shall be rendered by the Town Council for all Contested Cases arising under the Jackson Municipal Code ordinances within sixty (60) days of the issuance of the Recommended Decision issued pursuant to Sec. 3-5.
- e) The final decision shall be in writing, filed with the Town Clerk, and served upon all parties to the Contested Case within the timelines prescribed in the applicable Land Development Regulation

Division, but if none or the case arises under the Jackson Municipal Code, within the forty-five (45) days of the hearing set forth in this Section period set forth in Sec. 3-6(b).

e) The Town Council or Board of Adjustment, as the case may be, may, at any time prior to judicial review, correct clerical errors in final decisions or other parts of the record.

**Section 3-6. Record of Proceeding.** The Town Clerk shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to Wyoming Statute § 16-3-107(o) and (p).

**Section 3-7. Appeal.** Appeals from a final decision shall be taken in accordance with Wyo. Stat. Ann. § 16-3-114 and the Wyoming Rules of Appellate Procedure.

## Appendix

Form 1: Subpoena (follows on next page)

## **TOWN OF JACKSON ADMINISTRATIVE HEARING**

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Contestant, )  
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v. )  
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\_\_\_\_\_  
Contestee. )

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## **SUBPOENA**

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STATE OF WYOMING      )  
                            ) SS.  
COUNTY OF TETON      )

To: \_\_\_\_\_ **(name)**

\_\_\_\_\_ **(address)**

IN THE NAME OF THE TOWN OF JACKSON, you are hereby commanded to appear before the undersigned, in an Administrative Hearing in and for the Town of Jackson, County of Teton, in

the \_\_\_\_\_ (address) on or about the \_\_\_\_\_ (date and time to appear), to give evidence in the above-entitled matter on behalf of \_\_\_\_\_ (state party name) and this you are not to omit under penalty of law.

Pursuant to W.R.C.P. 45(a)(1)(D) you are hereby advised of the following:

W.R.C.P. 45(c): Protection of Persons Subject to Subpoenas:

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subdivision (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection has been made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) Fails to allow reasonable time for compliance;

(ii) Requires, in the case of a deposition or production prior to hearing or trial, a person to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person; or

(iii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) Subjects a person to undue burden.

(B) If a subpoena;

- (i) Requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) Requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

W.R.C.P. 45(d): Duties in Responding to Subpoena

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

W.R.C.P. 45(e): Contempt

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. Adequate causes for failure to obey include lack of personal service upon the person subpoenaed, and when a subpoena purports to require a person to attend a deposition or produce prior to hearing or trial at a place not within the limits provided by clause (ii) of subdivision.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Clerk of Municipal Court

Attorney Name:

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(Attorney Signature)

## GENERAL PROVISIONS

### Chapter 1

**Section 1-1. Authority and Scope.** These rules are promulgated by authority of Wyoming Statute § 16-3-102. These rules shall govern all contested case proceedings within the Town to the extent they are adopted, and shall be relied upon by hearing officers and parties in all contested cases.

**Section 1-2. Purpose.** These Rules are intended to set forth clear and comprehensive procedures for Contested Cases with the guidance of the Wyoming Administrative Procedure Act Wyo. Stat. Ann. §16-3-101 *et seq.*, as amended.

**Section 1-3. Construction.** These Rules are to be liberally construed to assure unbiased, fair, expeditious and impartial Contested Case proceedings. In the absence of a rule, the Hearing Officer may proceed in any manner consistent with the intent of these Rules.

**Section 1-4. Citation.** Citation to these Rules shall be "Town of Jackson Contested Case Rules." These Rules should be cited as "TOJ CCR. Sec.\_\_\_\_."

**Section 1-5. Severability.** If any portion of these Rules is found to be invalid or unenforceable, the remainder shall remain in effect.

**Section 1-6. Effective Date.** These Rules are effective as of June 19, 2017.

**Section 1-7. Incorporation by Reference.**

- a) The code, standard, rule, or regulation below is incorporated by reference.
  - i. Rule 12(b)(6), Wyoming Rules of Civil Procedure, as amended;
  - ii. Rule 24, Wyoming Rules of Civil Procedure, as amended;
  - iii. Rule 45, Wyoming Rules of Civil Procedure, as amended;
  - iv. Rule 52, Wyoming Rules of Civil Procedure, as amended;
  - v. Rule 56, Wyoming Rules of Civil Procedure, as amended;
  - vi. Rule 56.1, Wyoming Rules of Civil Procedure, as amended;

## CONTESTED CASE PRACTICE AND PROCEDURE

### Chapter 2

**Section 2-1. Definitions.** The following definitions shall apply to these Rules:

- a) "Affidavit" means a written, notarized statement of facts made voluntarily under oath.
- b) "Agency" means any authority, board, commission, department, division, officer or employee of the Town, except the governing body of the Town.
- c) "Attorney" means an attorney licensed to practice law in the State of Wyoming or, an attorney who is licensed to practice law in another state and who is associated with an attorney licensed to practice law in the State of Wyoming.
- d) "Clerk" means the Town Clerk of The Town of Jackson
- e) "Contest" means the adjudicative proceedings or trial type hearings required in contested cases.
- f) "Contestant" the petitioner in a Contest.
- g) "Contestee" the respondent in a Contest.
- h) "Contested Case" means a proceeding in which legal rights, duties, or privileges of a party are required by law to be determined by a Hearing Officer after an opportunity for hearing.
- i) "Hearing officer" means the judge presiding over the Contest and appointed in accordance with ordinances as set forth in the Jackson Municipal Code and Town of Jackson Land Development Regulations.
- j) "License" includes the whole or part of any permit, certificate, approval, registration, charter, or similar form of permission required by law.
- k) "Licensing" includes the process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
- l) "Party" means each person named or admitted as a party; or properly seeking and entitled as of right to be admitted as a party.
- m) "Registrar of Rules" means the Town Clerk of the Town of Jackson.
- n) "Representative" means an individual other than an attorney who is authorized to function in a representative capacity on behalf of a party to a contested case.
- o) "Town" means Town of Jackson, Wyoming
- p) "Wyoming Administrative Procedure Act" means Wyoming Statute §§ 16-3-101 through -115.

**Section 2-2. Informal Proceedings and Alternative Dispute Resolution.**

- a) Nothing in these rules shall be construed so as to prevent any Agency from establishing informal procedures or from establishing procedures which are intended to occur prior to an agency's referral for or the initiation of a Contested Case.
- b) Parties to a Contested Case are encouraged to resolve it through settlement, informal conference, mediation, arbitration, or other means throughout the duration of a Contested Case.
- c) If both Parties desire to pursue nonbinding alternative dispute resolution, including settlement conference and mediation, the Hearing Officer shall stay the Contested Case proceedings and such settlement conference or mediation shall be conducted in accordance with the procedures

prescribed by the person conducting the settlement conference or mediation, to which the Parties consented.

### **Section 2-3. Commencement of Contested Case Proceedings.**

- a) A Contested Case shall be commenced by filing a timely request for a hearing of any Agency action or inaction which, as a matter of law, entitles a Contestant an opportunity to be heard.
- b) Any person desiring to institute a hearing, must file a petition in writing with the Town Clerk setting forth:
  - i. The name and address of parties;
  - ii. A statement in ordinary and concise language, of the facts upon which the petition is based,
  - iii. Any instruments or documents at issue and involved in the allegations set forth,
  - iv. Whenever applicable, particular reference to the statute, regulation, rule, or order upon which the petition is based, and
  - v. Proof of service.
- c) The petition shall be served on all Parties by personal service according to Wyoming Rule of Civil Procedure Rule 5.
- d) The Town Clerk shall assign a docket number to each Contested Case. All papers, pleadings, motions, and orders filed thereafter shall contain:
  - i. A conspicuous reference to the assigned docket number;
  - ii. A caption setting forth the title of the Contested Case and a brief designation describing the document filed;
  - iii. The name, address, telephone number, and signature of the person who prepared the document; and
  - iv. Proof of Service.
- e) At the commencement of every Contested Case, the Hearing Officer shall issue a notice of hearing within the timelines prescribed in the applicable Land Development Regulation or, if the Contested Case is commenced pursuant to a Jackson Municipal Code provision, within twenty (20) days of the petition being filed including a statement of:
  - i. The time, place and nature of the hearing;
  - ii. The legal authority and jurisdiction under which the hearing is to be held;
  - iii. The particular sections of the statutes and rules involved; and
  - iv. A short and plain statement of the matters asserted. If the Hearing Officer is unable to state matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and, thereafter, upon application, a more definite and detailed statement shall be furnished.

### **Section 2-4. Appearances and Withdrawals.**

- a) A Party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a Contested Case under Rule 24 of

the Wyoming Rules of Civil Procedure may appear through an attorney or representative prior to a ruling on the motion to intervene.

- b) The filing of a pleading by an attorney constitutes his or her appearance for the Party for whom the pleading is filed.
- c) Prior to withdrawing from a Contested Case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The Hearing Officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:
  - i. The attorney wishes to withdraw;
  - ii. The client has the burden of keeping the Hearing Officer informed of the address where notices, pleadings, or other papers may be served;
  - iii. The client has the obligation to prepare, or to hire another attorney or representative to prepare, for the Contested Case and the dates of proceedings;
  - iv. The client may suffer an adverse determination in the Contested Case if the client fails or refuses to meet these burdens;
  - v. The pleadings and papers in the case shall be served upon the client at the client's last known address; and
  - vi. The client has the right to object within fifteen (15) days of the date of notice.

#### **Section 2-5. Hearing Officer Authority.**

- a) Hearing Officers shall have all powers necessary to conduct a fair and impartial hearing, including but not limited to, the following authority:
  - i. To administer oaths and affirmations;
  - ii. To subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry;
  - iii. To rule upon offers of proof and relevant evidence;
  - iv. To provide for discovery and determine its scope;
  - v. To regulate the course of the hearing;
  - vi. To hold conferences for the settlement or simplification of the issues;
  - vii. To dispose of procedural requests or similar matters;
  - viii. To make a recommended decision in Contested Cases; and
  - ix. To take any other action authorized by these Rules.

#### **Section 2-6. Hearing Officer Recusal.**

- a) At any time while a Contested Case is pending, a Hearing Officer may withdraw from a Contested Case by filing written notice of recusal. From and after the date the written notice of recusal is entered, the recused Hearing Officer shall not participate in the Contested Case.
- b) Upon motion of any Party, recusal of a Hearing Officer shall be for cause. Whenever the grounds for such motion become known, any Party may move for a recusal of a Hearing Officer on the ground that the Hearing Officer:

- i. Has been engaged as counsel in the action prior to being appointed as Hearing Officer;
- ii. Has an interest in the outcome of the action;
- iii. Is related by consanguinity to a Party;
- iv. Is a material witness in the action;
- v. Is biased or prejudiced against the Party or the Party's attorney or representative; or
- vi. Any other grounds provided by law.

- c) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts to show the existence of grounds for the motion. Prior to a hearing on the motion, any Party may file counter-affidavits. The motion shall be heard by the Hearing Officer or, at the discretion of the Hearing Officer, by another Hearing Officer. If the motion is granted, the Hearing Officer shall immediately designate another Hearing Officer to preside over the Contested Case.
- d) A Hearing Officer shall not be subject to a voir dire examination by any party.

**Section 2-7. Ex Parte Communications.** Except as authorized by law, a Party or a Party's attorney or representative shall not communicate with the Hearing Officer in connection with any issue of fact or law concerning any pending Contested Case, except upon notice and opportunity for all Parties to participate. Should ex parte communication occur, the Hearing Officer shall advise all Parties of the communication as soon as possible thereafter and, if requested, allow any Party an opportunity to respond prior to ruling on the issue.

**Section 2-8. Filing and Service of Papers.**

- a) In all Contested Cases, the Parties shall file all original documents, pleadings, and motions with the Town Clerk with true and correct copies of the particular document, pleading, or motion properly served on all Parties, accompanied by a certificate of service.
- b) All filings must be made either by hand delivery to the Town Clerk or by certified mail received by the Town Clerk by the filing deadline.
- c) Service must be accomplished in accordance with Wyoming Rule of Civil Procedure Rule 5.

**Section 2-9. Computation of Time.**

- a) In computing any period of time prescribed or allowed by these rules, by order or by any applicable statutes or regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the Town Hall inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days. As used in this rule, "legal holiday" includes any federal holiday and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

**Section 2-10. Burden of Proof.** The Hearing Officer shall assign the burden of proof in accordance with applicable law.

**Section 2-11. Discovery.**

- a) In all Contested Cases the taking of depositions and discovery shall be available to the Parties in accordance with the provisions of Rules 26 and 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure. All references therein to the "court" shall be deemed to refer to the "Hearing Officer"; all references to the use of the subpoena power shall be references to subsections (b) and (c) of this section; all references to "trial" shall be deemed references to "hearing"; all references to "plaintiff" shall be deemed references to "a party".
- b) In all Contested Cases the Hearing Officer shall have the authority to administer oaths and affirmations, subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry. Requests for the issuance of a subpoena shall be accompanied by a completed subpoena, which shall conform to Rule 45 of the Wyoming Rules of Civil Procedure. Parties may utilize the form subpoena in the Appendix to these Rules.
- c) In case of refusal to obey a subpoena issued by the Hearing Officer in a Contested Case, deposition or discovery relating thereto, to any person, the district court for the district in which the hearing or deposition or other proceeding is being conducted, or for the district where the person may be served, may upon application by the Hearing Officer issue to the person refusing to obey the subpoena an order requiring the person to show cause for the refusal or to appear before the Hearing Officer to produce documentary evidence if so ordered or there to give evidence touching the matter in question. Any failure to show cause or obey the order of court may be punished by the court as a contempt thereof.
- d) Unless the Hearing Officer orders otherwise, Parties shall not file discovery requests, discovery answers, and deposition notices with the Town Clerk.

**Section 2-12. Motions and Motion Practice.**

- a) The Contestee shall be allowed twenty (20) days from the date of service to file an Answer or other pleading with the Town Clerk.
- b) In the event a Party fails to Answer or otherwise plead within the twenty (20) day time period, and provided the foregoing rules as to service have been complied with, the Party shall be considered in default and the Hearing Officer may enter an order of default or an order affirming the Agency final decision.
- c) Deadlines for the filing of motions other than the Petition and Answer are to be filed in accordance with Wyoming Rule of Civil Procedure or at the discretion of the Hearing Officer.

**Section 2-13. Setting Hearings, Other Proceedings, and Location of Hearings.**

- a) The Hearing Officer shall set the course of proceedings, which may include, but is not limited to, scheduling informal conferences, confidentiality issues, summary disposition deadlines, motion practice, settlement conferences, and the evidentiary hearing.
- b) Prehearing conferences may be held at the discretion of the Hearing Officer. Any Party may request a prehearing conference to address issues such as discovery, motion deadlines, scheduling orders, or status conferences.
- c) At the Hearing Officer's discretion telephone or videoconference calls may be used to conduct any proceeding.
- d) The Hearing Officer shall determine the location for proceedings.

**Section 2-14. Consolidation.** A Party may seek consolidation of two or more Contested Cases by filing a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the Hearing Officer, all subsequent filings shall be in the case first filed, and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on a Hearing Officer's own motion.

**Section 2-15. Continuances, Extensions of Time, and Duty to Confer.**

- a) A motion for a continuance of any scheduled hearing must be in writing and state the reasons for the motion. A request for a continuance filed less than five (5) days before a scheduled hearing shall be granted only upon a showing of good cause.
- b) A motion for an extension of time for performing any act prescribed or allowed by these Rules or by order of the Hearing Officer must be filed and served on all parties and the hearing officer prior to the expiration of the applicable time period. A motion for extension of time shall be granted only upon a showing of good cause.
- c) A moving party shall make reasonable efforts to contact all Parties, representatives, and attorneys before filing a motion for continuance or extension of time. A motion for continuance or extension of time shall include a statement concerning efforts made to confer with the other Party(s) on the motion.
- d) Continuances relating to mediation shall be made no later than thirty (30) days prior to the date of the hearing, as referenced in Section 4(b) of this Chapter, or as determined by the Hearing Officer.

**Section 2-16. Expedited Contested Case.**

- a) Upon written request and consent of all Parties, made prior to the date set for an evidentiary hearing, any Contest may be heard as an expedited Contested Case.

- b) Expedited Contested Cases shall be decided on written arguments, evidence, and stipulations submitted by the parties. A Hearing Officer may permit oral arguments upon the request of any party.
- c) The Hearing Officer may require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined by an expedited hearing.

**Section 2-17. Summary Disposition.** Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure apply to Contested Cases.

## **EVIDENTIARY HEARING AND DECISION**

### **Chapter 3**

#### **Section 3-1. Prehearing Procedures.**

- a) Unless otherwise ordered by the Hearing Officer, each Party to a Contested Case shall file and serve on all other Parties a prehearing disclosure statement setting forth:
  - i. A statement of the specific claims, defenses, and issues which the Party asserts are before the Hearing Officer for hearing;
  - ii. A statement of the burden of proof to be assigned in the Contested Case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;
  - iii. A complete list of all witnesses who will or may testify, together with information on how that witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Town Clerk;
  - iv. A statement identifying stipulated facts. If the Parties are unable to stipulate to facts, the Parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated; and
  - v. A complete list and copies of all documents, statements, etc., which the Party will or may introduce into evidence.
- b) Parties shall file and serve prehearing disclosure statements on or before the date established by the Hearing Officer.
- c) The information provided in a prehearing disclosure statement shall be binding on each Party throughout the course of the Contested Case unless modified for good cause.
- d) Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not unfairly prejudice other Parties, and good cause is shown.
- e) The Hearing Officer may modify the requirements of a prehearing disclosure statement.
- f) Failure to file a prehearing disclosure statement may result in the Hearing Officer striking witnesses, exhibits, claims and defenses, or dismissal of the Contested Case.
- g) If a prehearing order is entered, the prehearing order shall control the course of the hearing.

#### **Section 3-2. Order of Hearing Procedure.**

- a) The following order of procedure shall be followed:
  - i. The Hearing Officer shall announce the hearing is open and call by docket number and title the Contest to be heard. The Hearing Officer shall ask if Parties are ready to proceed and will allow Parties an opportunity to dispose of any preliminary matters;

- ii. The Hearing Officer shall administer the oath/affirmation to all witnesses who will present testimony;
- iii. The opening statements will be made by the Party bearing the burden of proof first;
- iv. Evidence will be presented by the Party bearing the burden of proof first. All other parties shall be allowed to cross-examine witnesses in an orderly fashion. When the Party bearing the burden of proof rests, other parties shall then be allowed to present their evidence;
- v. Rebuttal and surrebuttal evidence shall be allowed only at the discretion of the Hearing Officer;
- vi. The Hearing Officer may examine witnesses at the close of either Party's direct or cross examination;
- vii. No testimony shall be received by the Hearing Officer unless given under oath/affirmation;
- viii. Closing statements will be made by the Party bearing the burden of proof first, then after the Party without the burden of proof presents a closing statement, the Party bearing the burden of proof will have the final response;
- ix. The Hearing Officer may limit the time for opening and closing statements;
- x. The Hearing Officer may recess the proceedings as appropriate;
- xi. After all Parties have had an opportunity to be heard, the Hearing Officer may excuse all witnesses and adjourn the hearing;
- xii. The hearing may be reopened only upon a motion by a Party to the proceeding on a showing of good cause.

### **Section 3-3. Evidence.**

- a) The Hearing Officer shall rule on the admissibility of evidence in accordance with the following:
  - i. Evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence may be excluded;
  - ii. Evidence may be offered through witness testimony or in documentary form;
  - iii. Live testimony shall be given under oath/affirmation administered by the Hearing Officer;
  - iv. Deposition testimony and other pre-filed testimony may be submitted as evidence, provided the testimony is given under oath/affirmation administered by an appropriate authority, and is subject to cross-examination by all parties;
  - v. The rules of privilege recognized by Wyoming law shall be given effect; and
  - vi. A Hearing Officer may take administrative notice of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.
- b) Each party shall have the opportunity to cross-examine witnesses. The Hearing Officer may allow cross-examination on matters not covered on direct examination.
- c) The Hearing Officer, agency staff, or other persons delegated to do so by the Hearing Officer, when applicable, may ask questions of any party or witness.

**Section 3-4. Settlements.** Parties shall promptly notify the Hearing Officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a hearing. When the Contested Case has settled, the Hearing Officer will enter an order dismissing the case.

**Section 3-5. Recommended Decision.**

- a) The Hearing Officer shall file the recommended decision and a proposed order with the Town Clerk and serve copies of both on all Parties to the Contested Case within the timelines prescribed in the applicable Land Development Regulation or, if the Contested Case is commenced pursuant to a Jackson Municipal Code provision, within forty-five (45) days of the hearing.
- b) A recommended decision shall include:
  - a. Statements of the findings of fact and conclusions of law, separately stated, with a concise and explicit statement of the underlying facts supporting the findings. When the Hearing Officer allows the Parties to submit a proposed final order, the Parties shall forward the original to the Town Clerk and serve copies of the proposed order on all other Parties.
  - b. The appropriate rule, order, relief, or denial thereof. The decision shall be based upon a consideration of the whole contested case record or any portion stipulated to by the Parties.
- c) Unless otherwise ordered, Parties shall have ten (10) days to file written exceptions to the Hearing Officer's recommended decision and proposed order.
- d) Unless otherwise ordered, Parties shall have ten (10) days to move that clerical errors or other parts of the record be corrected.
- e) Within fourteen (14) days of the issuance of the recommended decision and proposed order the Hearing Officer may correct clerical errors in recommended decisions or other parts of the record.

**Section 3-6. Final Decision.**

- a) A hearing before the Town Council or Board of Adjustment as required by and in accordance with the Town of Jackson Land Development Regulations Div. 8.8.3, 8.8.4, 8.9.3, and 8.9.4, respectively, shall be held within the timelines prescribed in the applicable Land Development Regulation Division.
- b) A final decision shall be rendered by the Town Council or Board of Adjustment as required by and in accordance with the Town of Jackson Land Development Regulations Div. 8.8.3, 8.8.4, 8.9.3, and 8.9.4, respectively, within the timelines prescribed in the applicable Land Development Regulation Division.
- c) A final decision shall be rendered by the Town Council for all Contested Cases arising under the Jackson Municipal Code ordinances within sixty (60) days of the issuance of the Recommended Decision issued pursuant to Sec. 3-5.
- d) The final decision shall be in writing, filed with the Town Clerk, and served upon all parties to the Contested Case within the timelines prescribed in the applicable Land Development Regulation Division, but if none or the case arises under the Jackson Municipal Code, within forty-five (45) days of the hearing set forth in this Section.

- e) The Town Council or Board of Adjustment, as the case may be, at any time prior to judicial review, correct clerical errors in final decisions or other parts of the record.

**Section 3-6. Record of Proceeding.** The Town Clerk shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to Wyoming Statute § 16-3-107(o) and (p).

**Section 3-7. Appeal.** Appeals from a final decision shall be taken in accordance with Wyo. Stat. Ann. § 16-3-114 and the Wyoming Rules of Appellate Procedure.

## Appendix

Form 1: Subpoena (follows on next page)

## **TOWN OF JACKSON ADMINISTRATIVE HEARING**

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Contestant, )  
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v. )  
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)  
\_\_\_\_\_  
)  
Contestee. )  

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## **SUBPOENA**

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STATE OF WYOMING )  
\_\_\_\_\_  
) SS.  
COUNTY OF TETON )

To: \_\_\_\_\_ (name)

\_\_\_\_\_ (address)

IN THE NAME OF THE TOWN OF JACKSON, you are hereby commanded to appear before the undersigned, in an Administrative Hearing in and for the Town of Jackson, County of Teton, in the \_\_\_\_\_ (address) on or about the \_\_\_\_\_ (date and time to appear), to give evidence in the

above-entitled matter on behalf of \_\_\_\_\_ (state party name) and this you are not to omit under penalty of law.

Pursuant to W.R.C.P. 45(a)(1)(D) you are hereby advised of the following:

W.R.C.P. 45(c): Protection of Persons Subject to Subpoenas:

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subdivision (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection has been made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On a timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) Fails to allow reasonable time for compliance;

(ii) Requires, in the case of a deposition or production prior to hearing or trial, a person to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person; or

(iii) Requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) Subjects a person to undue burden.

(B) If a subpoena;

(i) Requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) Requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) Requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

W.R.C.P. 45(d): Duties in Responding to Subpoena

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

W.R.C.P. 45(e): Contempt

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. Adequate causes for failure to obey include lack of personal service upon the person subpoenaed, and when a subpoena purports to require a person to attend a deposition or produce prior to hearing or trial at a place not within the limits provided by clause (ii) of subdivision.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Clerk of Municipal Court

Attorney Name:

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(Attorney Signature)