



## Notice of Hearing Examiner Decision

11/07/2017

To: Interested Parties and Parties of Record

RE:           Project Name: Kitsap Rifle and Revolver Club Appeal  
              Applicant: Kitsap Rifle and Revolver Club  
                          4900 Seabeck Hwy NW  
                          Bremerton, WA 98312  
              Application: Administrative Appeal  
              Permit Number: 17 00534

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

[http://www.kitsapgov.com/dcd/lu\\_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf](http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf)

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Applicant and Owner: Kitsap Rifle and Revolver Club, [info@gunsafety.org](mailto:info@gunsafety.org)  
Representatives:

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Kitsap County Prosecutor

Kitsap County Assessor

Kitsap County DCD

Kitsap Sun

Interested Parties:

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**KITSAP COUNTY HEARING EXAMINER  
CORRECTED<sup>1</sup> FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Administrative Appeal  
File No. 17 00534**

**November 6, 2017**

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**1. FINDINGS OF FACT**

**1.1 Summary**

**1.1.1** Kitsap Rifle & Revolver Club ("KRRC") operates a shooting range. The Kitsap County Code ("KCC") requires it to obtain an operating permit.<sup>2</sup> KRRC applied for a permit, but did not provide the Kitsap County Department of Community Development ("DCD") with information DCD requested within the 90 days the KCC provides for supplying such materials. KRRC requested an extension, DCD denied the request, and the permit application expired. Rather than submitting a new application, which it was free to do, KRRC appealed.

**1.1.2** KRRC first applied for an operating permit in March of 2016. DCD reviewed the submittal and requested additional information. Under the KCC, an applicant has 90 days to respond, or the application expires.<sup>3</sup> KRRC did not provide the requested information, and the first application expired. This first application is not before the Hearing Examiner.

**1.1.3** KRRC then submitted a second application on September 29, 2016.<sup>4</sup> DCD requested additional information on October 17, 2016. As with the first application, the application would expire unless KRRC provided the information within 90 days.<sup>5</sup>

**1.1.4** Four days before KRRC's application expired, DCD e-mailed KRRC to notify it that unless an extension request was granted, the 90-day response period would end on January 15, 2017, and its application would expire.<sup>6</sup> The next day, KRRC requested an extension, stating it needed more time to respond to DCD's questions.<sup>7</sup>

**1.1.5** DCD denied the extension request, primarily because the information DCD had requested was essentially the same as what DCD had requested on the first application,

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<sup>1</sup> At ¶ 1.5.7, DCD reference changed to KRRC. At FN 36, word "application" added after "permit."

<sup>2</sup> Ch. 10.25 KCC. The code's purpose is "to protect and safeguard participants, spectators, neighboring properties and the public, while promoting the continued availability of shooting ranges for firearm education, practice in the safe use of firearms, and recreational firearm sports." KCC 10.25.060.

<sup>3</sup> KCC 21.04.200(F)(1).

<sup>4</sup> See Ex. 11.

<sup>5</sup> See Ex. 11.

<sup>6</sup> Ex. 8.

<sup>7</sup> Ex. 9 ("The KRRC Permit Application Committee has requested further information and clarification of your review in order to ensure we address your concerns as thoroughly as possible and require the extra time.").

and KRRC "had made no discernible substantive effort to provide" the information, despite having "practically speaking ... over 300 days," to gather the requested materials.<sup>8</sup>

**1.1.6** DCD's denial was without prejudice. "KRRC is not prohibited from submitting another application for a shooting facility operating permit should it decide to do so."<sup>9</sup> DCD noted that if KRRC elected to submit another application, it was encouraged "to include the information and corrections requested for the prior two applications in its new submittal."<sup>10</sup> Rather than submit a third application, KRRC appealed.

## **1.2 Parties**

**Appellant/Property Owner and Site Location:** Kitsap Rifle & Revolver Club, 4900 Seabeck Highway NW, Bremerton, WA 98312 (Assessor No. 362501-4-002-1006).

**Decision Maker:** Kitsap County Department of Community Development.

**Intervenor:** Terry Allison.

## **1.3 Hearing Procedural Issues**

**1.3.1** A pre-hearing conference call was held on February 22, 2017, to establish a hearing schedule and procedures. The parties agreed to a tentative hearing date of April 27, 2017, and also to deadlines for submitting briefs, exhibits, and witness lists.<sup>11</sup> KRRC later requested that the hearing date be continued by at least 30 days, and DCD did not object.<sup>12</sup> The Examiner granted the continuance, with May 25, 2017 tentatively set, but allowed for the parties to confer on an alternate date, which they did, setting the hearing for June 8, 2017.<sup>13</sup>

**1.3.2** A KRRC neighbor, Terry Allison, requested intervention and submitted a motion to dismiss on March 28, 2017. The Examiner deferred ruling on the intervention request until the hearing.<sup>14</sup> The Examiner denied the motion to dismiss, but without prejudice, allowing the parties to address the issues the motion raised in accordance with the briefing schedule and at the hearing. Argument on the motion to dismiss was not further presented at or before the hearing, and the hearing proceeded as scheduled.

**1.3.3** At the hearing, DCD did not object to intervention, as long as the Intervenor participation was strictly limited to the narrow issues before the Examiner. KRRC did not submit briefing opposing intervention, although after intervention was granted, did raise objections during the hearing process. Intervenor Allison explained in his briefing that:

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<sup>8</sup> Ex. 11.

<sup>9</sup> Ex. 11.

<sup>10</sup> Ex. 11.

<sup>11</sup> Order Setting Hearing Schedule (February 23, 2017).

<sup>12</sup> KRRC request submitted April 5, 2017, with DCD's response submitted April 6, 2017.

<sup>13</sup> Order on Motion to Quash and Motion for Continuance (April 7, 2017); Order on Hearing Schedule (April 26, 2017).

<sup>14</sup> Order on Procedural Questions (April 5, 2017).

I have lived immediately adjacent to the KRRC since 1988. Any consideration of the Range Operating Permit for KRRC without KRRC meeting the projectile containment and noise mitigation requirements of KCC 10.25.090 will continue to expose my home to the noise and safety nuisance conditions determined to exist.... My home is within 200 yards of most of the unlawful shooting bays, and is directly in the line of fire from each of those bays....<sup>15</sup>

As a neighbor impacted by how the site is used and how the operating permit processes are applied here, Intervenor Allison is an "aggrieved person," so at the hearing he was granted intervention. However, given the narrow procedural issue before the Hearing Examiner, which does not affect whether an operating permit will issue, his intervention was strictly limited. Over two hearing days, Intervenor Allison's participation consisted of roughly 15 minutes of argument and witness examination.<sup>16</sup>

**1.3.4** KRRC submitted discovery requests to DCD, and DCD moved to quash.<sup>17</sup> As the hearing was just 20 days out, and the Examiner would be unavailable over the following week, the Examiner temporarily granted the motion, but provided KRRC an opportunity to respond before making a final ruling.<sup>18</sup> KRRC filed a response, pointing the Examiner to Hearing Examiner Rules of Procedure 1.4.2, 1.4.4, and 2.11.1.

**1.3.5** As the County Hearing Examiner is not a state superior court, CR 26, 33, and 34 do not apply.<sup>19</sup> The Hearing Examiner Rules of Procedure, including the provisions KRRC cited, provide for a fair hearing and the presentation of relevant evidence, and for County Staff to provide relevant documentation, but do not provide for discovery. They do not prohibit discovery; however, the Examiner has no code or rule authority to order a party to respond to interrogatories and requests for production.<sup>20</sup> Consequently, the Examiner affirmed the original order quashing discovery, noting that KRRC would be able to call and cross-examine witnesses, and that KRRC could request from the County any documents it needed and did not have.<sup>21</sup> KRRC's requested hearing continuance was granted, allowing KRRC additional time to pull needed documents.

**1.3.6** The hearing schedule required the parties to submit briefing, exhibits, and witness lists before the hearing. DCD filed Exhibits 1-13, including its Staff Report, in accordance with the hearing schedule deadlines. KRRC elected not to file a pre-hearing brief or exhibits.

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<sup>15</sup> Motion for Dismissal, Enc. 1, Certificate of Eligibility (March 28, 2017).

<sup>16</sup> Mr. Allison submitted an exhibit after briefing had closed, but as the document was considered after the record had closed and all briefing was submitted, that document has not been admitted.

<sup>17</sup> Appellant KRRC's First Interrogatories and Requests for Production of Documents to Respondent Kitsap County (April 5, 2017); Motion to Quash Discovery and Response to Request for Extension (April 6, 2017). KRRC's interrogatories included an e-mail extension request.

<sup>18</sup> Order on Motion to Quash and Motion for Continuance (April 7, 2017).

<sup>19</sup> *Delacey v. Clover Park School Dist.*, 117 Wn. App. 291, 296, 69 P.3d 877 (2003).

<sup>20</sup> In the APA context, discovery is only allowed if agency rule allows for it. *See* RCW 34.05.446(2).

<sup>21</sup> Order on Hearing Schedule (April 26, 2017).

**1.3.7** KRRC did submit a witness list with 20 witnesses, along with "John Does and Jane Roes, I-XX, inclusive."<sup>22</sup> DCD objected to a number of individuals on the witness list, which included the County Prosecutor and two Deputy Prosecuting Attorneys; a retired County Judge; three County Commissioners; DCD's current Director, who had no personal involvement with the application; and a former DCD Director who had retired before the KRRC application was submitted. DCD emphasized that while parties may call witnesses and present witnesses, documents and testimony must still be relevant to the appeal,<sup>23</sup> attorneys cannot testify on privileged communications and judges should not testify on litigation they preside over. However, DCD stated it "will make available every staff member of DCD relevant to KRRC's appeal including those listed by KRRC."<sup>24</sup>

**1.3.8** As the witness list was only preliminary, and it was not clear that KRRC would be calling everyone on this initial list, the Examiner held on ruling on the objection until the hearing. At the hearing, KRRC did not call the majority of the individuals listed.

#### **1.4 Hearing.**

**1.4.1** An open record public hearing was held on June 8, 2017, and then continued to August 24, 2017. On day one, after procedural issues were addressed, including Mr. Allison's intervention motion, opening arguments were heard, and then KRRC devoted the remainder of the hearing time to witness examination.

**1.4.2** KRRC first completed the direct examination of its witness, Ms. Butterson, Chair of the KRRC Permit Application Committee. KRRC then called the DCD official who prepared the decision under appeal, David Lynam, DCD's Acting Assistant Director.

**1.4.3** During its questioning of Mr. Lynam, KRRC began relying on documents which had not been submitted in accordance with the pre-hearing deadlines. In response to Examiner questioning on the extent of documents KRRC planned to introduce, KRRC indicated it may have a large number, but it was unable to identify the documents at this juncture. As the Examiner's earlier order had required that the proposed exhibits be provided before the hearing, DCD suggested continuing the hearing. KRRC did not object, and the hearing was continued to a date to be determined by the parties in consultation with the Hearing Examiner Clerk.

**1.4.4** Once the parties agreed on a hearing continuance date, the Examiner established new disclosure deadlines.<sup>25</sup> In that order, the Examiner also established time limitations for the remainder of the hearing. The order was based upon the parties' input on how long they believed they would require. KRRC was provided eight hours, DCD was provided 15 minutes, and Intervenor Allison was provided 15 minutes.<sup>26</sup> As this time frame would cover witness examination, cross-examination, and closing argument, the Examiner noted DCD and the Intervenor could request additional time if needed.

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<sup>22</sup> KRRC Briefing/Witness List (May 25, 2017).

<sup>23</sup> Hearing Examiner Rule 1.6.8.b.

<sup>24</sup> DCD's Objection to KRRC's Witness List (June 1, 2017).

<sup>25</sup> Order on Hearing Continuance (July 10, 2017).

<sup>26</sup> Order on Hearing Continuance (July 10, 2017).

1.4.5 Before the hearing, KRRC submitted its Hearing Exhibits A1-A22; Intervenor Allison also submitted one exhibit, I-1; as did the County, C-1. All exhibits were admitted. The hearing reconvened on August 24, 2017.

1.4.6 On hearing day two, KRRC continued with its examination of Mr. Lynam. KRRC then called two additional witnesses, Mr. Rowe (DCD Deputy Director) and Ms. Garbo (DCD Director). DCD stated neither was then available. As KRRC had extensively questioned the DCD official most familiar with the decision (Mr. Lynam), the Examiner asked KRRC what it intended to ask the other two witnesses about. KRRC explained that it wanted a DCD witness to testify about an operating permit application submitted by a different applicant.

EXAMINER What was the scope of what you wanted to ask Mr. Rowe about?

KRRC ... We needed to get someone on the stand so to speak that had detailed information about what happened during the processing of the Poulsbo application, so that the Hearing Examiner can compare and contrast what happened in the processing of that application with ours.

...

Ok the issue, part of our issues are that there's been unequal treatment and the actions have been arbitrary and capricious. Laying out the differences between how Poulsbo was treated in processing their application and how we have been, even in a very, way that can be documented, and we have a great deal of documentation to deal with that, would seem to go to that issue of being arbitrary and capricious.

EXAMINER And, that would be the primary reason for calling Mr. Rowe?

KRRC Yes. ...

DCD Again, Madam Examiner, we believe it's inappropriate and beyond the scope of this decision today to mention in any capacity the difference between the review of the Poulsbo application. Poulsbo did not apply for an extension of a permit. That is what we are here to discuss today.

EXAMINER All right. Mr. Rowe is not available and I do agree that the Poulsbo matter is a separate issue and is not relevant to the narrow scope of this appeal. Are there any other witnesses that the appellants wish to call today?

KRRC We'd like to call Mrs. Garbo.

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EXAMINER ... [W]hat were you going to ask Ms. Garbo about?

KRRC Ms. Garbo would have been called to be an alternative if Mr. Rowe was not present on substantially the same issues.

1.4.7 If KRRC wished to question Ms. Garbo or Mr. Rowe on facts relevant to issues the Examiner has jurisdiction over, then the hearing could have been continued to allow those individuals to be called. KRRC did not wish to call these DCD witnesses to provide testimony on the extension denial, but on how DCD had treated another permit applicant to address KRRC's equal protection claims.

1.4.8 This subject is not relevant to the appeal. As the Examiner has no jurisdiction over constitutional issues, and KRRC failed to show DCD's approval of the Poulsbo operating permit related to the narrow issues raised by KRRC's permit extension appeal, the Examiner determined that continuing the hearing a third time would not be necessary.

1.4.9 KRRC then continued with its examination of Mr. Lynam, and concluded its witness examination with KRRC Executive Officer Marcus Carter. During the examination, KRRC submitted a new exhibit, marked as A-23, and received by KRRC on August 9, 2017, but not provided to the parties before the hearing. The document appears to be a computer generated card noting the application as being in "returned status due to missing information." The exhibit was objected to as KRRC had failed to provide the card to the parties before the hearing, although KRRC received it over two weeks earlier. The Examiner reserved ruling on admission. The document is now admitted, although as the post card appears to be computer generated and does not alter DCD's extension denial, it has limited relevance.

1.4.10 Once witness examination concluded, after closing arguments were presented, the Examiner asked the parties if they wished to provide post-hearing briefing. KRRC stated it did, while DCD indicated it did not require same. A post-hearing briefing schedule was agreed upon and memorialized by order.<sup>27</sup>

1.4.11 On the due date, KRRC submitted a draft or partial brief, and due to ongoing litigation deadlines requested an additional week to submit its final version. The Examiner granted the request.<sup>28</sup> KRRC then submitted a final brief, and DCD submitted a short response, as did Intervenor Allison. As the Examiner did not receive a reply from KRRC, the Hearing Examiner Clerk notified the parties that one had not been received. In response, KRRC's reply was received late, on October 12, 2017. DCD objected to the late filing,<sup>29</sup> but the Examiner has reviewed and accepted KRRC's reply. Intervenor Allison then submitted a document in response to KRRC's reply, but as the record had closed and there was no motion from any of the parties to re-open it, the Examiner has not admitted the document.<sup>30</sup> With all documents received on October 16, 2017, the Examiner was finally able to render a decision.

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<sup>27</sup> Order on Post-Hearing Briefing (August 28, 2017).

<sup>28</sup> Order Granting Appellant's Motion for Extension of Time and Establishing Revised Briefing Schedule (September 11, 2017).

<sup>29</sup> DCD E-Mail Objection (October 13, 2017). Throughout the proceeding, KRRC has requested multiple extensions, and has not shown particular concern about expediting its appeal.

<sup>30</sup> E-Mail from Intervenor Allison (sent October 14, 2017, but deemed received Monday, October 16).

## 1.5 Extension Request - Details

**1.5.1** Kitsap County requires shooting facilities to obtain an operating permit. When the requirement was adopted in 2014, existing facilities were given 90 days from the ordinance's effective date to apply for a permit.<sup>31</sup> The County has reviewed a total of three applications for two shooting ranges (KRRC's and the Poulsbo facility). Poulsbo's operating permit was granted. A DCD employee who is no longer with Kitsap County was primarily responsible for processing the Poulsbo application.

**1.5.2** KRRC submitted its first application on March 16, 2016. KRRC applied again for a shooting facility operating permit by submitting a second application, which was substantially the same as the first.

**1.5.3** Mr. Lynam was primarily responsible for reviewing both of KRRC's applications. He is familiar with shooting ranges, has participated in shooting events, and has helped set up ranges. He has used the KRRC facility, but this was some time ago (1995). At some point during operating permit review, before a decision is issued, a site visit would occur. However, the KCC does not require DCD to visit the site before it issues a decision on a permit extension.

**1.5.4** KRRC's second application included a minor modification and the addition of a modified site plan. DCD completed the initial review of the application and provided a letter to KRRC informing it of the 90-day limitation prescribed by code for response to the review summary and information request.

Please find enclosed the Review Summary and Information Request.... The initial review is completed. As indicated in the review the club has 90 days beginning today, October 17, 2016 to supply the required information before the application expires. If you have any directions [sic] don't hesitate to contact me directly.<sup>32</sup>

**1.5.5** DCD's letter to KRRC requesting additional information primarily related to site layout and safety, and requested information necessary to address requirements in Ch. 10.25 KCC.<sup>33</sup> DCD requested information and clarification on the physical containment of projectiles. Information on firing lines was requested, as all buildings at the facility are potentially within risk of gunfire. Accurate identification of berm heights and backstops consistent with the site plan was requested. Also, a number of berm dimensions were inconsistent with the range datasheets. DCD directed KRRC to modify the datasheets or provide a new site plan to resolve the inconsistencies. DCD also explained that the site plan must identify critical areas, such as the wetlands on site,<sup>34</sup> and bullets must be contained so they do not enter wetland areas.<sup>35</sup>

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<sup>31</sup> KCC 10.25.090(2).

<sup>32</sup> Ex. 6.

<sup>33</sup> Ex. 6.

<sup>34</sup> KCC 10.25.090(5)(b).

<sup>35</sup> KCC 10.25.090(4)(j).

**1.5.6** DCD's requests were based on Ch. 10.25 requirements. DCD did not receive the answers necessary to complete its processing of the requested permit within the 90 day time frame. And, in its one page permit review extension request, KRRC did not contend otherwise. KRRC simply stated it required additional time to provide the requested information. KRRC did not explain what remained for it to complete its submission to DCD, and how much time it required.

**1.5.7** DCD denied the request in a detailed decision explaining its rationale. This included the fact that KRRC had known for some time what DCD required to complete processing its application (over 300 days), and KRRC had made very little effort to remedy the situation. These facts led DCD to conclude it was unlikely to promptly receive the requested information and materials.<sup>36</sup>

## **2. CONCLUSIONS OF LAW**

**2.1** The County Code provides for the Hearing Examiner to hear appeals of certain administrative decisions "in a de novo open-record hearing in accordance with the hearing examiner rules of procedure."<sup>37</sup> KRRC asserts that DCD should have granted the permit review extension request. To prevail, KRRC has the burden of proof to demonstrate DCD erred in denying the request.

**2.2** Throughout the hearing and in briefing, KRRC consistently referred to DCD's denial as being "arbitrary and capricious." This is a higher review standard than preponderance of the evidence or clear error. KRRC's arbitrary and capricious standard is applied, given KRRC has used it throughout the proceeding. However, the Examiner has also utilized a preponderance of the evidence standard in deciding the appeal. Under either review standard, KRRC has not met its burden of proof.

**2.3** When DCD requires additional information to process an application, the applicant must promptly provide the requested materials.

[The applicant] shall have ninety calendar days from the date of the written notification to submit all required corrections or information to the department. If the applicant does not submit all required corrections or information within the ninety-day period, the project permit application shall automatically expire.<sup>38</sup>

**2.4** If the applicant cannot comply with this time frame, applicants may request a 90-day extension.

Prior to the expiration date, the applicant may request, in writing, an extension in order to provide the required information. The review authority may grant up to two ninety-day extensions if it is determined that the required information

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<sup>36</sup> After the extension denial, on January 31, 2017, DCD received additional documents from KRRC, but as these documents arrived after the permit application had expired, DCD has not reviewed these documents in depth.

<sup>37</sup> KCC 21.04.290(C).

<sup>38</sup> KCC 21.04.200(F)(1).

warrants additional time. Financial hardship shall not be considered for extensions of deadlines.<sup>39</sup>

**2.5** The Appellant timely made such a request, three days before the permit application expired on January 15, 2017.

**2.6** The decision to grant an extension is discretionary. DCD "may grant" up to two 90-day extensions if DCD determines additional time is "warranted."<sup>40</sup> There is no code requirement to provide an applicant more than 90 days to supply the required information. KRRC did not contend otherwise.

**2.7** KRRC's first permit application expired after KRRC failed to respond in time to DCD's request for additional information and corrections. The second application was substantially the same as the first. After its initial review, DCD asked for essentially the same corrections and information as it had on the first application, but received no response or contact from KRRC until just days before the permit application was scheduled to expire. The extension request KRRC submitted did not identify why the extension was warranted, other than more time was needed to prepare detailed responses. When the material would be forthcoming and how close KRRC was to submitting the information was not detailed. DCD's denial noted this, and explained its rationale and the code basis for the denial in detail.

**2.8** DCD notified KRRC of both the 90 day deadline and the KCC provision providing for extensions. There is no evidence in the record that DCD made any promise or even provided any assurance to KRRC that an extension would be granted. Rather, DCD simply provided notice to KRRC of the relevant code provisions. KRRC has not shown even under a preponderance of the evidence standard that DCD promised KRRC it would grant an extension.

**2.9** DCD reasonably concluded KRRC had not responded in a timely manner and had not demonstrated a good faith effort to submit the material necessary for DCD to complete application processing. The corrections DCD required and additional information DCD requested were essentially the same for both the March and September applications, so KRRC effectively had over 300 days to make the necessary changes to its application and to supply the required additional information. Given this passage of time, coupled with the lack of information from KRRC as to how and when it planned to submit the necessary materials to complete application processing, it was reasonable for DCD to conclude that granting an extension would not result in a timely response to its request for additional materials, so that DCD could issue a final determination on the permit application. While KRRC takes a different view, KRRC has the burden of proof, and under a preponderance of the evidence standard has not met that standard. Certainly, DCD's decision was not arbitrary and capricious.

**2.10** With respect to the procedural errors KRRC has identified, on hearing day two, KRRC attempted to call a DCD witness who could testify about an operating permit approval issued to a different applicant. Neither of the two witnesses KRRC identified was available on day two.

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<sup>39</sup> KCC 21.04.200(F)(2).

<sup>40</sup> KCC 21.04.200(F)(2).

**2.11** The Hearing Examiner does lack subpoena power, but if there is a key witness or documents which an appellant requires to prosecute an appeal, and same is not available on a hearing day, the Examiner can continue the hearing. In this case, KRRC wanted to call a DCD witness to testify not on KRRC's application, but on a separate project.

**2.12** KRRC's purpose was to present facts that would demonstrate unequal treatment under the state and federal constitutions, as set forth in its appeal statement and in addressing Examiner questions on the purpose of the testimony. The Examiner has no jurisdiction over those issues.<sup>41</sup> All that is before the Examiner is whether DCD followed KCC requirements in denying KRRC's extension request. Either DCD had code authority to deny the extension request and properly exercised that authority, or it did not. DCD's approval of an operating permit on a different project is not relevant to this narrow issue. Even if DCD approved ten operating permits for other shooting ranges, but denied KRRC's extension request, the question would still be whether DCD reasonably exercised its discretion under the KCC in issuing the extension denial. In general, under the Examiner's Rules, "[t]he right of persons to cross-examine ... shall be at the discretion of the Hearing Examiner."<sup>42</sup> Given the DCD witness was not being called to address the decision under appeal, but matters the Examiner lacks jurisdiction over, the Examiner determined a continuance would not assist the Examiner in deciding the appeal.

**2.13** KRRC asserted in briefing that the only difference between the two applications is that Poulsbo complied with Ch. 10.25 KCC.<sup>43</sup> The statement infers that KRRC delayed in submitting the requested information because it did not believe it complied with KCC requirements, not because it was in fact making a good faith effort to compile the necessary information. However, regardless of whether this inference is the appropriate one to make, no DCD determination has been made on whether or not KRRC complies with the KCC, as DCD lacked the information necessary to make that decision. Calling another DCD official to address another application would simply have taken up additional time and resources without providing information useful to the Examiner.

**2.14** KRRC also requested discovery from DCD. The Examiner previously concluded that although the Hearing Examiner Rules do not prohibit pre-hearing discovery, they also do not afford the Examiner the authority to order the parties to engage in same. As KRRC was able to request any relevant documents DCD has which it does not, and was able to examine the DCD official responsible for processing both its applications, KRRC had sufficient information available to make its case before the Examiner. KRRC complained in general about DCD's response to its document requests, but failed to identify any particular body of information or documents it needed to present its case that it could not obtain.

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<sup>41</sup> See e.g., *In re Jurisdiction of Exam'r*, 135 Wn. App. 312, 144 P.3d 345 (2006) (as a code created entity, hearing examiner jurisdiction is limited by that code). Even if it could do so, the KCC does not provide the Hearing Examiner with jurisdiction over constitutional issues.

<sup>42</sup> Hearing Examiner Rule 1.4.3.

<sup>43</sup> A-27 (KRRC's Further Argument), p. 4 ("The only difference that KRRC can see is that Poulsbo Sportsman's Club has been compliant with DCD with respect to the KCC 10.25.").

**2.15** This should be a relatively simple appeal, with the key documents being the extension request, the denial, DCD's documented review of the application, and the application materials. KRRC has these documents, and the Examiner is not aware of any body of information or documentation KRRC lacked access to which is relevant to this appeal.

**2.16** The Hearing Examiner Rules do not specifically address intervention, although they do define an "aggrieved person" as a person other than the applicant or property owner, "who would be aggrieved or adversely affected by a reversal or modification of the land use decision."<sup>44</sup> Mr. Allison submitted detailed briefing on these criteria, stating that as an "aggrieved person" he has standing as an "appellant" and "party," as the Hearing Examiner Rules define those terms.<sup>45</sup> No other party submitted briefing or even oral argument contesting the legal standard for defining an "aggrieved party" and how the Examiner Rules provide an "aggrieved party" a basis for intervention to contest Intervenor Allison's arguments. The Rules do not prohibit intervention, and it occurs routinely in other administrative review processes, thus the Examiner concluded allowing for a limited intervention was consistent with the Rules. Consistent with the ruling and with Examiner rulings during the proceeding, Intervenor Allison strictly limited his argument, witness examination, and briefing, so as to avoid delaying the hearing processes or complicating the issues.

**2.17** The Examiner concludes that DCD did not err in denying the permit extension request. The KCC provides DCD with discretion to determine whether an extension is warranted. The KCC did not require DCD to visit the site before making a decision on the permit extension request. In sum, DCD appropriately exercised its discretion and its decision, whether one agrees with it or not, was based on sufficient evidence to support it. Whether viewed through a preponderance of the evidence or arbitrary and capricious lens, KRRC has not met its burden of proof to show otherwise.

**2.18** The Examiner also concludes that it would be useful to clarify, for the record, that DCD did not, in denying the extension request, make a substantive decision on the operating permit. DCD's decision was issued without prejudice to KRRC, meaning that KRRC is free to resubmit its application.

## DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, denies KRRC's appeal of DCD's denial of KRRC's request for an extension of the expiration date for permit application 16 04424 – Kitsap Rifle and Revolver Club Shooting Facility Operating Permit.

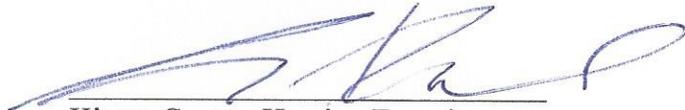
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<sup>44</sup> Hearing Examiner Rule 2.1.1.

<sup>45</sup> Motion for Dismissal, Enc. 1, Certificate of Eligibility (March 28, 2017).

The Examiner provides the following clarification. As DCD confirmed at the hearing, DCD's extension denial does not mean the operating permit itself was denied. While DCD denied the extension request, it has not made a substantive decision on the underlying permit. Should it wish to do so, KRRC is free to reapply for an operating permit.

THIS DECISION is entered this 6th day of November, 2017.

A handwritten signature in blue ink, appearing to read 'S. Drummond', is written over a horizontal line.

Kitsap County Hearing Examiner  
Susan Elizabeth Drummond