



Office of the Hearing Examiner

**A GUIDE TO HEARINGS BEFORE THE EXAMINER**

*Disclaimer:* This guide summarizes the Hearing Examiner process. It is only intended as an informal, helpful guide; it does not have strict legal effect. The hearings are legal processes governed by constitutional principles, state law, Chapter 2.02 of the Snohomish County Code, other codes, ordinances and rules pertinent to the matter at issue, and the Hearing Examiner Rules of Procedure. Copies of relevant county codes and ordinances are available from the Clerk of the County Council or the responsible county department. If you need legal advice, please consult with your attorney.

**HEARING PURPOSE**

The Hearing Examiner is appointed by the County Council and conducts hearings in order to receive evidence and testimony, and hear argument regarding the laws, ordinances, policies and administrative regulations that apply to the application, alleged violation or other matter being reviewed. The Examiner then enters Findings of Fact, Conclusions of Law and renders a Decision.

**TYPES OF HEARINGS**

The Examiner holds two types of public hearings: hearings on land use applications and hearings on administrative appeals. In some cases, there are combined proceedings involving both an application and one or more appeals (e.g., a subdivision application combined with a SEPA appeal).

***Hearings on land use applications***

In an application hearing, the Examiner considers land use or development proposals and issues either a final decision or a recommendation to the County Council. These hearings provide the general public an opportunity to provide testimony and comment, and to obtain responses to questions. They include applications for:

- Rezoning of specific parcels of real property
- Preliminary plat approval (subdivisions), rural cluster subdivisions, plat alterations, and preliminary plat major revisions
- Conditional use permits
- Variances
- Planned residential developments

Appeals of land use decisions made by the Hearing Examiner go either to the County Council or to Superior Court pursuant to Chapter 36.70C RCW (the Land Use Petition Act or "LUPA"). Strict deadlines apply.

***Administrative Appeal Hearings***

In some circumstances, when a decision is made or action taken by a county department, the County Code authorizes an appeal to the Hearing Examiner. If a notice of appeal and appeal statement are properly filed with the county department that made the decision or took the action that is disputed, the Examiner will hold an administrative appeal hearing. Typical administrative appeals address code enforcement citations, notices of violation, appeals of solid waste violations, appeals of code interpretations and SEPA determinations.

Administrative appeal hearings enable the parties directly affected (including the responsible county department) to obtain timely and fair dispute resolution. The opportunity for the general public to comment on such disputes is very limited; usually, only witnesses called by the parties may testify. The Examiner's administrative appeal decisions can be appealed to Superior Court or, in some cases, to an identified state agency or board.

## INITIATING A HEARING

### *Land Use Application Hearings*

For public hearings on land use applications, the hearing process begins when the reviewing department notifies the Examiner that the application is ready to be considered and issues a notice of hearing. The department will schedule a hearing date and notice will be provided as required in Title 30.7 SCC.

### *Appeal Hearings*

Administrative appeals to the Examiner must be filed with the department that made the disputed decision. (SCC 2.02.125) Strict filing and information requirements apply:

1. **Notice of appeal.** The notice of appeal must be filed, within the time allowed, with the county department that made the decision or took the action being appealed. In most instances, the deadline for receipt by that department of the notice and fee is fourteen (14) calendar days from the date of issuance of the county decision. Check the decision you are appealing and the county code to ensure you understand the deadline in your case.
2. **Appeal statement.** The appeal statement is often consolidated with the notice of appeal, but may be filed separately. If filed separately, it usually must be received by the responsible county department within twenty-one (21) calendar days of the decision or action appealed. Again, confirm the deadline. The appeal statement must contain specific information, as outlined below, describing the nature and scope of the appeal. If the following information is not contained in a timely appeal statement, the appeal may be subject to dismissal without a full hearing.
  - A. **Identify the decision being appealed.** Provide the name of the county department or division that issued the decision, the department file number, the date of the decision, and if applicable, the applicant's name and the property location. In many cases, a copy of the decision that is being appealed must be attached to the appeal statement.
  - B. **Identify the appellant's interest.** Give the name of the appellant (including address and telephone number, fax number and e-mail address, if available) and describe the way in which the decision being appealed harms or adversely affects the appellant or the appellant's property.
  - C. **State the basis for the appeal.** Describe the specific reasons why the decision is thought to be wrong and/or that there were procedural errors, why it should be reversed or modified, and the harm caused to the appellant. Typical reasons include the impact it will cause, the laws or policies it conflicts with or violates, and significant issues it fails to address. *Please note:* The County Code section that applies to the decision may specify the grounds for appeal. If so, you must allege one of those grounds for appeal or your case may be dismissed.
  - D. **State the relief requested.** Describe the outcome that the appellant seeks, for example: a reversal of the decision; remand to a department for reconsideration; or a change in the conditions of a permit approval.

## **PROHIBITED *EX PARTE* CONTACTS; APPEARANCE OF FAIRNESS**

***Ex parte contact prohibited.*** All Examiner hearings are quasi-judicial. All persons are prohibited from contacting the Examiner outside the public hearing for the purpose of influencing a decision. The Examiner's administrative staff screens all correspondence and telephone calls to prevent prohibited contacts.

***Conflicts of Interest.*** Examiners and Council members may not participate in quasi-judicial proceedings in which they have a financial interest, have pre-judged the issues, or may appear to be biased as a result of a relationship to a party or property involved. Any person who has reasonable grounds to believe that an Examiner or a member of the Council might be influenced by any factor outside the public record of the hearing should promptly bring that concern to the attention of the pertinent official.

## **NOTICE OF HEARINGS**

Notice of the initial hearing on a land development application is given by advertising in the official newspaper of the County and by mailing to nearby property owners whose properties are within a certain radius of the parcel to be developed and to parties of record. Other types of notice requirements apply to other types of cases. See Chapter 30.70 SCC.

When you ask to become a "Party of Record" or testify at the hearing and provide your name and mailing address to the Hearing Examiner's office, you will receive any additional notices or reports that the Hearing Examiner may issue.

## **PRE-HEARING CONFERENCES AND DISCOVERY**

The Examiner may schedule a pre-hearing conference for complex matters or expected lengthy proceedings. Pre-hearing conferences seek to clarify issues and address procedural matters in advance, leading to a more efficient hearing. Pre-hearing conferences normally need not be requested when the issues are clear and involve only a few parties and witnesses. To make hearings more efficient and to reduce the likelihood of parties being surprised by new issues or information at the hearing, the Examiner's procedural rules require exchange of certain information ("discovery") by the parties before the hearing.

NOTE: In March, 2012, the County Council authorized the use of subpoenas in certain appeal hearings before the Examiner. See Hearing Examiner Rule of Procedure 3.2.

## **STAFF REPORTS AND FILES**

The responsible department submits a preliminary report to the Examiner one week before the hearing. Interested persons may request a copy in advance of the hearing from the responsible department. The report reviews the known facts, provides the department's analysis of applicable laws and ordinances, and contains a recommendation to the Examiner.

The responsible department maintains a separate file for every application or appeal. These files are public records. Interested persons may arrange with the responsible department to review the file before the hearing.

## **AGENDAS AND HEARING ROOMS**

On the day of the hearing, the Examiner's office posts an agenda outside the door of the hearing room and in the kiosk outside of the Hearing Examiner's Office, listing all items to be heard. If you are uncertain as to where, when or whether a matter will be heard, call the Hearing Examiner's office at (425) 388-3538. Most matters are heard in Public Meeting Room No. 2, on the first floor of the Robert J. Drewel Building (Admin-East Bldg) at 3000 Rockefeller Avenue, in Everett, Washington. If you need accommodation of any disability in order to participate in the hearing, please contact the Hearing Examiner's Office in advance of the hearing.

## ORDER OF PROCEEDINGS

The order of proceedings for a hearing is subject to the terms stated in a pre-hearing order, if one has been issued. Modifications in the usual sequence may also be made by the Examiner. In most hearings, the order of proceedings is:

### ***Land Use Permit Application Matters:***

1. PDS department staff introduction of the application, the department recommendation and any additional exhibits that were not pre-filed into the record with the Examiner;
2. PDS/other department staff summary of issues raised by the parties or members of the public;
3. Testimony by applicant describing the application and project design in detail, addressing any issues raised by the parties or members of the public;
4. Public testimony and comment;
5. Rebuttal by Staff and responses to questions;
6. Rebuttal by the applicant and other participants (following the same order as initial statements);
7. Final arguments, if requested by the Hearing Examiner.

### ***Administrative Appeal Matters***

1. Department staff introduction of the decision being appealed and the basis for that decision, introduction of evidence in support of decision (evidence may be through testimony of witnesses, documents, *etc.*). Cross-examination of any witnesses presented will be allowed;
2. Appellant introduction of evidence in support of the grounds for the appeal (evidence may be through testimony of witnesses, documents, *etc.*). Cross-examination of any witnesses presented will be allowed. The appellant bears the burden of proof by a preponderance of the evidence;
3. Public comment;
4. Rebuttal by the department staff;
5. Rebuttal by the appellant;
6. Final arguments, if requested by the Hearing Examiner.

## HOW TO PARTICIPATE

To assure a complete hearing record, one of the microphones provided by the Examiner's Office must be used for all statements or questions. When you first speak, spell your last name and give your mailing address. State your name each time you speak. All testimony is required to be under oath or affirmation.

Testimony and argument are most useful if they provide factual information or argument that contends how a specific statute, rule of law, ordinance or county policy applies to the proposal or situation under review.

State directly and succinctly the relevant information or argument you wish to present. Avoid repetition. Question and answer format is permitted but is not necessary. Persons testifying may use notes, written statements and visual aids. If you simply agree with testimony previously presented, a statement to that effect is sufficient. However, you may elaborate or expand on others' testimony if you desire.

### ***\*\*Tips for Effective Presentations:***

Presenting Testimony from a Witness:

#### Direct examination

- Ask the witness to state and spell their name and give their address for the record.
- Ask the witness if they have personal knowledge about the matter before the Hearing Examiner and if so, how?
- If you have brought an "expert" witness (such as an engineer or consultant), ask them to describe their education, training and experience in the matter you are having them speak to during their testimony, so that the Examiner may consider them as an expert.

- Ask open-ended questions that don't lead the witness to a specific answer or conclusion. (Example: Are you familiar with the department's decision in this case? How did you come to know about this? But not: *"You know that the department erred in making the decision in this case, don't you?"*)
- When you ask a witness a question, be quiet and let them answer.
- If a witness asks you to clarify or re-state the question, don't move on to a new question, just clarify it and wait for the answer.
- When you are presenting a witness, you may not add your own testimony or comment at that time.
- Listen carefully to the answers given by your witness. If they raise new questions, follow up and ask them.
- Don't call the witness or any party (or the Hearing Examiner) by their first name; use formal names.
- Never use sarcasm or an inappropriate tone in questioning any witness (yours or the other party's witness).
- When you are finished, tell the Examiner you have "no further questions." This will signal the Examiner that it is time to offer the other party a chance to cross-examine the witness.

### Cross-Examination

- During cross-examination of your witness, listen carefully and take notes. If a question is inappropriate, object. (State: "Objection! And then quickly state the reason). The Hearing Examiner will stop the proceeding and address the objection. Once a ruling is made, the witness may continue.
- If your witness answers a question under cross-examination that you feel needs more explanation, you may ask for "re-direct testimony" to go over that question and answer again. Note: During re-direct testimony, you may only ask about questions raised during cross-examination. All other questions are "outside the scope of cross-examination" and the other party may object if you ask these types of questions.
- When it is your turn to cross-examine a witness, you may lead them with your questions (which is something you can't do on direct questioning). (e.g. You know that the decision made by the department was incorrect, don't you?!) ("Leading questions" suggest a particular answer).
- If the witness refuses to answer your question, or attempts to answer a different question that you did not ask, bring them back to your question and ask them again to answer it. If they refuse, ask the Hearing Examiner to direct them to answer the question. You may request a simple "yes" or "no" answer.
- Be respectful and polite when cross-examining a witness, even if you are asking tough questions. When you are finished, tell the Examiner you have "no further questions."

### Exhibits

Exhibits introduced into evidence become part of the permanent county record. They must be readily storable, preferably within standard legal size filing folders. Large, easily seen exhibits may be used for illustrative purposes at the hearing but reduced copies will be required for the permanent hearing record.

Please note: You must arrange for audiovisual or other presentation aids before the hearing! Make requests for audiovisual equipment to the responsible department and/or the Clerk of the Hearing Examiner several days before the hearing. (The equipment you desire may or may not be available from the County; you may need to arrange for it privately.) Provide duplicate copies of photographs, tapes, CDs, DVDs, *etc.*, to primary parties (applicant, appellant, county department) and to the Examiner. Any PowerPoint© or similar presentation must be accompanied by printed paper copies of each panel/image presented, one for each primary party, the Examiner and the case record.

**\*\*Tips for Effective Presentations:**

**Presenting Documents or other Physical Evidence During a Hearing**

- You **must** make copies for all other parties **prior to the hearing.**
- Please **do not** pre-mark the Exhibits you plan to introduce. The Clerk of the Hearing Examiner will mark them during the hearing.
- Have your exhibits arranged in the order that you intend to use them. Have an exact duplicate set ready to hand the other parties and keep a set for yourself. Place them on the table in front of you so that you aren't wasting time during the hearing searching for them and shuffling a lot of papers.
- When you are ready to introduce them, stand and ask the Hearing Examiner: "May I approach the bench to offer documents into evidence?" When the Examiner agrees, hand copies of the exhibit(s) to the other party. Approach and hand the items to the Clerk for marking. If there is no objection, the Examiner will state that the exhibit has been added into evidence in the record and will state the exhibit number. Mark each of your copies of the exhibits as stated by the Clerk or Examiner.
- Once they are marked, you need to provide either personal testimony or the testimony of a witness to *authenticate* the document. This means telling the Hearing Examiner what the document (or other physical evidence) is, when it was created, copied or made, and if it is not an original, where it can be found. For example, state: "This is a set of photographs taken by me (or Joe Smith) that show the grading activity that was performed on March 7, 2007. The date stamp is shown on the corner of the photograph. This document fairly represents the property in question on that date." For photographs, if you were not the photographer, be prepared to answer questions about how you know this is the same property.

Request the Examiner's attention to ask questions that arise during the hearing concerning procedures. If you cannot hear or see adequately, feel free to move about the hearing room. Be as comfortable in participating as you can without disturbing the proceeding.

**As a courtesy to other participants, refrain from side conversations during the hearing and turn off all cell phones, pagers, etc.**

**CONTINUANCES**

A hearing usually proceeds during regular business hours on succeeding days until concluded. Sometimes, however, a hearing may be continued by the Examiner to a later date or "on call," meaning indefinitely, often with a status report(s) required at a specific time(s) in the future. On other occasions, a hearing may be continued for "administrative purposes," which allows the future submission of written evidence or argument specified by the Examiner. If you need to seek a continuance, you must do so in writing by submitting your request to the Clerk of the Hearing Examiner and by providing copies to all other principle parties in advance of the hearing. Once a hearing is scheduled, the Hearing Examiner will only grant continuances based on a showing of good cause.

**EXAMINER'S DECISION**

The Hearing Examiner's decision includes Findings of Fact based upon evidence in the hearing record and Conclusions drawn from those Findings. The Examiner customarily mails the final decision within fifteen (15) days after the close of the hearing to the parties and known interested persons. Instructions for filing a Petition for Reconsideration and/or appeal of the decision will be provided in the decision, but may also be found in the Snohomish County Code.