



INFORMATION BULLETIN No. 40

City of Blaine

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HEARING EXAMINER GUIDE

WHAT IS THIS GUIDE?

This guide summarizes the hearing examiner process for applications and appeals. It is meant to help laypersons and carries no legal weight. The examiner has specific rules of procedures for the conduct of hearings that are available for review on the Hearing Examiner webpage (<https://www.ci.blaine.wa.us/1074/Hearing-Examiner>).

WHO IS THE EXAMINER?

The examiner is appointed by the City Council to hold hearings and issue decisions and recommendations. The examiner is a neutral decision-maker, like a judge. The examiner and staff work for the council, not for the City Manager or for any department.

ARE THERE DIFFERENT TYPES OF HEARINGS?

Examiners hold two broad hearing types: applications and appeals. For applications, such as subdivisions or variances, a hearing is held in each case, whether or not anyone files an objection. In contrast, for some agency actions, like enforcement or permits, the examiner only gets involved if a person is unhappy with the agency's action and files an appeal. Occasionally hearing involves both an application and an appeal.

WHAT CAN YOU EXPECT BEFORE A HEARING?

At least 10 days before any hearing, a notice of hearing will be provided. Notice requirements vary by case type. In general, for applications, notice is typically provided to those persons who own property within a certain distance (usually 300 feet) from the property which is the subject of a land use application. The list of property owners is based upon records of the

Whatcom County Assessor's Office. Notice of a pending application is also posted on the property near an adjacent street. Notices for most land use application hearings are also published in the Bellingham Herald and are available on the internet (<https://www.ci.blaine.wa.us/200/Public-Notices-Hearings>).

Read that notice carefully. It sets the day, time, and format (telephone, video, in-person, etc.) of the hearing. It sets deadlines for any required pre-hearing submittals. Fifteen days before a hearing, the agency submits to parties, interested persons, and the examiner a report summarizing the issues. Read this carefully. Often (depending on case type), the agency provides some or all of the documents the agency intends to offer as exhibits.

The agency's case file is a public record; anyone wanting to review the entire file prior to the hearing may arrange this with the agency (by email to cdspermits@cityofblaine.com or by calling (360)-332-8311 and speaking with a representative of Community Development Services).

WHO CAN PARTICIPATE IN THE PROCESS?

Hearings are open to the public. They are held in the City Council Chambers on the fourth floor of Blaine City Hall, 435 Martin Street in Blaine, unless another location is specified in the hearing notice. Each applicant and appellant will have an opportunity to speak at the hearing and to present documents or other evidence to support his or her position.

In addition, any person who wants to comment on a land use application may send written materials to the Planning and Community Development Department for

inclusion in the record and/or speak at the public hearing. The amount of time each person may be allowed to speak may be limited in order to ensure that everyone who wants to comment will have an opportunity to do so. Written materials must be received by the Hearing Examiner before the public hearing is closed. The time to submit materials is usually closed when the public comment portion of the hearing ends. Occasionally the record may be left open for a short time period after the hearing date for submission of additional written materials.

WHAT IS THE PURPOSE OF A PUBLIC HEARING?

The purpose of a public hearing before the Examiner is to ensure that the Examiner has all the necessary information to accurately implement the development regulations adopted by the City Council.

HOW CAN I COMMUNICATE WITH THE HEARING EXAMINER?

By law the Hearing Examiner is not allowed to talk to participants about the subject matter of the appeal or application outside of the public hearing. All communications to the Hearing Examiner about the case, other than those made at the hearing, must be in writing and included in the record of the case. Written comments should be submitted to the Community Development Services Department at 435 Martin Street, Suite 3000. Communications received after the hearing is closed will not be considered in making the decision unless a motion to reconsider the case is granted.

WHAT TYPICALLY HAPPENS AT A HEARING?

WHEN IS THE HEARING?

The examiner's notice or order gives the hearing location and start time, and format (in-person, video, telephone, etc.); read that carefully. Be on time, or you may forfeit your rights. Very occasionally, a prior hearing runs overtime and delays the next hearing's start. Please enter the room quietly (proceedings are recorded), refrain from side conversations, and turn off all phones.

HOW WILL THE HEARING GO?

Order and content depend on the type of hearing. See Section 31 and 32 of the rules of procedures for the conduct of hearings for a full description. For all hearings, the examiner swears in anyone offering testimony, and any party may question any witnesses. Any party may specifically object to any document, although examiners have a lower threshold than courts do for admitting evidence.

HOW CAN I PRESENT THE BEST CASE?

The Examiner must apply the development regulations to the information presented at the public hearing. In general, a developer must acquire one or more city permits before commencing development. The city has laid out standards in its development regulations that a developer must meet in order to acquire the permits. You can enhance your effectiveness at a public hearing by knowing what development regulations apply and by explaining how your information shows that the developer does or does not meet these regulations. City staff will prepare a staff report in advance of the hearing that identifies the applicable development regulations. Staff will provide a copy of the staff report in advance of the hearing upon request. Copies will also be available at the public hearing.

You can present notes, written statements, photographs, documentary records, and visual aids. For an in-person hearing, anyone wanting to introduce a document should bring at least three copies. (Check the examiner's written notice for any pre-hearing deadlines.)

WHAT ABOUT HEARING RECORDS?

Hearings are recorded, and you may request a copy of the recording and any documents from the Community Development Services Department. Depending on the volume of data requested, there may be a duplication cost, although the Department tries to maintain most records digitally.

WHAT HAPPENS AFTER THE HEARING?

Within ten business days (meaning weekends and holidays excluded) of the hearing's close, the examiner sends a final determination that includes findings of fact based on the hearing record and conclusions drawn from

those findings. It may wholly approve the application or grant the appeal, wholly deny the application or appeal, or do something in the middle (modify conditions, reduce fines, etc.).

Examiner determinations end with general information for how to appeal. The examiner can offer no additional instruction beyond that written information. It is an appellant's responsibility to determine and meet the exact requirements for filing an appeal.

WHAT IS THE PROPER WAY TO COMMUNICATE WITH THE EXAMINER'S OFFICE?

Any questions or statements related to the substance of the application or appeal should be raised at a hearing or conference, or made in writing and submitted to the Community Development Services Department.

HOW DOES THE EXAMINER ENSURE I HAVE A FAIR HEARING?

Unless required to by law, examiners do not give any deference to agency determinations. Examiners may not hear applications or appeals where they have financial interests, have pre-judged the issues, or may appear biased by a relationship to a party or property. A person with reasonable grounds to believe an examiner might be influenced by a factor outside the record should promptly bring that concern to the examiner's attention.

It is important to understand that the Examiner must base his or her decision on the ordinances and policies adopted by the City Council. The Examiner is not imposing his or her values on the community. Rather, the Examiner is implementing the values that the City Council has adopted in its ordinances and policies, primarily codified in the city's development regulations.

Development regulations include the Zoning Code, Shoreline Master Program and State Environmental Policy Act regulations. These documents have gone through extensive public participation and Planning Commission and City Council review. If you feel that development occurring in your community is inconsistent with your values or interests, the place to seek change is your Community Development Services Department, Planning Commission, and ultimately the City Council. You can request that the City Council change the city's development regulations.

MORE QUESTIONS?

For further information, please call the Community Development Services Department at the City of Blaine (360) 332-8311.

The City of Blaine's Community Development Department has created customer information bulletins to inform the general public about the effect of codes and regulations on their projects. These bulletins are not intended to be complete statements of all laws and rules and should not be used as substitutes for them. If conflicts and questions arise, current codes and regulations are final authority. Because the codes and regulations may be revised or amended at any time, consult City of Blaine, CD staff to be sure you understand all requirements before beginning work. It is the applicant's responsibility to ensure that the project meets all requirements of applicable codes and regulations.