



Hearing Examiner

This document outlines the Hearing Examiner’s role and processes.

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What is the purpose of a Hearing Examiner?

The basic purpose of having a hearing examiner is to conduct quasi-judicial hearings. These hearings benefit from having a professionally trained individual, typically an attorney, make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system free the city council and planning commission to focus on policymaking. It also reduces the city's liability exposure with consistent and legally sustainable quasi-judicial decisions.

Leavenworth has adopted the office of Hearing Examiner under Leavenworth Municipal Code Chapter 21.15. The Hearing Examiner is tasked with conducting hearings in which evidence and relevant information are admitted into the record, decisions (approvals, conditional approvals, or denials) based on the public hearing record are made, and the decision is documented by written findings and conclusions of law. The type of items decided by the Hearing Examiner include:

1. Preliminary plats;
2. Planned developments;
3. Rezones which are not of general applicability;
4. Applications for shoreline variances, conditional use permits and nonconforming use permits pursuant to the Shoreline Management Act and shorelines master program;
5. Applications for variances, conditional use permits, permits for the alteration, expansion or replacement of a nonconforming use, and waivers;
6. Amendments and/or alterations to plats;
7. Petitions for plat vacations;
8. Appeals alleging an error in a decision of a city official in the interpretation or the enforcement of the zoning code or any other development regulation;
9. Appeals alleging an error in a decision of a city official in taking an action on a short plat or binding site plan;
10. Appeals alleging an error in administrative decisions or determinations pursuant to Chapter 43.21C RCW;
11. Appeals alleging an error in a decision of the Leavenworth design review board;
12. Public hearings for revision or revocation of a conditional use permit;
13. Appeal of SEPA determinations; and
14. Any other matters as specifically assigned to the hearing examiner by the city council or as prescribed by the city code.

The decision of the hearing examiner on all matters is final and conclusive, unless appealed pursuant to Chapter 21.11 LMC.

How is the Hearing Examiner appointed?

The hearing examiner is appointed, by the City Council via a contract, solely with regard to qualifications for the duties of such office and shall have such training or experience as will qualify the hearing examiner to conduct administrative or quasi-judicial hearings utilizing land use regulatory codes, must have expertise and experience in platting, and should have knowledge or experience in at least one of the following areas: environmental sciences, law, architecture, economics or engineering.

What information will the Hearing Examiner use to make a decision?

The Hearing Examiner's decision shall be based upon the policies of the comprehensive planning documents of the city, the standards set forth in the various development regulations (Leavenworth Municipal Code and adopted standards) or any other applicable program adopted by the city council and the evidence that is entered into the record.

When acting upon any of the above specific applications or appeals, the Hearing Examiner may grant, condition or deny the application, or may attach reasonable conditions, modifications and restrictions found necessary to make a decision on the record and to carry out the goals and policies of the applicable comprehensive plan, the City's development regulations and applicable law, or other applicable plans or programs adopted by the city council.

What if there is a conflict of Interest for Hearing Examiner?

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might influence his or her decision-making process. Any actual or potential interest shall be disclosed to the parties immediately upon discovery.

Participants in the land use regulatory process have the right, insofar as possible, to have the hearing examiner free from personal interest or prehearing contacts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing public right to free access to public officials on any matter. Therefore, the hearing examiner shall reveal any substantial interest or prehearing contact made with him or her concerning the proceeding, at the commencement of such proceeding. .

Immediately after the announcement of any interest or prehearing contact, any person who objects to such interest or prehearing contact shall state the objection and any reasons supporting the objection. The failure to state such an objection at the time of announcement is deemed to be a waiver of such objection; therefore, this objection cannot be raised for the first time at any subsequent time.

The hearing examiner, upon hearing an objection, shall personally decide whether the interest or contact will impair his or her ability to be fair and impartial, and shall hear the case or abstain accordingly.

No city council member, city official or any other person shall interfere with or attempt to influence the hearing examiner in the performance of his or her designated duties; provided, that a city official or employee may, in the performance of his/her own official duties, provide information for the hearing examiner or process a city case before the hearing examiner, when such actions take place or are disclosed in the hearing examiner's hearing or meeting. Nor are city officials or employees prohibited from participating in a hearing in their private capacity.

What is the Hearing Examiner Process?

The city will receive an application and fees from a property owner or representative which is reviewed for completeness by city staff. Once an application is complete it is noticed (if required). Noticing may include posting a sign on the subject site, publication in the newspaper and/or website, or mailing to surrounding property owners. Not all applications require noticing.

If the application is one that goes to the hearing examiner, then city staff will draft a report which may have a recommendation. The Staff report becomes part of the file of record and is presented to the

Hearing Examiner. The Hearing Examiner will hold a public hearing consistent with a quasi-judicial review process, outlined in [Chapter 21.09 LMC](#).

Ten calendar days before the date of the hearing, the city will post a public notice (agenda) in three different locations at City Hall.

Seven days before the meeting, the city will issue its written staff report which is provided to the applicant and the Hearing Examiner. It will also be sent to anyone who has commented on the application or requested it.

The Hearing Examiner conducts hearings as needed. There is no set schedule for hearings rather when a quasi-judicial application is determined complete or after the initial comment period, staff will contact the Hearing Examiner to schedule the hearing. Hearings are open to the public and conducted in accordance with Open Public Meetings Act, Chapter 42.30 RCW. Most hearings include an opportunity for public comment (generally not provided for appeals).

The Hearing Examiner strives to conduct hearings in a relaxed and informal manner, however there is still a process followed in order to ensure that all parties are allowed to present evidence and are given the opportunity to testify on an application if they so desire. The hearing examiner may adopt rules of procedure. Members of the public may testify and provide evidence on an individual proposal, for most hearing actions. At the conclusion of oral testimony, the Hearing Examiner may establish the date and time at which the public record will close. The public record may be amended (up to 10 working days) beyond the public hearing for the purpose of allowing written testimony to be submitted.

All decisions are rendered within 10 working days after the public record closes. When the Hearing Examiner renders a decision or recommendation, written findings and conclusions, which support the decision are made. Upon issuance of the hearing examiner's decision, the staff is required to send the decision to the applicant and send a notice of the decision to other interested parties requesting it.

Sample Hearing Procedure/Script:

Call to Order: The Hearing Examiner may state, "I will call the hearing to order at [TIME]. My name is _____; I've been appointed by the city to serve as the Hearing Examiner to review and render decisions on various permits, such as _____ before us today. I will consider any testimony and evidence submitted at today's hearing, as well as all the written materials on file, in order to make my decision.

The hearing process has certain rules however I strive to conduct meetings in a relaxed and informal manner; however, we still have a procedure we are going to use. First of all, staff will present their report and their recommendation then the applicant (or representative) will make their presentation/statements of evidence. The applicant has the burden of proof to show compliance with all applicable rules and regulations. If someone from the public wishes to provide comment/testimony they will be provided that opportunity. If there is opposition to the project, I will provide the applicant an opportunity to respond.

Everyone providing comment will be asked to state their name and address. If you are providing testimony, you will be sworn in as a witness. If anyone wants to provide written comment or

materials at the hearing, arrangements will be made (especially important if attending via zoom).

I have the option to keep the record open for additional information. A written decision will be issued 10 working days after the close of the hearing. Except under reconsideration, as provided by code, my decision on this matter will be final, conclusive and binding unless appealed.

Appeals are by means of a Land Use Petition Action within 21 days of the date of decision (or other means depending on the matter under consideration). If the appeal is not timely filed it may be barred. If you are considering an appeal you may want to seek legal counsel.

I've reviewed the file and don't have any interest in the matter to be heard today. I'll be able to fairly and objectively consider the item today. Outside of receiving and reviewing the staff report, all attachments and the full file of record, I have not had any communication on this matter. With those representation if any has an objection to me serving as the Hearing Examiner today you need to state so at this time. Hearing no objection, we can turn to the item to be heard, application number ____, known as ____, for (detailed description). For the record, I submit all the application materials, the staff report, all documents, all public/agency comments, all noticing, site plans, SEPA documents, the entire file of record into the record at this time. I will turn this matter over to staff for their presentation.

Staff will provide a summary of the staff report and any recommendation. This presentation is general expanded or shortened based on the audience. If the Hearing Examiner has questions of staff, they will be asked at this time.

Hearing Examiner will ask the applicant/agent if they are ready to present. Each person testifying for the applicant will be asked to provide their name and address and be sworn in (asked to raise your right hand and swear or affirm under penalty of perjury that any testimony provided today is the truth). If the Hearing Examiner has questions of the applicant they will be asked at this time. At a minimum, the Hearing Examiner may ask if the applicant has read the recommended conditions within the staff report. And, if they have any objections to those conditions. The applicant/agent presentation may include multiple professionals, individuals, attorneys, etc.

At the close of the applicant/agent presentation, the Hearing Examiner will ask for any public testimony and comment (for or against) the proposal.

The Hearing Examiner will ask if there is anything further from staff. If opposition to the proposal has been stated, the Hearing Examiner will provide time for the applicant to respond. The applicant has the burden of proof and therefore may always have the option for the final statement.

The Hearing Examiner may close with a statement of when a decision will be rendered.

Are meeting minutes available?

The Hearing Examiner meetings are recorded. The recordings are available for the public to review. Minutes and transcripts are not provided by the city.

What is appearance of fairness?

For quasi-judicial proceedings, a Washington statute, Chapter 42.36 RCW and case law require a fair hearing and an impartial decision maker. A summary of actions that may violate appearance of fairness taken from MRSC, a public resource, follows:

By following Appearance of Fairness requirements, local governments have a method for disqualifying decision-makers from quasi-judicial hearings who have prejudged the issues, who have a bias in favor of one side in the proceeding, who have a conflict of interest, or who cannot otherwise be impartial. "Ex-parte" communications between a decision-maker and a proponent or opponent of the matter being decided are prohibited

What creates a conflict of interest?

A potential conflict of interest exists when a decision maker takes an action that reasonably could be expected to have a financial impact on him/her, or a relative, or a business with which he/she or member's relative is associated. The Hearing Examiner shall reveal any conflict of interests.

Many perceived conflicts usually are not actual conflicts and are not illegal. But even perceived conflicts are vulnerable to legal challenges and public misunderstanding.

What are the expectations of the public at a hearing?

A public hearing should be regarded similar to a court of law with no distractions to the process. Each person who wishes to participate will be provided a time to do so; however, repeat comments or restating comments already entered into the record is discouraged and may result in a request to move on to a new comment or end comment or testimony.

Conflict and controversy around a project can occur. However, the hearing is a time for civil presentation and public comment and testimony where differing points of view and concerns may be civilly presented.

All attendees (in person or via zoom) should turn cell phones off and put away and not eat or drink. During presentations or public testimony there is no clapping, booing or other comments permitted. Disorderly people will be asked to leave or removed from the hearing.