



A CITIZEN'S GUIDE TO THE CITY OF FEDERAL WAY HEARING EXAMINER PROCESS

Introduction

This serves as a brief guide to those who would like to participate in the Hearing Examiner (Examiner) process. This guide explains the Examiner's role and provides some guidelines on how to effectively voice your concerns at public hearings held by the Examiner. This document is a summary only and does not serve as a substitute for city and state laws. The Community Development Department can direct you to city laws and regulations if you wish to see them.

The Role of the Hearing Examiner

Certain types of development applications in the City of Federal Way are subject to a public hearing process. A public hearing is an opportunity for citizens to voice their concerns or support for a proposed development. The Examiner presides over these hearings and uses the evidence gathered at the hearing to issue a final decision on a land use application or land use appeal.¹ The Federal Way city code (*Federal Way Revised Code* [FWRC]) provides more detail on what types of projects are subject to hearings (also see the second page of this document).

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, Subdivision Code, Critical Areas Ordinance, 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 Department and ultimately the City Council. You can request that the City Council change the city's development regulations. State law does place some restrictions on what the City Council can include or omit from its development regulations.

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. 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

¹ For quasi-judicial rezones the Examiner makes a recommendation to the City Council after holding a hearing, instead of issuing a final decision.

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.

In conducting hearings, the Examiner assures fairness and constitutional due process protection for all involved in the hearing process. It is his or her responsibility to make fair and professional decisions without bias. The Examiner is not an employee of the city. Other than the city (who pays for his or her services), the Examiner should not have any affiliation or business or personal relationship with anyone participating in the hearing process. This level of detachment ensures that the Examiner will base decisions solely upon standards adopted by the City Council and not for any reasons motivated by self-interest or bias.

Decision Making Process

An important component of a fair decision making process is a level playing field, where all hearing participants have equal access to the information considered by the Examiner. For this reason, the Examiner is prohibited from discussing a development application outside of the hearing process. Decisions are based solely on the testimony and evidence presented at the hearing. If you are unable, or do not wish to participate in the actual hearing, you can submit written comments before or during the hearing. The Examiner will ensure that all other hearing participants have an opportunity to review your written comments. The Examiner is allowed to discuss procedural matters with staff and applicants outside of the hearing on issues such as scheduling. However, the Examiner cannot acquire any other information that is relevant to development regulations without making all hearing participants aware of the information.

The Examiner may grant or deny the application and require conditions, modifications, and restrictions as are necessary to make the application consistent with applicable development regulations.

Matters Reviewed by the Hearing Examiner

The Examiner is utilized to decide many land use applications and issues. Specific items that go before the Examiner include the following: Use Process IV applications; Subdivisions; Variances; Quasi-Judicial Rezones; certain requests related to critical areas; Shoreline Conditional Use Permits; Shoreline Variances; SEPA Appeals; and Use Process I, II, III Appeals.

Public Notice

Applications that are reviewed by the Examiner require public notice. Depending upon the type of permit application, city development standards may require: (1) written notice sent by mail to all property owners within a specified distance of the project site; (2) posting a public notice board at the project site; (3) posting notice at the city's posting places (libraries and City Hall); and/or (4) publishing notice in the city's official newspaper (Federal Way Mirror).

Guidelines on Presenting Testimony

All hearings are recorded and the recording is part of the official record of the application. An audible recording is essential to a valid hearing. Reviewing courts will require the city to redo the hearing if

testimony is missing or inaudible. The Examiner relies upon a complete recording to review and evaluate evidence. For this reason, all testimony should be made in front of a microphone. Statements outside of microphone range are prohibited.

Simple and direct statements or arguments are encouraged. Repetitive and combative statements or arguments are discouraged. Personal and defamatory attacks are prohibited.

If you want the Examiner to consider your concerns, make sure you present your concerns during the hearing. Generally, state law prohibits the introduction of new information after the close of a public hearing on a development permit application, even if another decision making body such as the City Council reviews an Examiner recommendation, or the Superior Court reviews a final decision on appeal. Another decision making body can only consider the evidence presented to the Examiner during the public hearing.

The Examiner does not have to close a hearing on the date it has been scheduled. The Examiner can continue the hearing to another date to allow for additional written or verbal testimony. If you need more time to present your information, ask for that time. Keep in mind; however, that state law keeps the city to a strict decision making schedule. The city must issue a final decision for most land use applications within 120 days from the date an application is found complete. Subdivision decisions must be made within 90 days of the filing of a complete application.

Written Testimony

If written evidence is submitted, it should be addressed to the Examiner and be clearly legible. The written testimony must be received on or before the date of the public hearing in order for it to be considered by the Examiner; unless the Examiner expressly authorizes written statements after the close of the verbal testimony portion of the hearing. The letter should reference the application and contain the specific reasons why the application should be approved, disapproved, or conditioned. The writer should give his or her full mailing address in order to receive a copy of the decision.

Order of Hearing

The hearing will *usually* proceed in the following order:

1. Introduction by the Examiner.
2. Presentation by city staff to describe the application, summarize code requirements and other issues, and give the city's recommendation.
3. Presentation by the applicant or authorized representative (who has the burden of proof) that the application is consistent with the city's comprehensive plan and development regulations.
4. Testimony by members of the public.
5. Responses to public comments, questions, or statements by staff and applicant.
6. Response by staff.
7. Response by applicant.
8. Conclusion by the Examiner—the record will be closed unless the Examiner requests additional information from staff or other parties.

The Examiner may interject questions throughout the hearing. Do not expect an oral decision at the conclusion of the public hearing. The Examiner takes the case under advisement and prepares a decision or recommendation in a written report that includes findings of fact and conclusions of law.

Final Decision or Recommendation

After reviewing the entire record, the Examiner will issue a written final decision (or recommendation in the case of quasi-judicial rezones) within 10 business days after the close of the hearing, as specified in the city's development regulations. The decision will identify how the proposed development complies or fails to comply with the applicable development regulations. Notice of the final decision or recommendation will be mailed to the applicant and all parties who have signed up at the hearing to receive a copy.

Appeals of Examiner Decisions

The Examiner's decision contains information on the time limits and methods of appeal for each decision. An appeal must be filed within the specified time limit in order for the decision to receive further consideration. If no appeal is filed, the Examiner's decision stands.