

# HEARING EXAMINER RULES

## Introduction

In April 2003, the City Council passed and the Mayor approved Resolution No. 2003-14 adopting Rules of Procedure for the Office of the Hearing Examiner. These Hearing Examiner Rules govern the conduct of hearings held by the Hearing Examiner. The Rules are divided into three chapters: rules that apply to all matters [Chapter I]; rules for hearings on permit applications [Chapter II]; and, rules for hearings on appeals of administrative decisions [Chapter III]. The Table of Contents may help you locate the rules that apply in your situation.

The Bainbridge Island Municipal Code, in Chapter 2.16 and Chapter 2.38, establish the Hearing Examiner review and appeal procedures.

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**RULES OF PROCEDURE FOR  
PROCEEDINGS BEFORE THE HEARING EXAMINER**

**CHAPTER I: GENERAL**

**SECTION 1: APPLICATION**

This Chapter applies to all hearings that are required by the City Code to be held before the Hearing Examiner.

**SECTION 2: NATURE OF PROCEEDINGS**

2.1 Expeditious Proceedings

It is the policy of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, all hearings shall be conducted expeditiously. In the conduct of such proceedings the Examiner, City staff, and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

2.2 Frequency

Hearings before the Examiner shall be scheduled on an as-needed basis. Each matter shall be noted to commence at a particular time.

2.3 Format

The format for a hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will be easily ascertainable by a reviewing body. The format will allow development of a record by parties.

2.4 Site Inspection

When deemed necessary by the Hearing Examiner, the Examiner may inspect the site prior or subsequent to the hearing.

2.5 Record of Hearing

- a. Record. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recording of a particular proceeding shall be made available to the public five business days after a request. The reasonable cost of such copying shall be paid by the requester. No minutes of the hearing will be kept.
- b. Copies of any written materials in the record may be obtained by any person upon payment of the cost of reproducing the material.

2.6 Computation of Time

Computation of any period of time prescribed or allowed by these rules shall begin with the first day following that on which the act or event initiating the period of time occurred. When the last day of the period so computed is a Saturday, Sunday or a city, national or state holiday, the period shall run until the end of the next following business day.

### **SECTION 3: DEFINITIONS**

"Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a decision.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for a land use permit or approval.

"BIMC" means City of Bainbridge Island Municipal Code.

"Comprehensive plan" means the comprehensive plan that has been adopted by the city.

"City" means City of Bainbridge Island, Washington.

"Hearing" means the proceeding at which testimony or documents are presented as evidence to the examiner or council.

"Examiner" means the hearing examiner of the City of Bainbridge Island.

"Party of interest" means any individual, partnership, corporation, association, or public or private organization that may be affected by proceedings before the examiner. The term includes a "party of record" as defined herein.

"Notice of decision" means a written document that communicates a decision of the administrator, examiner or council.

"Party of record" means:

- a. For an open record hearing on a permit application:
  1. the applicant;
  2. the city; and
  3. a person who testifies at the hearing or who submits written testimony for consideration at the hearing.
- b. For an open record appeal of an administrative decision:
  1. the applicant;
  2. the appellant;
  3. the city;
  4. any intervenors allowed by the hearing examiner to join as a party.

"Record" means the oral testimony and written exhibits submitted at the hearing. The tape recording of the proceeding shall be included as part of the record.

### **SECTION 4: PARTIES' REPRESENTATIVE REQUIRED**

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Examiner of the name, address and telephone number of that designated representative. The rights of such party shall be exercised by the person designated as the party representative. Except as otherwise provided in these rules, notice or other communication to the party representative is considered to be notice or communication to party.

## **SECTION 5: PRESIDING OFFICER**

The Hearing Examiner shall preside over the hearing. The Hearing Examiner shall have all of the authority and duties granted to the Examiner in state statutes, the City code, and other City ordinances. Included in the duties of the Examiner are the following: to conduct fair and impartial hearings; to take all necessary action to avoid delay in the disposition of proceedings; and, to maintain order. The Examiner has all powers necessary to that end, including the following:

- a. to administer oaths and affirmations;
- b. to issue subpoenas;
- c. to rule upon offers of proof and receive evidence;
- d. to regulate the course of the hearings and the conduct of the parties and their agents;
- e. to question any party at the hearing,
- f. to hold conferences for settlement, simplification of the issues, or any other proper purpose;
- g. to require briefs on legal issues;
- h. to consider and rule upon all procedural and other motions appropriate to the proceedings; and
- i. to make and file recommendations or decisions.

## **SECTION 6: CONFLICTS**

These rules of procedure are adopted to supplement the requirements of the City code. In the event that there are any conflicts between these rules and the provisions of the City code, the provisions of the City code shall prevail.

## **CHAPTER II: OPEN RECORD HEARINGS ON PERMIT APPLICATIONS**

### **SECTION 1: APPLICATION**

This Chapter applies to open record hearings on land use applications that are required by the City Code to be held before the Hearing Examiner.

### **SECTION 2: RIGHTS OF PARTIES**

#### **2.1 Rights of City**

The City staff shall have the right to present evidence and testimony, cross-examine witnesses, object, and make motions, arguments, and recommendations.

#### **2.2 Rights of Applicant**

Every Applicant shall have the right to notice of the hearing, present evidence and testimony, cross-examine witnesses, object, and make motions and arguments.

#### **2.3 Rights of Parties of Record**

All Parties of Record have the right to present evidence and testimony, cross-examine witnesses, object, and make motions and arguments.

#### **2.4 Presence of Legal Counsel at Hearings or Meetings**

- a. Although representation by legal counsel is not required, all parties participating in the hearings may be represented at any stage of the proceeding by legal counsel of their choice.
  - b. At the request of the City staff or the Examiner, a representative of the City Attorney's Office may be present at any stage of the proceedings to advise on matters of law and procedure.
- 2.5 Notwithstanding the provisions of paragraphs 2.1, 2.2, and 2.3, the Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Examiner shall control the amount and style of cross-examination.

### **SECTION 3: RESPONSIBILITIES OF PARTIES**

#### 3.1 Responsibilities of City Staff

The City staff shall provide a staff report consistent with the City code. The staff report shall be available for review and copying at least seven days prior to the hearing. The City staff shall also present materials at the hearings; provide the Examiner with documentation relevant to the proceedings, and be courteous to all persons participating in the proceedings.

#### 3.2 Responsibilities of Applicant

The Applicant shall, seven days prior to the hearing: provide the Examiner with written material that supports the application; be prepared for questions by the Examiner; and, be courteous to all persons participating in the proceedings.

#### 3.3 Responsibilities of Other Parties of Interest

All persons who attend a hearing shall conduct themselves with civility and deal courteously with all involved in the proceedings. Failure to do so may result in the Examiner removing the person from the hearing.

- 3.4 All briefs and other legal memoranda upon which a Party of Record knows the party will be presenting at the hearing must be submitted to the Examiner and all Parties of Record at least seven days in advance of the scheduled hearing date. The above mentioned documents shall be available to the public at least seven days in advance of the scheduled hearing date. This paragraph does not prohibit the Examiner from allowing a party to submit materials at a later date.

## SECTION 4: CONDUCT OF HEARINGS

### 4.1 Affidavit of Notice

An affidavit attesting to the notice given of a hearing (including dates and places of publication and list of those mailed to) shall be part of each official case record.

### 4.2 Prehearing Conference

- a. The Examiner may, on his/her own order, or at the request of a Party of Record, hold a conference prior to the hearing. At the prehearing conference, the Examiner may require:
  1. Identification, clarification, or simplification of the issues;
  2. Disclosure of witnesses to be called and exhibits to be presented;
  3. Presentation of motions to be decided;
  4. Other matters deemed by the Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call.
- c. The Examiner shall give notice to all parties of record of any prehearing conference. Notice may be written or oral.
- d. All Parties of Record shall be present at any prehearing conference unless the party waives the right to be present or represented at the conference.
- e. Following the prehearing conference, the Examiner shall issue an order reciting the actions taken or ruling on motions made at the conference.

### 4.3 Oath or Affirmation

All testimony before the Examiner shall be given under oath or affirmation to tell the truth. The Examiner shall administer the oath or affirmation.

### 4.4 Content of the Record

The record of a hearing conducted by the Examiner shall include, but not be limited to, the following materials:

- a. the application;
- b. the Departmental staff reports;
- c. all evidence received which shall include oral testimony given at the hearing, and all exhibits and other materials admitted as evidence,
- d. a statement of all matters officially noticed;
- e. a decision or a recommended decision containing the findings and conclusions of the Examiner;
- f. official recordings made on electronic equipment; and
- g. an environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

#### 4.5 Development of Record at the Hearing

A hearing will usually include, but not be limited to, the following elements: a brief introductory statement by the Examiner regarding the procedures before the Examiner; an introductory statement by the City staff that may include submission of the staff report with exhibits, reference to visual aids and a summary of the staff recommendation, testimony and submission of other evidence by the Applicant, testimony of Parties of Interest; opportunity for cross-examination and rebuttal; and, opportunity for questions by the Examiner.

#### 4.6 Content and Form of Staff Reports

The staff report on a land use application shall include the following:

- a. Names and addresses of the owner(s) and Applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and a statement as to which code regulations apply to the application
- c. A common description of the subject property and a legal description of the subject property. If necessary due to length, the legal description may be included as an appendix.
- d. A summary of the Comprehensive Plan designation and zoning designation of the subject property; the current uses on the subject property and the adjoining properties; topographical information; geological and soils information; information on the vegetation on the property, information on available services and utilities, and other site characteristics.
- e. The current and proposed access to the subject property.
- f. An analysis of the proposed project as to its consistency with the relevant criteria for review of the application.
- g. A summary of any other requested land use permits in the area.
- h. A summary of recommendations made by any agencies consulted on the project, and a list of any reports submitted by the agencies.
- i. Maps as specified in the submittal requirements contained in the zoning chapter(s) relevant to the specific development application.
- j. The result of the determination pursuant to the State Environmental Policy Act (SEPA).
- k. Staff's recommendations as to the consistency of the application with the relevant criteria and any necessary conditions that should be applied to any approval of the application.
- l. A brief summary of issues raised in public comment, with copies of written comments attached.

#### 4.7 Continuances of Hearings

- a. If, in the opinion of the Hearing Examiner, more information is necessary in order to make a recommendation or decision, or the Examiner is unable to hear all of the public comments on the matter, the Examiner may continue the hearing to a specified date.
- b. Any Party of Record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance. The Examiner shall have discretion to grant or deny the request for continuance.
- c. If the hearing is continued prior to the commencement of the hearing, the new hearing time and place shall be posted on the door of the hearing facility on the original hearing

date. If the hearing is continued to a specific time and place during the hearing, the new hearing time and place shall be posted on the City's website.

#### 4.8 Evidence

- a. Burden of proof. In each proceeding for review of an application, the Applicant shall have the burden of proof to show compliance with applicable laws and regulations of Washington State and City of Bainbridge Island.
- b. Admissibility. The hearing generally will not be conducted according to strict legal rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is the type that possesses value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Examiner shall have discretion on the admissibility of all evidence.
- c. Copies. Documentary evidence may be received in the form of copies if the original is not readily available. Upon request, parties shall be given opportunity to compare the copy with the original. The party offering the document into evidence shall provide an extra copy of the document to the Examiner as a working copy.
- d. Judicial notice. The Examiner may take judicial notice of generally accepted facts. The Examiner shall not take judicial notice of any disputed adjudicative facts that are at the center of the proceeding.
- e. The Examiner may request that a document be filed after the close of public testimony. Only those documents referred to at the hearing may be submitted after the hearing and only those specifically requested by the Examiner. If a document is submitted after the close of public testimony, the Examiner may allow other Parties of Record a reasonable opportunity to comment on the document.
- f. After the public hearing is closed, additional evidence may only be submitted upon a motion for reconsideration based on new evidence not reasonably available at the time of the hearing. If additional evidence is submitted with a motion for reconsideration, the additional evidence will be considered only upon a showing of significant relevance and good cause for delay in its submission. All Parties of Record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- g. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

### **SECTION 5: WITHDRAWAL OF APPLICATION**

If the Applicant requests that the application be withdrawn at any time prior to the issuance of a decision by the Hearing Examiner, the application shall be withdrawn. The Applicant shall remain responsible for the payment of fees and costs already incurred by the City with respect to the application.

### **SECTION 6: RECOMMENDATIONS/DECISIONS**

#### 6.1 Written Recommendations

For applications heard by the Examiner that require Council approval, a written report of findings, conclusions and recommendations shall be forwarded to the Council and the Parties of Record, within the time allowed by law or agreed to by the Applicant and City. The findings, conclusions and recommendations shall indicate how the recommendation meets the relevant

goals, policies, plans and requirements of the City code and other policies and objectives of the City including the Comprehensive Plan.

## 6.2 Written Decisions

For all applications where the Examiner has final approval authority, a written report of findings, conclusions and decision shall be forwarded to all Parties of Record, within the time allowed by law or agreed to by the Applicant and the City. The findings, conclusions and decision shall indicate how the decision meets the relevant goals, policies, plans and requirements of the City code and other policies and objectives of the City, including the Comprehensive Plan.

## 6.3 Content of Recommendation or Decision. The Examiner's recommendation or decision shall include:

- a. Summary of the Proceedings. This shall include a list of all exhibits received and all persons who testified. A summary of testimony should be given if relied upon in a Finding.
- b. Findings. These shall be statements of verifiable fact relevant to the criteria for review of the application. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. A finding shall be made on each contested issue of fact. Findings shall reference a specific exhibit or testimony in support of the finding. On contested issues of fact, findings shall clearly summarize all exhibits or testimony presented and shall reference the specific exhibit or testimony used to support the finding.
- c. Conclusions. Each conclusion shall be supported by a reference to a Finding of Fact. The conclusions shall reference specific provisions of the law and regulations when relevant to the decision.
- d. Decision or Recommendation. A decision or recommendation on an application may be to approve, deny or approve with conditions. Every recommendation or decision shall be based upon a consideration of the whole record and supported by substantial evidence.

## 6.4 Procedure for Reconsideration and Reopening Hearing

- a. At any time prior to the filing of the final decision or recommendation, the Examiner may reopen the proceeding for the submission of further evidence. All Parties of Record who participated at the hearing shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- b. Reconsideration.
  1. Any Party of Record may file a written request with the Examiner for reconsideration of the Examiner's recommendation or decision within ten (10) working days of the date of the Examiner's recommendation or decision. The request shall explicitly state the alleged errors of procedure or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Examiner's recommendation or decision.
  2. The Examiner shall act within five (5) working days after the date of the filing of the request for reconsideration by either denying the request, approving the request by modifying or amending the recommendation or decision based on the established record,

requesting written responses from other Parties of Record, or setting the matter for an additional hearing.

3. If an additional hearing is required the notice of said hearing shall be mailed to all Parties of Record not less than five (5) working days prior to the date of the new hearing.

### **CHAPTER III: OPEN RECORD APPEAL HEARING OF ADMINISTRATIVE DECISIONS**

#### **SECTION 1: APPLICATION**

This chapter applies to open record appeals of administrative decisions that approve, deny, or condition a land use permit application. An open record appeal hearing is one where evidence is submitted for the record for the first time.

#### **SECTION 2: PARTIES RIGHTS AND RESPONSIBILITIES**

- 2.1 Although Appellants and Applicants have the right to be represented by an attorney, representation by an attorney is not required.
- 2.2 All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

#### **SECTION 3: FILING**

##### 3.1 Compliance with Rules

All appeals must comply with this chapter and with the requirements established in the applicable City of Bainbridge Island ordinance(s) under which the appeal is filed.

##### 3.2 Timeliness

To be considered timely filed, an appeal must be received by the City Clerk or other person designated in the City code no later than the last day of the appeal period.

##### 3.3 Fee

Any filing fee as required by the City shall accompany an appeal.

##### 3.4 Contents

An appeal must be in writing, identify the decision appealed and the date of the decision, and contain a summary of the grounds for the appeal.

##### 3.5 Appeal by Petition

Appellants may appeal by “petition”, in which multiple persons or entities sign one appeal statement. In the case of an appeal by petition, the Appellants shall pay only one appeal fee. The Appellants shall comply with Chapter I, Section 4 of these Rules and designate one individual to be its representative for purposes of the appeal proceedings; provided, that the City

shall provide notice of the appeal hearing to each Appellant signing and providing an address on the appeal statement.

#### **SECTION 4: DISMISSAL**

- 4.1 An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Examiner has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.
- 4.2 Any Party of Record may request dismissal of all or part of an appeal at any time with notice to all parties. The Examiner may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.
- 4.3 When decision or action being appealed is withdrawn by the issuing Department, the appeal becomes moot and shall be dismissed.

#### **SECTION 5: WITHDRAWAL**

- 5.1 An appeal may be withdrawn only by the Appellant.
- 5.2 Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who was designated as the party representative.
- 5.3 An Appellant's request to withdraw the appeal shall be granted as a matter of right and the appeal dismissed.

#### **SECTION 6: DEFAULT**

- 6.1 The Examiner may dismiss an appeal by an order of default where the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

#### **SECTION 7: NOTICE OF HEARING**

##### 7.1 Contents

The notice of hearing given to Applicant and Appellant shall be given in accordance with the City code.

##### 7.2 Time

Notice of the hearing shall be given within the time required by applicable ordinance(s). If the time for notice of hearing is not specified by the applicable ordinance(s), or applicable ordinances conflict, the minimum notice shall be 10 days.

##### 7.3 Responsibility

The Hearing Examiner shall be responsible for serving notice of hearing for appeals.

7.4 Record of Notice

A copy of the notice of hearing shall be made part of each official case record.

**SECTION 8: PREHEARING CONFERENCE**

8.1 Prehearing Conference

- a. The Examiner may, on his/her own order, or at the request of a Party of Record, hold a conference prior to, the hearing. At the prehearing conference, the Examiner may require:
  1. Identification, clarification, or simplification of the issues;
  2. Disclosure of witnesses to be called and exhibits to be presented;
  3. Presentation of motions to be decided;
  4. Other matters deemed by the Examiner to be appropriate for the orderly and expeditious disposition of the proceedings.
- b. Prehearing conferences may be held by telephone conference call.
- c. The Examiner shall give reasonable notice to parties of any prehearing conference. Notice may be written or oral.
- d. All Parties of Record shall be represented at any prehearing conference unless they waive the right to be present or represented.
- e. Following the prehearing conference, the Examiner shall issue an order reciting the actions taken or ruling on motions made at the conference.

**SECTION 9: HEARING FORMAT**

9.1 Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Examiner to make the relevant evidence most readily and efficiently available to the Examiner and to provide the parties a fair opportunity for hearing.

9.2 The order of an appeal hearing will generally be as follows:

- a. Examiner's introductory statement;
- b. Background presentation by City staff;
- c. Appellant's presentation;
- d. City staff's presentation;
- e. Applicant's presentation;
- f. Rebuttal;
- g. Closing argument of parties.

9.3 Notwithstanding the above provisions, the order of hearing may be modified or a different order established as the Examiner deems necessary for a clear and fair presentation.

9.4 The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

**SECTION 10: RECORD**

10.1 The record of an appeal shall include:

- a. The administrative decision or action being appealed;
- b. Appeal statement;

- c. Record of proceedings of decisionmaker;
- d. Tape recording of appeal hearing;
- e. Written arguments submitted by parties.
- f. The Departmental staff reports;
- g. All evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
- h. A statement of all matters officially noticed;
- i. A decision or a recommended decision containing the findings and conclusions of the Examiner; and
- j. An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA) (if applicable).

10.2 The Examiner's administrative file on an appeal case may include other information or materials which are not part of the evidentiary record.

### **SECTION 11: EXAMINER'S DECISION**

11.1 A decision of the Examiner on an appeal shall include, but not be limited to, a statement regarding the following:

- a. Background. The nature and background of the proceeding, including identification of party representatives participating in the hearing, prehearing determinations, and other similar information.
- b. Findings. The individual facts that the Examiner finds relevant, credible, and requisite to the decision, based on the record of proceedings.
- c. Conclusions. Legal conclusions based upon specific provisions of law and the findings of fact.
- d. Decision. The Examiner's decision as to outcome of the appeal (affirm, modify, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record, including any conditions imposed as part of the decision.
- e. Right to Appeal. A statement of the right a person with standing to appeal the decision.

### **SECTION 12: RECONSIDERATION**

12.1 Reconsideration shall be granted by the Examiner on a showing of one or more of the following:

- a. Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
- b. Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
- c. Clear mistake as to a material fact.

12.2 Motions for reconsideration must be filed within ten (10) working days of the date of the Examiner's decision. Unless otherwise specifically provided by the applicable ordinance(s), the time for appealing a decision shall begin to run upon the issuance of a decision on a motion for reconsideration that was filed in a timely manner.