

Guide to the Hearing Examiner Process

The following information explains the role of the City's Hearing Examiner and the process by which the Examiner renders land use decisions. This is not a complete description of the rules and laws governing the hearing process, but rather an overview to prepare Applicants, Appellants, and members of the public for participation in public proceedings. The land use hearing process is described in more detail in the College Place Municipal Code (CPMC) Chapter 19.09 and in the Hearing Examiner Rules of Procedure. Copies of the relevant ordinances are available from the City of College Place Community Development Department.

The Hearing Examiner system assures fairness and due process protection for all persons involved in land use hearings. City ordinances authorize the Hearing Examiner to conduct hearings on land use permit applications and appeals of certain City administrative decisions. It is the Examiner's responsibility to render decisions in an efficient manner. The specific applications and appeals under the Hearing Examiner's jurisdiction are listed in CPMC 19.05.010.

Keep in mind that the Hearing Examiner is limited in his/her authority to determining whether the evidence submitted in a given matter demonstrates compliance with adopted criteria for approval in the City code. The Hearing Examiner is not authorized to hear and decide challenges to existing city codes, including constitutional challenges and claims for equitable relief not established in the code.

Staff Reports and Project Files

In each matter scheduled to be heard in a public hearing by the Examiner, a staff report prepared by the Community Development Department will typically be available for public review one week prior to the date of the hearing. Staff reports contain a general summary of the evidence submitted by the Applicant, the Community Development Department's analysis of whether the applicable criteria for approval have been satisfied, and a recommendation to the Hearing Examiner as to whether to approve, condition, or deny the application. Electronic copies will be posted on the city website on the College Place Hearing Examiner's page and a limited number of copies are typically available in the hearing chambers the day of the hearing.

The Community Development Department maintains a separate file for every application or appeal. These files are available to the Hearing Examiner and the public. Files normally includes (as applicable): the application; an environmental checklist; environmental threshold determination pursuant to the State Environmental Policy Act; records of public notice; relevant comments from City, County, and/or State agencies, and public comments submitted to the City concerning the matter. With few exceptions, these files are public records. Persons interested in a matter are encouraged to review the file before the hearing.

If you have a particular interest in a given land use matter, you may become a Party of Record. To do so, you may submit written comments (email is acceptable) in response to notice of application or notice of environmental threshold determination per the State Environmental Policy Act. Written comments submitted prior to the hearing must be submitted not later than

12:00 noon the day of the hearing to the specific Planner for the project. Alternatively, you may submit written comment or testify at the public hearing.

Only Parties of Record will have the right to request reconsideration of the Hearing Examiner's decision and/or appeal to the City Council.

How to Participate in Land Use Hearings

After appropriate notice of hearing is provided to necessary parties as required by ordinance, the Hearing Examiner conducts a public hearing. An agenda of the matters to be heard on a given date is available at the hearing or prior to the hearing from the Community Development Department and online at the College Place Hearing Examiner's page. Each land use hearing is recorded in order to establish a verbatim record of testimony and procedural issues as they occur. All testimony is given under oath to tell the truth, and each person who testifies must identify him or herself for the record. The Hearing Examiner may establish time limits for testimony.

In hearings on application for land development, it is the Applicant who bears the burden of proof, meaning it's the Applicant's responsibility to provide adequate evidence to demonstrate compliance with the relevant criteria for approval. In appeals of land use decisions made by City staff, it is the Appellant who bears the burden of proving the City's decision was in error.

In conducting hearings, the Hearing Examiner will do the following:

- Establish the order of the day's docket and presentation of testimony for each matter;
- Administer the oath;
- Accept relevant documentary and testimonial evidence from all interested persons with standing to participate;
- Identify each exhibit admitted;
- Ask clarifying questions as needed;
- Proceed in an expeditious manner; and
- Keep order.

Application hearings will usually proceed in the following order:

- City Staff presentation summarizing issues presented and Staff recommendation;
- Applicant presentation;
- Public comment in the form of questions or statements by members of the public;
- Responses to public comment first by Staff and then by Applicants; and
- Final statement from Applicant who has the burden of proof.

Appeal hearings will usually proceed in the following order:

- Brief description of the decision appealed from by City Staff to provide context;
- Appellant presentation of case including witnesses;
- City presentation of case including witnesses;
- Applicant (if different from Appellant) presentation including witnesses;
- Final statement from Appellant who has the burden of proof.

At the conclusion of each hearing, the Examiner will close the record in the matter and identify the due date for the decision. At the Examiner's discretion, the record can be left open for

submission of specific, necessary, relevant information not provided prior to or at the hearing either at the request of a participant or at the Examiner's own request.

Generally, no new evidence can be added to the record after the public hearing closes, even on appeal from the hearing examiner decision. It is very important that all relevant information be provided prior to the close of the record.

No decision is announced at the hearing. The Hearing Examiner takes each case under advisement and prepares a written decision including findings of fact and conclusions of law. The decision is mailed to parties of record. Usually, the due date for decision issuance by the Examiner is ten business days after close of the record. In appeals and/or complex cases, the time for issuance of the Examiner's decision can be extended with the agreement of the parties. After the City receives the decision, Staff will distribute it to the Applicant, Appellant, and/or parties of record within two business days.

In order to maximize the effectiveness of your testimony, members of the public should focus their comments on evidence that tends to show that the application does or does not comply with the criteria for approval established in the City code for that type of application.

Due Process Considerations

- Land use hearings before the Hearing Examiner are quasi-judicial proceedings, which must both appear to be fair and actually be fair. Accordingly, the Hearing Examiner may not participate in any matter where he/she has financial or personal interest. Any person who has grounds to believe the Hearing Examiner may be influenced by a consideration outside the public record should promptly bring that concern to the attention of the Hearing Examiner prior to or at their first opportunity to testify at the hearing.
- If written testimony is submitted, it must be received before the close of the public hearing in order for it to be considered by the Hearing Examiner. Written testimony should be addressed to the Hearing Examiner and should be clearly legible. Comments should name the application or appeal, give the file number, and contain the writer's specific concerns about the matter.
- ***The Hearing Examiner must not be contacted directly about specific matters.*** To ensure that the Examiner will remain free from bias or prejudice in the decision making process, any contact with the Examiner must be through testimony or written statements submitted in the record at hearing, or through material submitted to Planning and Community Development Staff prior to the hearing for inclusion in the record. Material not submitted in an appropriate manner will not be admitted in the record.

Appeals From Hearing Examiner Decisions

The Notice of Decision attached to the Hearing Examiner's decision contains information on the time limits and methods of appeal for each decision. An appeal or request for reconsideration *must* be filed within the specified time limit to be considered. Usually, new information cannot be raised on appeal. All relevant information and arguments should be presented at the public hearing before the Hearing Examiner. See the municipal code for specific information about reconsideration (Chapter 19.09) and appeal (Chapter 19.15) requirements relating to the type of case in which you are interested.