

A CITIZEN'S GUIDE TO THE
HEARING EXAMINER PROCESS
CITY OF BLACK DIAMOND

Introduction.

This pamphlet serves as a brief guide to those of you who would like to participate in the Hearing Examiner process. This pamphlet explains the Examiner's role in the development of your community and provides some guidelines on how to effectively voice your concerns in public hearings held by the Examiner. This pamphlet is a summary only of City and state laws and does not serve as a substitute for those laws. The Black Diamond Community Development Director can provide you with copies of the actual City laws and regulations if you wish to see them.

The Role of the Hearing Examiner.

All significant private development in the City of Black Diamond is subject to a public hearing process. A public hearing is an opportunity for citizens to voice their concerns or support for proposed development. The Hearing Examiner presides over these hearings and uses the evidence gathered at the hearings to issue a final decision on a permit application or land use appeal. For very large development proposals, the Examiner makes a recommendation to the City Council after holding a hearing, instead of issuing a final decision. Black Diamond ordinances provide more detail on what type of projects are subject to hearings and whether the Examiner's decision is final or a recommendation to the City Council.

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 your 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 standards." "Development regulations" include the Zoning Code, Subdivision Code, Design Standards, Sensitive 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 community, the place to seek change is probably your City Council. You would be requesting your City Council to change its development regulations. State law does place some restrictions on what the City Council can include or omit from its development regulations. Nonetheless, the City Council has a great deal of flexibility with what it includes in its development regulations. You will find your City Council very receptive to constructive suggestions for improvement.

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 Council has laid out standards in its development regulations that a developer must meet in order to acquire the permits. These standards are called "permit criteria". You can enhance your effectiveness in a public hearing by knowing what permit criteria apply and by explaining how your information shows that the developer does or does not meet these criteria. City staff will prepare a "staff report" in advance of the hearing that identifies the applicable permitting criteria. Staff will provide a copy of the staff report in advance of the hearing upon request. Copies are also available at the public hearing.

In conducting hearings, the Hearing Examiner assures fairness and constitutional due process protection for all involved in the hearing process. It is his responsibility to make fair and professional decisions without bias. The Hearing 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 the standards adopted by the City Council and not for any reasons motivated by self-interest or bias.

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 strictly 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 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 other applicants outside of the hearing on issues such as scheduling. However, the Examiner cannot acquire any other information that is relevant to permitting criteria without making all hearing participants aware of the information.

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

Types of Matters Reviewed by the Hearing Examiner.

The Hearing Examiner is utilized to decide many land use applications and issues. Specific items that go before the Hearing Examiner include the following: variances; conditional use permits; site plan reviews; rezones; subdivisions; and master planned developments.

Public Notice.

Applications that are reviewed by the Hearing Examiner require public notice. Depending upon the type of permit application, City development standards may require: (1) written notice by mail to all property owners within a specified distance of the development site; (2) posting a sign at the project site; (3) posting notice at the City's website; and/or (4) publishing notice as a legal ad in the city's official newspaper.

Some Simple Rules 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 Hearing Examiner and City Council rely 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 strictly prohibited.

If you want the Hearing Examiner and City Council 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 a final decision on appeal. State law also generally prohibits the City Council from holding a public hearing if the Hearing Examiner has already held a hearing on a development permit application. If the City Council reviews a Hearing Examiner recommendation or hears an Examiner decision on appeal, it can only consider the evidence presented to the Examiner during the public hearing. Staff and the Examiner will ensure that your information is forwarded to the Council. If the Council doesn't receive the information you presented during the hearing, speak up and City staff will make sure the missing information becomes available.

The Hearing Examiner does not have to close a hearing on the date it's been scheduled. The Hearing 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.

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

If written evidence is submitted, it should be addressed to the Hearing Examiner and should 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 Hearing 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 should contain the specific reasons why the application should be approved, disapproved or conditioned. The writer should give his/her full address in order to receive a copy of the decision.

Order of Presentation

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

1. Introduction by the Hearing Examiner.
2. Presentation by city staff to describe the application, summarize issues presented, and give the city's recommendation;
3. Presentation by the applicant or the applicant's authorized representative, who has the burden of proof, that the application is consistent with comprehensive plans and development regulations;
4. Presentations, questions or statements by members of the public;
5. Responses to public comments, questions or statements by staff and applicants;
6. Rebuttal by staff;
7. Rebuttal by applicant.
8. Conclusion by the Hearing Examiner - the record will be closed unless the Hearing Examiner requests additional information from staff or parties.

Do not expect an oral decision at the conclusion of the public hearing. The Hearing 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, including any additional information requested, the Hearing Examiner will issue a written final decision or recommendation two to three weeks 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 applicable permit criteria. 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 from Hearing Examiner Decisions.

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