

# Quasi-Judicial Hearings & Land Use

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PRESENTER: AMY KEENAN AND GEORGE ROCHE

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# Types of Land Use Decisions Before Council Sitting in a Quasi-Judicial Capacity

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- Major Project Permits
- Planned Unit Development
- Development Agreement

# Type IV Project Permits

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- Process outlined in WCC 22.05.120(6)
- Requires public notification including:
  - posting of the site,
  - notice in the newspaper,
  - posting on our website, and
  - mailing to neighbors.
- Open Record Public Hearing
- Council Decision
- Appeal to Superior Court

# Council Approval

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- ❑ The open record public hearing is scheduled and held with the Whatcom County Hearing Examiner.
- ❑ The record is closed after the open record public hearing. No additional information, documents, or testimony can be submitted into the record.
- ❑ The Hearing Examiner will issue recommended conditions of approval, findings of fact and conclusions of law to County Council for final determination.
- ❑ County Council holds a public meeting and issues a final written decision.

# Appearance of Fairness

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- ❑ The appearance of fairness doctrine is codified in RCW chapter 42.36, and Whatcom County Code 2.104.040 applies appearance of fairness to quasi-judicial actions on all matters concerning land use.
- ❑ The appearance of fairness doctrine is designed to guarantee that strict procedural requirements are followed so that quasi-judicial hearings are not only fair, but also appear to be fair. The goal of the doctrine is to instill and maintain confidence in the fairness of government proceedings.
- ❑ Quasi-judicial public hearings meet two requirements:
  - ❑ They must be procedurally fair.
  - ❑ They must appear to be conducted by impartial decision-makers.

# Actions That Are Exempt from the Doctrine

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Purely legislative matters, such as:

- ❑ the adoption, amendment, or revision of a comprehensive, community, or neighborhood plan;
- ❑ adoption of area-wide zoning ordinances; and
- ❑ adoption of zoning amendments of area-wide significance.

# Ex Parte Communication

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- ❑ “Ex parte communication” means one-sided. This includes any communication, written or oral and relating to a quasi-judicial action, between an elected official and only one party to said action without the presence of other parties to the action.
- ❑ Procedural due process requires that all parties to the action are given notice and opportunity to be heard. Engaging in discussion of the issues outside of the presence of a party to the action violates these basic principles of fairness.
- ❑ Participation by a member of a decision-making body in earlier proceedings that results in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding.

# Disclosing Ex Parte Communication

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- ❑ Disclosure of ex parte communication - A decision-maker who has had ex parte contacts is allowed, by statute, to cure the violation by publicly stating the nature and substance of the contact on the record and by advising the parties of any ex parte contact and giving each party a chance to respond at each subsequent hearing at which the matter is considered.
- ❑ Record/memorialize any ex parte contact you receive, so that it can be publicly reported and cured. Staff and legal can assist you in this process.



# Types of Bias

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- ❑ **Personal interest** - Personal interest exists when someone stands to gain or lose because of a governmental decision. Origins of bias could be from: financial gain, property ownership, employment by an interested person, prospective employment, membership ties, and family and social relationships.
- ❑ **Pre-judgment** - Although public officials are not prohibited from expressing opinions about general policy, it is inappropriate for decision-makers to be close-minded before they even hear testimony on a contested matter. Decision-makers need to reserve judgment until after all the evidence has been presented.
- ❑ **Partiality** - The existence of hostility or favoritism can turn an otherwise carefully conducted hearing into an unfair proceeding. Historical examples of partiality involve planning commissioners recusing for bias, but then continuing to participate as audience members advocating for their biased position. If you feel the need to recuse, honor the recusal and step aside.

# Test for Bias

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- Has the decision been made solely on the basis of matters of record?
- Would a fair-minded person, observing the proceedings, be able to conclude that everyone had been heard who should have been heard?
- Did decision-makers give reasonable faith and credit to all matters presented, according to the weight and force they were reasonably entitled to receive?

# Challenges / Disqualification

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- ❑ **Timeliness** - Challenges must be made as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision.
- ❑ **Duty to recuse** - Any county elected official shall remove him or herself from hearing any quasi-judicial matter where, in the judgment of that official, his or her impartiality might be reasonably questioned. If your participation is challenged, the party should be heard fully on their basis, and you can consult with legal before exercising your ethical judgment, and deciding whether to recuse.
- ❑ **Rule of necessity** - If members of a decision-making body are challenged as being in violation of the doctrine so that there are not enough members to legally make a decision, the “rule of necessity” allows challenged members to participate and vote. Before voting, though, the challenged officials must publicly state why they would, or might have been, disqualified.

# Special Rules Apply During Elections

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- ❑ RCW 42.36.050 – A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions.
- ❑ During campaigns, candidates for public office are allowed to express their opinions about pending or proposed quasi-judicial actions, even though they may be involved in later hearings on these same actions.
- ❑ If opinion statements made during a campaign reflect an intractable attitude or bias that continues into the post-election hearing process, a court might determine that the right to a fair hearing has been impaired, even if no statutes were violated.