

CITY OF BLAINE
REQUEST FOR CITY COUNCIL ACTION
MEETING DATE: June 11, 2007

SUBJECT: Amendments to increase Hearing examiner responsibilities.

PROPONENT: City of Blaine

SUBMITTING DEPT: Community Development Services Department

PREPARED BY: Terry Galvin, Community Development Director

AGENDA LOCATION: Comments/Communications ☐ Consent ☐ Committee Reports ☐
Unfinished business ☐ New business ☐ Public hearings ☐ Standing committees ☐

ATTACHMENTS

Attachment A: Proposed amendments

MRSC Focus: Use of hearing examiners by Cities and Counties in Washington

SUMMARY/BACKGROUND

In 2002, the City Council approved an ordinance creating a hearing examiner (HE) system to handle appeals for the City. The ordinance created chapter 2.58, Blaine Municipal Code (BMC) establishing a Hhearing examiner position, related responsibilities, and due process.

Five years later staff is proposing additional changes to the code that increase the responsibilities of the hearing examiner. The proposal can be broken into three categories as follow:

Staff Proposal -1 Continue hearing examiner Appeal duties as follows:

- ☐ HE to hear decisions of administrative appeals.
- ☐ Change code to eliminate HE appeals to the City Council.
- ☐ All HE decisions to be appealed to the Whatcom County Superior Court.

Staff Proposal -2 Expand the hearing examiner responsibilities as follows:

- ☐ To hear and decide all Type II applications for site-specific land use project permits and approvals with the exception of Major Development projects. Hearing examiner to make recommendation to the City Council.
- ☐ To hear and decide on enforcement action relating to land use actions.
- ☐ To periodically provide feedback and recommendations addressing the Blaine Municipal Code (BMC) to staff, the Planning Commission and the City Council.

Staff Proposal -3 Change Planning Commission responsibilities as follows:

- ☐ The Planning Commission will stop reviewing Type II permit applications.
- ☐ The Planning Commission will continue to conduct hearings and meetings and make recommendations to the City Council on land use code or comprehensive plan amendments.

Staff Proposal –4 Require annual review as follows:

- ☐ The City Council and Planning Commission to jointly review hearing examiner rulings in one year increments with detailed staff analysis. Make necessary revisions.
- ☐ Critical review criteria: is the public being better served (or as well served) by a hearing examiner as would otherwise take place with Planning Commission Review?

The primary motivation for this change is to allow the Planning Commission to concentrate on the Comprehensive Plan and land use code update. The use of a hearing examiner can relieve the load of the Planning Commission and City Council and allow more time for them to concentrate on legislative matters.

Another reason for the proposed change addresses the concern that with the passage of the Growth Management Act in 1990 and a multitude of related state legislation, the regulatory scene has become very complex with increasing potential for litigation and liability. There is evidence that supports the conclusion that the use of a hearing examiner will result in more legally defensible, timely, and consistent land use decisions thus reducing the City's potential liability.

RECOMMENDATION:

Staff recommends that the City Council refer these amendments to the Planning Commission for a Public Hearing and their recommendation.

REVIEWED BY:

City Manager

Finance Director

City Clerk

CITY COUNCIL ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to:

☐ Other:

Attachment A

Hearing Examiner/Planning Commission Responsibilities

Proposed Amendments to Chapter 2.56 -PLANNING COMMISSION

2.56.010 Established – Membership.

A. There is created a city planning commission consisting of seven members who shall be selected by the city council pursuant to Chapter [2.08](#) BMC, as adopted and amended.

B. At the next regular meeting of the planning commission following the effective date of the ordinance codified in this section, the commissioners presently in office shall determine by lot whose terms shall expire in four years, three years, two years, and one year, respectively. Thereafter, the term of office for each appointive member shall be set by BMC [2.56.020](#). The members of the commission shall determine which member shall serve as chairperson. (Ord. 2025 § 5, 1991; Ord. 2020 § 5, 1991; Ord. 1991 § 1, 1990; Ord. 1650 § 1, 1982; Ord. 999 § 1, 1948; Ord. 987 § 1, 1948; Ord. 985 § 1, 1948; prior code § 2-101)

2.56.020 Terms.

The term of office of the seven members appointed by the city council shall be six years. (Ord. 2025 § 5, 1991; Ord. 2020 § 5, 1991; Ord. 1650 § 1, 1982; Ord. 999 § 1, 1948; prior code § 2-102)

2.56.030 Residency.

Any member appointed to the planning commission shall reside within the city limits for the term of his office. (Ord. 1650 § 1, 1982; Ord. 1530 § 1, 1979; prior code § 2-111)

2.56.040 Vacancies – Nonpartisanship – Compensation.

Vacancies occurring other than through the expiration of terms shall be filled by the council. The members shall be selected without respect to political affiliations and they shall serve without compensation. (Ord. 1650 § 1, 1982; Ord. 985 § 1, 1948; prior code § 2-103)

2.56.050 Duties.

The planning commission, as required by this chapter, shall conduct an open record hearing and make recommendations to the city council on proposed amendments to the City of Blaine Comprehensive Plan and Title 17, Land Use & Development., BMC.

2.56.060 Research and fact-finding.

The planning commission may act as the research and fact-finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by the council. (Ord. 1650 § 1, 1982; Ord. 985 § 3, 1948; prior code § 2-105)

2.56.070 Secretary.

The Community Development Director shall serve as the secretary of the Planning Commission.

2.56.080 Quorum – Valid action.

A majority of the membership of the planning commission, not less than four appointed members, shall constitute a quorum for the transaction of business. Any action taken by a majority of those present when a meeting of the planning commission is held shall be deemed and taken as the action of the commission. (Ord. 1650 § 1, 1982; Ord. 985 § 5, 1948; prior code § 2-107)

2.56.090 Expenditures – Employees.

The expenditures of the commission shall be within the amounts appropriated for the commission by the city council. Within such limits the commission may employ such employees and expert consultants as are deemed necessary for its work. (Ord. 1650 § 1, 1982; Ord. 985 § 6, 1948; prior code § 2-108)

Proposed amendments to Chapter 2.58- HEARING EXAMINER

2.58.010 Established.

Effective February 2002, the position of city of Blaine hearing examiner is created. The position shall be appointed as provided for under RCW 36.70.970 by the city council for a two-year term and may be removed at will by the city council. (Ord. 2507 § 2, 2002)

2.58.020 Blanket amendment.

All Blaine Municipal Code designations of “board of adjustment” or “board of appeals” or any variations therein shall be amended to read “hearing examiner.” (Ord. 2507 § 2, 2002)

2.58.030 Purpose.

The purpose for creating a hearing examiner function is:

A. To provide an efficient and effective system for deciding appeals from administrative decisions, Type II permit decisions, and Type III permit recommendations;

B. To help insure procedural due process and appearance of fairness by holding such hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 2507 § 2, 2002)

2.58.040 Salary.

The hearing examiner shall be compensated on an hourly basis as established by resolution with an allocated budget set annually as part of the budget process. (Ord. 2507 § 2, 2002)

2.58.050 Qualifications.

The hearing examiner and his or her pro tempore shall be appointed solely with regard to their qualifications for the duties of their office, and shall have such training or experience as will qualify them to conduct administration of quasi-judicial hearings on the application of regulatory enactments and to discharge other functions conferred upon them, and shall hold no other appointed or elected public office or position in the city government, except as provided in this chapter. (Ord. 2507 § 2, 2002)

2.58.060 Appointment and removal.

The hearing examiner and one or more pro tem shall be appointed by a majority vote of the city council for a two-year period. The hearing examiner may be removed from office at any time by an affirmative vote of not less than two-thirds of city council members. (Ord. 2507 § 2, 2002)

2.58.070 Duties and powers.

The hearing examiner shall make a final decision upon the following matters:

- A. Appeals from any final written orders, requirements, permits, decisions or determinations made by an administrative official in the administration of BMC Titles 8, 12, 13, 15, 16 and 17.
- B. Appeals from SEPA determinations of significance, determinations of nonsignificance, and mitigated determinations of nonsignificance.
- C. Revocation proceedings involving all project proposals requiring an open record hearing.
- D. Applications for zoning conditional use permits;
- E. Applications for shoreline management substantial development permits;
- F. Applications for shoreline management program conditional use permits;
- G. Applications for long subdivision approval;
- H. Project permits that require a variance request;
- I. Applications for short plat approval when a short plat variance is being requested;
- J. Applications for general binding site plan approval;
- K. Applications for zoning or shoreline variances which accompany any of the applications listed in subsection (D)(1) of this section; and
- L. Appeals of administrative decisions made by the director in the administration of the design guidelines and sign review regulations.

2. The hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the city council for approval or disapproval of applications made for the project permits listed below:

- A. Major development;
- B. Planned unit development permits; and
- C. An application for any of the project permits for which the hearing examiner would normally make a final decision as provided in subsection (D)(1) of this section, when associated with a major development or a planned unit development.

2.58.080 Rules and regulations.

The hearing examiner shall have the power to prescribe rules and regulations for the conduct of hearings before him, subject to approval by the city council, and also to issue summons for and compel the appearance of witnesses, to administer oaths and preserve order. The opportunity of cross-examination of witnesses shall be afforded all interested parties or their counsel in accordance with the rules of the hearing examiner. (Ord. 2507 § 2, 2002)

2.58.090 Department reports.

The hearing examiner may request reports from appropriate staff. (Ord. 2507 § 2, 2002)

2.58.100 Changes in legislation.

The hearing examiner may recommend changes in legislation to the community development department or city council. (Ord. 2507 § 2, 2002)

2.58.110 Limited jurisdiction.

The hearing examiner shall have no jurisdiction over any project that requires a legislative action, such as but not limited to regulatory amendments, regulatory map amendments, a comprehensive plan change, or a shoreline management program amendment. The approval or denial of such projects shall be solely within the discretion of the city council. (Ord. 2507 § 2, 2002)

2.58.120 Final decision conditions.

The hearing examiner's final decision on all permits or appeals shall either grant or deny the permit or appeal. The hearing examiner may grant the permit or appeal subject to conditions, modifications or restrictions that the hearing examiner finds necessary to make the proposed project compatible with its environment, and to carry out the objectives and goals of the comprehensive plan, the land use code, and other applicable official policies and objectives of the city. Performance bonds or other security, acceptable to the city, may be required to ensure compliance with the conditions, modifications and restrictions. (Ord. 2507 § 2, 2002)

2.58.130 Final decision – Findings and conclusions.

Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. (Ord. 2507 § 2, 2002)

2.58.140 Time limitation on decision.

Each final decision of the hearing examiner shall be rendered within 10 days following the conclusion of all testimony and hearings. (Ord. 2507 § 2, 2002)

2.58.150 Review limited.

No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein. (Ord. 2507 § 2, 2002)

2.58.160 Appeal of hearing examiner decision.

The decision of the hearing examiner shall be final unless appealed to the Whatcom County Superior court pursuant to Section 17.06.190, BMC.

Proposed amendments to Section 17.02.050 Administrative responsibilities.

A. Director.

1. The director shall have the responsibility for administering the provisions of this title including the interpretation and application of its provisions;

2. The director shall make final decisions on all permits and approvals not explicitly delegated to another decision-making body;

3. The director shall act as a coordinating agent to ensure that the regulatory process is expeditious. All departments of city government shall cooperate with the director in the exercise of his or her duties relative to land use controls and regulations;

4. The director shall establish a city of Blaine technical review committee (TRC) with the director serving as chairperson; and

5. The director shall serve as the secretary of the planning commission.

B. Technical Review Committee (TRC).

1. In addition to the director, the TRC shall be made up of the director of public works or his or her designee, and the building official or his or her designee. The director may expand the membership of the committee to include other city staff members with particular expertise in the matter under consideration;

2. The TRC shall convene to review and make recommendations on the following applications prior to their approval by the approving authority:

a. Applications for short and long subdivision;

b. Applications for rezones and comprehensive plan amendments;

c. Applications for annexations; and

d. Such other applications or matters as the director may choose to bring before the committee for their consideration;

3. The role of the TRC is advisory only. The final decision on any matter brought before the TRC rests with the approving authority. The interpretation and the application of a particular statute, code, rule or policy rests with the administrative official charged with the responsibility for administering that statute, code, rule or policy and is not subject to review by the TRC unless such review is requested by the responsible director.

C. Hearing Examiner (HE).

1. The hearing examiner shall conduct open record hearings and prepare a record thereof, and make final decision.s on appeals and Type II land use decisions pursuant to Chapter 2.58, BMC, except as provided in subsection E of this Section

D. Planning Commission (PC).

1. The planning commission shall conduct an open record hearing and prepare a record thereof, and make recommendations to the city council on proposed amendments to the land use and development code and on proposed new regulations thereunder.

E. City Council (CC).

1. The city council shall make a final decision on the following applications for project permits:

- a. Major development permits;
- b. Planned unit developments;
- c. Associated land use permits.

2. The city council, through its chairperson, shall review and sign final plats.

Proposed amendments to 17.06.170 Variances.

A. The hearing examiner shall have the power and duty to authorize a variance from the terms of the area and dimensional regulations of this title when the request is consistent with the public interest and where, due to special conditions, literal enforcement of the provisions of this code would result in unnecessary hardship.

B. A variance from the terms of this title shall be granted by the hearing examiner when a written application for a variance is submitted demonstrating all of the following:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;

2. That literal interpretation of the provisions of this division would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this division;

3. That the special conditions and circumstances do not result from the actions of the applicant;

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this division to the other lands, structures or buildings in the same district; and

5. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

C. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.

D. The following steps are required for consideration of a variance:

1. Notice of public hearing shall be given consistent with the timelines established in this chapter;

2. The hearing examiner shall hold an open record hearing addressing the variance request in conjunction with related permit applications or project proposals;

3. The hearing examiner shall make findings that all of the requirements of subsections (B)(1) through (4) of this section are met;

4. The hearing examiner shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and

5. The hearing examiner shall further make a finding that the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. In granting any variance, the hearing examiner shall set the expiration date at 12 months from issuance. If establishment or construction of the variance conditions has not commenced within this 12-month period, the applicant may reapply for a new variance permit. The hearing examiner may extend the expiration date by one six-month period upon written request and evidence that the applicant intends to activate the permit within that time limit.

F. Under no circumstances shall the hearing examiner grant a variance to allow a use not permitted under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this division in the district. Variances shall be limited to the area and dimension requirements of this division. (Ord. 2554 § 3, 2003)

Proposed amendments to 17.06.180 Appeals.

A. Type I-ADM Final Decisions. Type I final decisions, when provided in writing, shall be final and conclusive unless a statement of appeal is filed by the applicant, a department of the city, or any aggrieved person in the manner set forth below:

1. A statement of appeal shall be in writing and include a brief statement of the matter being appealed and the basis for the appeal;

2. The statement shall be submitted to the director, filed with the appropriate city hearing body and shall be accompanied by a fee pursuant to the city's unified fee schedule within 14 days of the issuance of the formal written decision. The appropriate hearing body shall be determined by the director based on the matter under appeal;

3. The applicant may choose to submit a more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal. This statement must be submitted by the appealing person within 30 days following the issuance of the final decision;

4. The appeal of a Type I decision shall be an open record appeal.

B. Type II Final Decisions. Type II final decisions made by the hearing examiner or the city council shall be final and conclusive unless a timely judicial appeal is filed with the superior court of Whatcom County pursuant to BMC [17.06.190](#).

C. The timely filing of an administrative appeal shall stay the effective date of the decision until such time as the appeal is heard and decided or is withdrawn. The burden of proof regarding modification or reversal shall rest with the appellant.

17.06.190 Appeals to the Whatcom County superior court.

A. Appeals from the final decision of the city council on a land use decision shall be made to Whatcom County superior court in conformity with the requirements of the State Land Use Petition Act, Chapter 36.70C RCW.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served to the city clerk, the director, and city attorney within the applicable time period. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered, certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

D. No land use decision shall be deemed a final decision by the city and subject to judicial appeal until all available administrative appeals of the decision allowed by city code have been completed. Failure of a person to timely file an administrative appeal, if such is available, of a land use decision shall preclude further administrative or judicial review of the decision. (Ord. 2554 § 3, 2003)