

## Chapter 25.32

### HEARING EXAMINER ORDINANCE

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**25.32.010 PURPOSE.**

The purpose of this chapter is to: streamline the process for the public; provide an administrative land use regulatory system which will separate Grant County’s land use regulatory function from its land use planning function; ensure and expand the principles of fairness and due process in public hearings; and to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters.

**25.32.020 HEARING EXAMINER OFFICE ESTABLISHED.**

The Office of the Grant County Hearing Examiner, herein referred to as “Hearing Examiner,” is hereby created by the BOCC. The role of the Hearing Examiner shall be to interpret, review and implement regulations as provided in this ordinance. Unless the context requires otherwise, the term Hearing Examiner used in this ordinance shall also include Hearing Examiner(s) pro tem.

**25.32.030 DEFINITIONS.**

For purposes of this chapter the following words and phrases used herein shall have the designated meaning unless a different meaning is expressly provided.

1. **Applicant:** any person, entity, or agency that applies for a development proposal, permit or approval [subject to review under this Uniform Development Code (the “UDC”)] and who is either the owner, beneficial owner, contract purchaser, or authorized agent of such owner of the land on which the proposed activity would be located.
2. **BOCC:** the Board of County Commissioners of Grant County; the legislative authority of Grant County.
3. **County:** Grant County, Washington, its Board, commissioners, and departments.
4. **Department:** the Grant County Planning Department.
5. **Hearing Examiner:** the Grant County Hearing Examiner, an appointed officer of the County who shall interpret, review and implement the county’s land use regulations as provided in this UDC.
6. **Ex parte communication:** means written or oral communications not included in the public record and made outside of a public hearing.
7. **Party of Record:** any person who has testified at an open-record public hearing, or has submitted a written statement related to a development action, or has notified the Grant County Administrative Official of their desire to receive a copy of a final decision related to a development action, and who provides the County with a complete address.
8. **Record:** means official documents that record all public hearing proceedings with regard to a specified land use application. Such record will normally be by means of magnetic recording tape equipment and minutes.
9. **Staff:** means departments of Grant County, Washington.
10. Other technical and procedural terms and rules for construction of language shall be as defined in Grant County Unified Development Code Chapter 25.02.
11. All other words and phrases used herein will have their commonly accepted meanings.

**25.32.040 APPOINTMENT OF HEARING EXAMINER.**

The Hearing Examiner shall be selected by the BOCC and shall serve at the pleasure of the BOCC. This position will be a contracted position for a term and on conditions deemed appropriate by the BOCC. Said contract may also provide for Hearing Examiner(s) pro tem to serve in the absence of the Hearing

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Examiner on such terms and conditions deemed appropriate by the BOCC. The Hearing Examiner(s) pro tem shall be selected by the BOCC.

**25.32.050 HEARING EXAMINER – QUALIFICATIONS.**

The Hearing Examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have such training or experience as will qualify the Hearing Examiner to conduct administrative or quasi-judicial hearings utilizing land use regulatory codes and must have expertise and experience in planning, and should have knowledge or experience in at least one (1) of the following areas: “environmental sciences, law, architecture, economics or engineering.” Persons appointed to this position should have experience in drafting records of decisions which incorporate findings of fact and conclusions of law. Hearing Examiners shall hold no other elective or appointive office or position with the County. The Hearing Examiner may be removed from office by the BOCC at will.

**25.32.060 HEARING EXAMINER PRO TEM – QUALIFICATIONS AND DUTIES.**

The Hearing Examiner(s) pro tem shall serve in the event of the absence or the inability of the Hearing Examiner to act and shall have all the duties and powers of the Hearing Examiner. The Hearing Examiner(s) pro tem shall have such training or experience as to satisfy Section 25.32.050, above.

**25.32.070 HEARING EXAMINER – AUTHORITY AND DUTIES.**

The Hearing Examiner shall review all applications for conformance with the UDC and consistency with the Grant County Comprehensive Plan, and/or all relevant community development plans, and the provisions of all other applicable land use regulations. The Hearing Examiner shall receive and examine all available information, including environmental documents, conduct public hearings, cause preparation of a record thereof, prepare and enter findings of fact and conclusions of law based upon those facts in a record of decision to be rendered within ten (10) working days of the conclusion of the hearing. The conclusions of the Hearing Examiner shall represent final decisions as provided hereinafter:

1. **Final Decisions:** The decisions of the Hearing Examiner shall be final and conclusive on the following matters, unless such determination is appealed to BOCC as provided herein:
  - a. Applications for land use conditional use permits under Title 23 Zoning;
  - b. Appeals of decisions or determination of the Administrative Official regarding any requirements, decision or determination regarding flood hazard permits pursuant to GCC § 24.16;
  - c. Any other matters specifically assigned to the Hearing Examiner by the BOCC.
  
2. **Jurisdictional Limits:** The Hearing Examiner shall not review matters related to legislative decisions pursuant to GCC § 25.12.010 or for matters related to enforcement or penalties for violations of the GCC.
  - a. The Hearing Examiner’s decision on all matters is final and conclusive, provided that appeals from such decisions for permit applications subject to Type I or II procedures may be taken to the BOCC as provided herein. Judicial appeals pursuant to GCC § 25.04.430 shall be the exclusive means;
  - b. The Hearing Examiner’s decision shall be based upon the policies of the applicable Comprehensive Plan, Shoreline Master Program, the standards set forth in the various land use regulatory codes of the County or any other applicable program adopted by the BOCC. When acting upon any of the above specific applications or appeals, the Hearing

1 Examiner and/or the BOCC may attach any reasonable conditions found necessary to  
2 make the project compatible with its environment and to carry out the goals and policies  
3 of the applicable Comprehensive Plan, Shoreline Master Program, or other applicable  
4 plans or programs adopted by the BOCC.

5 **25.32.080 RULES.**

6 The Hearing Examiner may prescribe rules or adopt rules by reference for the scheduling and conduct of  
7 hearings and other rules of procedure. Said rules shall provide, without limitation, that all testimony be  
8 audio taped, under oath, and subject to penalties for perjury. Applications for the consideration of cases to  
9 be heard by the Hearing Examiner shall be made to the Department.

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11 **25.32.090 HEARING EXAMINER – CONFLICT OF INTEREST AND FREEDOM FROM**  
12 **IMPROPER INFLUENCE.**

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14 1. The Hearing Examiner shall not conduct or participate in any hearing or decision in which the  
15 Hearing Examiner or any of the following persons has a direct or indirect or substantial financial  
16 or personal interest or in which such conduct or participation would violate any rule of law  
17 applicable thereto:  
18 a. The Hearing Examiner’s spouse, brother, sister, child, parent, in-laws, partner; any  
19 business in which the Hearing Examiner is then serving or has served within the previous  
20 two (2) years; or  
21 b. Any business with which such Hearing Examiner is negotiating for or has an arrangement  
22 or understanding concerning possible partnership or employment. Any actual or potential  
23 interest shall be disclosed prior to such hearing.  
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25 2. Participants in the land use regulatory process have the right, insofar as possible, to have the  
26 Hearing Examiner free from personal interest or pre-hearing contacts on land use regulatory  
27 matters considered by them. It is recognized that there is a countervailing public right to free  
28 access to public officials on any matter. Therefore, the Hearing Examiner shall reveal any  
29 substantial interest or pre-hearing contact made with them concerning the proceedings, at the  
30 commencement of such proceeding. If such interest or contact impairs the Hearing Examiner’s  
31 ability to act on the matter, such person shall so state and shall abstain therefrom to the end that  
32 the proceeding is fair and has the appearance of fairness.

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34 Immediately after the announcement of any interest or pre-hearing contact, any person who  
35 objects to said interest or pre-hearing contact shall state the objection and any reasons supporting  
36 the objection. The failure to state such an objection at the time of announcement is deemed to be  
37 a waiver of said objection, therefore, this objection cannot be raised (for the first time) at any  
38 subsequent time.

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40 The Hearing Examiner, upon hearing an objection, shall personally decide whether the interest or  
41 contact will impair their ability to be fair and impartial, and shall hear the case or abstain  
42 accordingly.

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44 No BOCC member, County official, or any other person shall interfere with or attempt to  
45 interfere with or attempt to influence the Hearing Examiner in the performance of their  
46 designated duties; provided that a County official or employee may, in the performance of their  
47 own official duties, provide information for the Hearing Examiner or process a County case  
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before the Hearing Examiner, when such actions take place or are disclosed in the Hearing Examiner's hearing or meeting.

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3 **25.32.095 EX PARTE COMMUNICATIONS**

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1. Hearing Examiner may not communicate, directly or indirectly, regarding any issue in a proceeding before it, other than to participate in communications necessary to procedural aspects of maintaining an orderly process, unless Hearing Examiner provides notice and opportunity for all parties to participate; except as provided in this section;
    - a. Hearing Examiner may receive advise from legal counsel;
    - b. Hearing Examiner may communicate with Department and other staff members (except where the proceeding relates to a code enforcement investigation or prosecution).
  2. If, before serving in a quasi-judicial proceeding, Hearing Examiner receives an ex parte communication of a type that could not properly be received while serving, Hearing Examiner promptly after starting to serve, shall disclose the communication as described in Section 3. below.
  3. If Hearing Examiner receives an ex parte communication in violation of this section, Hearing Examiner shall place on the record:
    - a. All written communication received;
    - b. All written responses to the communication;
    - c. State the substance of all oral communication received, and all responses made;
    - d. The identity of each person from whom Hearing Examiner received any ex parte communication.
  4. Hearing Examiner shall advise all parties that these matters have been placed on the record. Upon Request made within ten (10) days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a rebuttal statement on the record.

26 **25.32.100 FEES.**

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28 All applications for Hearing Examiner review submitted to the Department shall be accompanied by the  
29 applicable fees as set forth in GCC § 25.01.110.  
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31 **25.32.110 APPLICATIONS.**

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33 Project permit applications shall be classified, submitted and processed in accordance with the  
34 requirements of GCC § 25.04. After the Administrative Official determines that an application is  
35 technically complete and within the jurisdictional scope of the Hearing Examiner the Administrative  
36 Official shall schedule a Type III application for a public hearing, and provide public notice in accordance  
37 with GCC § 25.04.240. Applications for appeal of flood hazard permits shall be in accordance with GCC  
38 §25.04.410.  
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40 **25.32.120 REPORT BY THE DEPARTMENT.**

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42 such application has been set for public hearing, the Department shall coordinate and assemble the  
43 comments and recommendations of other County departments and governmental agencies having an  
44 interest in the subject application and shall prepare a report on the application and present this staff report  
45 at the public hearing. This staff report will incorporate on the project permit application, any mitigation  
46 measures recommended under the County's development regulations or under the authority of SEPA, and  
47 the County's final SEPA determination on the project permit action.  
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**25.32.130 PUBLIC HEARING.**

1. Before rendering a decision on any Type III application, the Hearing Examiner shall hold a public hearing thereon in accordance with GCC § 25.04 Article VIII. In the case of any Type I flood hazard permit appeal, the Hearing Examiner shall hold a closed-record appeal hearing thereon in accordance with GCC §25.04.420(b).
2. The order of proceedings shall be in accordance with GCC § 25.04.310. Hearing Examiner may adopt other rules of procedure not inconsistent with GCC § 25.04.310, subject to confirmation by the BOCC. Further, if deemed appropriate, to facilitate review of a particular application, the Hearing Examiner may adopt specific procedures for an individual matter.

**25.32.140 HEARING EXAMINER’S DECISION – FINDINGS REQUIRED.**

1. When the Hearing Examiner renders a decision, the Hearing Examiner shall make and enter findings from the record and conclusions thereof, which support such decision, and the findings and conclusions shall set forth and demonstrate the manner in which the decision carries out and helps to implement the goals and policies of the Comprehensive Plan and the standards set forth in the Unified Development Code. Decision content shall further be a specified in GCC § 25.04.375.
2. All decisions of the Hearing Examiner shall be rendered within ten (10) working days following the conclusion of all testimony and hearings. The timeline for issuance of a notice of decision shall be as specified in the GCC § 25.04.380.
3. Upon issuance of the Hearing Examiner’s decision, the Department shall distribute the notice of decision as specified in GCC § 25.04.375.

**25.32.150 RECONSIDERATION.**

Any aggrieved party or agency (including the Planning Commission) that believes the final decision of the Hearing Examiner is unsound based upon errors in procedure, law interpretation of adopted policy, fact, judgment, or the discovery of new factual evidence which, by due diligence, could not have been found prior to the Hearing Examiner hearing may make a written request for reconsideration by the Hearing Examiner within fourteen (14) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the Department on forms provided by the Department. Reconsideration of the decision is wholly within the discretion of the Hearing Examiner; if the Hearing Examiner chooses to reconsider, he/she may revise the decision, as they deem appropriate, and may issue a revised record of decision within ten (10) days of the reconsideration heard by the Hearing Examiner. A request for reconsideration is not a prerequisite to an appeal.

**25.32.160 APPEAL OF HEARING EXAMINER’S FINAL DECISION.**

A final decision by the Hearing Examiner on any land use matter within their jurisdiction, may be appealed by a person with standing to appeal pursuant to GCC § 25.04.400. Appeal procedures shall be as specified in GCC § 25.04 Article X, and as follows:

1. An appeal shall stay the effective date of the Hearing Examiner’s decision until final resolution has been made by the appeal hearing body.
2. Judicial appeals of Hearing Examiner decisions shall be pursuant to RCW 36.70C, and such process shall be the exclusive means of appeal review for such decisions, except for:

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- a. Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the Shoreline Hearings Board or Growth Management Hearings Board; or
  - b. Judicial review of application for a Writ of Mandamus or prohibition; or
  - c. Claims provided by any law for monetary damages or compensation.

**25.32.170 HEARING EXAMINER’S REPORT TO PLANNING COMMISSION.**

- 1. The Hearing Examiner shall meet at least once per Calendar year with the Planning Commission for the purpose of reviewing the policies contained in the comprehensive plans and the administration of these policies.
- 2. The Hearing Examiner shall submit a written report to the Planning Commission briefly summarizing the Hearing Examiner’s decisions and recommendations for the one (1) year period preceding the meeting.

**25.32.180 MULTIPLE APPLICATIONS.**

The Hearing Examiner may consider two (2) or more applications relating to a single project concurrently, and the findings of fact, conclusions and decision on each application may be covered in one (1) written decision.

**25.32.190 ANNUAL REPORT.**

The Hearing Examiner shall report in writing to and meet with the BOCC at least annually for the purpose of reviewing the administration of the County’s land use policies and regulating ordinances. The report shall include a summary of the Hearing Examiner’s decisions since the prior report.

**25.32.200 SEVERABILITY.**

If any section, subsection, or other portion of this ordinance is, for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, or portion shall be deemed a separate portion of this ordinance and such holding shall not affect the validity of the remaining portions of this ordinance.

**25.32.210 REPLACEMENT AND SUBSTITUTION OF THE JURISDICTION OF OTHER COMMISSIONS TO THE HEARING EXAMINER.**

With the adoption of this ordinance and its inclusion into Title 25 of the Grant County Code, the jurisdiction of the Board of Adjustment shall be replaced and substituted by those powers and duties, as stated herein. The Hearing Examiner shall hear and decide those land-use matters and appeals as stated in Section 25.32.070 herein, irrespective of the procedures mentioned in other ordinances and policies of the County.

**25.32.220 EFFECTIVE DATE.**

This ordinance shall take effect February 1, 2002.