

Land Use Process

Clark County

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Type I

- No Pre-app required
- No Public Notice
- 21-day review time frame
- Staff is the decision maker
- Examples: ADU's, Boundary Line Adjustments, Legal Lot Determinations, Site Plan Review,



Type II

- Pre-app Conference
- Public Notice = 300 feet in urban and 500 feet in rural, Neighborhood Association and others that request notice
- 78 day review
- Staff is the decision maker
- Examples: Short Plat, Site Plan review



Type II-A

- **Pre-app Conference**
- Public Notice = 300 feet in urban and 500 feet in rural, Neighborhood Association and others that request notice
- 78-day review time if hearing is not requested
- 92-day review with hearing
- Staff is decision maker on cases without a hearing, otherwise hearing examiner is the authority.
- Examples: Conditional Use Permits, PUD's and Master Plans that do not include a subdivision.



Type III

- Pre-app Conference
- Public Notice = 300 feet in urban and 500 feet in rural, Neighborhood Association and others that request notice
- 92-day review with public hearing
- Hearing Examiner is the decision maker
- Examples: Subdivisions and zone changes (within the same density group, small, medium, high)



Type IV

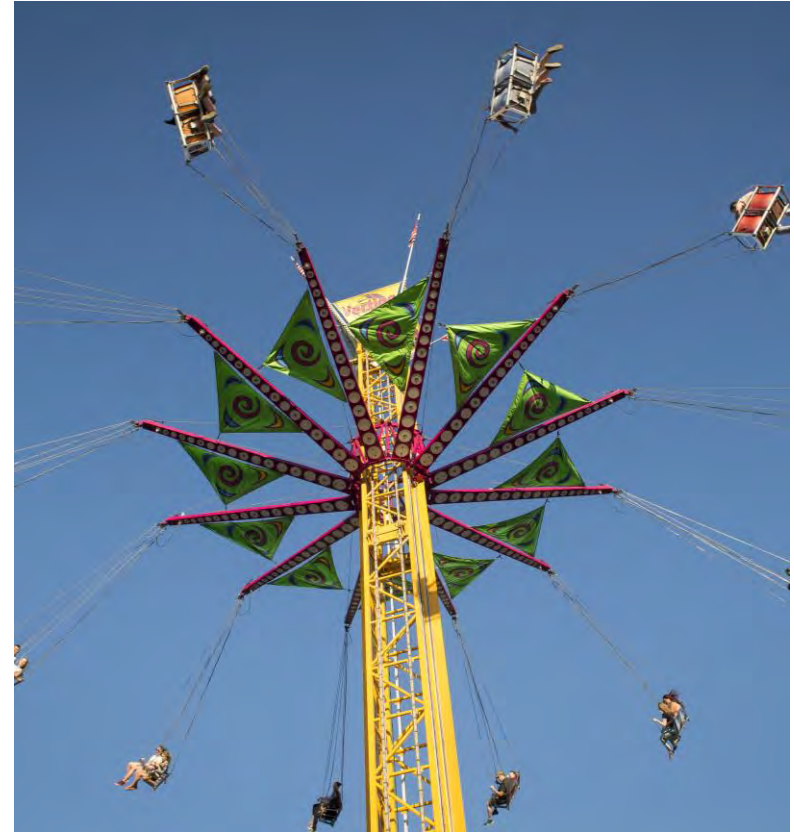
- Annual Reviews for comprehensive plan designations and code changes (outside of minor code changes associated with bi-annual code amendments)



Procedure for preliminary, final and building reviews

Stage 1: Pre-Application – Pre-Application Conferences are required for most Type II, III and IV applications

- Applicant submits pre-application.
- Applicant and planning staff meet at pre-application conference to discuss project.
- Applicant receives pre-application report from staff.



Procedure for preliminary, final and building reviews

Stage 2: Preliminary Development Approval – Basic process for all review types is similar, main differences include time frames and decision makers

- Applicant submits application.
- Staff reviews application for completeness.
- Surrounding property owners are notified of proposal.
- Staff reviews proposal for compliance with codes.
- Staff writes staff report and decision for Type I and Type II cases.
- Staff writes staff report, public hearing is conducted for Type III proposals, decision made by hearings examiner.



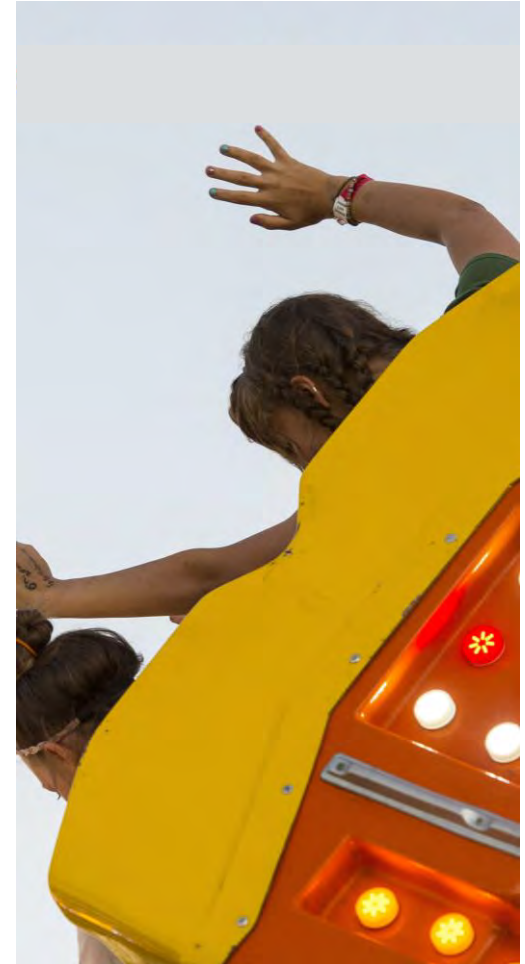
Procedure for preliminary, final and building reviews

Stage 3: Final Development – Development Engineering

- Engineering staff reviews detailed engineering drawings.
- Staff manages the approval of final site plans and final plats.
- Construction of environmental facilities/mitigation installations is inspected.
- Construction of site development such as roads, utilities and stormwater facilities is inspected.

Stage 4: Building

- Plans examiners review building plans for compliance with building safety codes.
- Permit Technicians issue building, plumbing, mechanical and related permits.
- Building construction is inspected and final occupancy is achieved.
- <http://www.codepublishing.com/WA/ClarkCounty/html/ClarkCounty40/ClarkCounty40510/ClarkCounty40510.html>



Land Use Hearing Process

What is the purpose of the public hearing?

For the applicant, citizens and groups to present evidence regarding a proposed development to a hearing examiner. The examiner makes the decision of approval or denial based upon the following evidence.

- State and County codes and/or any relevant legal precedence
- The proposed plan and evidence submitted by the applicant
- Staff analysis and recommendations presented in the staff report (based on state and county code)
- Written testimony submitted to the county (recommended)
- Verbal testimony by applicant, public and staff (recommend that you put in writing as well)



Land Use Hearing Process

How can I be informed about upcoming land use hearings?

Notice of Application

- Within 14 days after an application is determined complete and ready for review notice is sent
- 300 feet in urban and 500 feet in rural
- Notice is posted on our website



Land Use Hearing Process

Notice of Public Hearing

- At least 15 calendar days prior to land use hearing, notice is provided
- 300 feet in urban and 500 feet from site in rural
- Notice is mailed to area's recognized neighborhood association
- Notice is posted on signboard on the property
- Notice and public hearing agendas are posted on our website



Land Use Hearing Process

The public notice will list the assigned county review planner and contact information

Staff will issue a report and recommendation to the hearing examiner at least 15 calendar days prior to the hearing. A copy of the site plan or land division plan with a description of the proposal and hearing dates, and the staff report can be viewed on our website.

Once the staff report is issued 15 days prior to the scheduled public hearing, it is available for review in on our website. The final decision by the hearing examiner and any subsequent appeal decisions can also be viewed on our website.



Land Use Hearing Process

Who makes the decision?

The County contracts with two hearing examiners, who have legal and planning expertise. Their decisions are based upon whether or not the proposed development meets or exceeds the approval criteria and development standards contained in the Clark County Code. The examiner has three options to consider:

1. If the proposal meets the code requirements, the hearing examiner must approve the development.
2. If the proposal does NOT meet the code requirements, but can meet it if conditions are required, then the hearing examiner must approve the development subject to “Conditions of Approval”
3. If the proposed development does NOT meet the code requirements or the applicant failed to submit sufficient or credible evidence into the record to demonstrate that the proposal can meet code requirements, even if conditions of approval are required, then the hearing examiner must deny the application.

The applicant has the “burden of proof” as to whether or not the proposed development meets or exceeds the code requirements.



Land Use Hearing Process

When do I get to speak?

Land Use hearings has a number of rules that must be followed to ensure all interested parties have a fair opportunity to present their case. The information upon which decisions are made is available for all parties to review. Clark County Land Use hearings follow these seven steps:

1. Hearing Examiner's opening statements
2. Staff report and recommendations
3. Applicant testimony
4. Public testimony: support, opposition, all
5. Hearing examiner's response to testimony: Questions for public, applicant or staff
6. Applicant rebuttal
7. Close public hearing



Land Use Hearing Process

Tips for Testifying

- Understand what is being requested
- Understand approval criteria
- Understand the process, notice requirements and deadlines
- Prepare written testimony with detail, reference code sections, include pictures or diagrams. Keep written and verbal testimony to the point.
- Petitions are a lot of work and aren't always helpful, land use decisions are not by popular vote.
- Don't waste verbal testimony reading code, reference it and move on
- Be polite
- If a substantial amount of new information was submitted after the staff report was issued, you may request the examiner leave the record open to provide additional written response and hearing extended to allow additional testimony
- Thank the hearing examiner for the opportunity to comment
- The hearing examiner has been using time limits on some hearings: 10 minutes for the applicant and 3 minutes for public testimony. Make sure your verbal testimony meets the 3 minutes.



Land Use Hearing Process

When will the decision be made?

The record has traditionally been left open for one week after the hearing (more time for cases with a lot of public comment).

The hearing examiner will issue a written decision 14 days after the week of open record. The decision will be mailed to the applicant and parties of record within 7 calendar days of being issued.

Can the decision be appealed?

The decision of the hearing examiner is final unless a motion is filed for reconsideration or an appeal is filed with Superior Court.



Appeals and Motions for Reconsideration

A final decision regarding an application may be appealed to different levels depending on the type of review.

A decision made by staff under Type I or Type II review may be appealed to the hearing examiner.

A decision made by the hearing examiner under Type III review may be appealed to Superior Court

A motion of reconsideration may be filed for Type III hearing examiner decisions

Who can appeal a decision?

Type I – any interested party may appeal

Type II – only those who have submitted written comments to the Responsible Official within the comment period and provided accurate mailing address, also known as Parties of Record, may appeal the decision.

Type III – only applicant and Parties of Record



Appeals and Motions for Reconsideration

When must the appeal be filed?

Type I and Type II decisions may be appealed only if a complete appeal application and appeal fee paid within 14 calendar days from the mailing of the land use decision.

Type III Hearing Examiner decisions may be appealed only if, within 21 calendar days after written notice of the decision is mailed, a written appeal is filed in the Superior Court of Clark County, pursuant to Chapter 36.70B RCW or applicable state law

Can I submit new evidence regarding the application being appealed?

Yes, The hearing examiner will hear appeals in a public hearing and will accept new information and testimony.



Appeals and Motions for Reconsideration

What is the application process?

To appeal a Type I or Type II review decision to the hearing examiner, the appellant must submit a completed appeal application form and fees paid, together with the appeal letter to Community Development. Visit <https://clark.wa.gov/media/document/131361> for more information or email planningapps@clark.wa.gov with questions on how to apply

The decisions by the Land Use Hearing Examiner under a Type III review process will become final and conclusive unless an appeal is filed with Superior Court.

What is required in the appeal application?

- The case number designated by the county and name of the applicant
- The name of each petitioner, the signature of each petitioner or his or her duly authorized representative, and a statement showing that each petitioner is entitled to file the appeal under CCC 40.510.020 (H)(1). If multiple parties file a single petition for review, the petition shall designate one party as the contact for all contacts with the responsible official.
- The specific aspects of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law and the evidence relied on to prove the error.
- The appeal fee adopted by the board provided, the scheduled fee shall be refunded if the applicant files with the responsible official at least fifteen calendar days before the appeal hearing a written statement withdrawing the appeal.



Appeals and Motions for Reconsideration

Who can file a Motion of Reconsideration?

Any party of record to the proceeding before the hearing examiner, may file with the responsible official a motion for reconsideration of an examiner's decision within 14 calendar days of written notice of decision.

The motion must be accompanied by the applicable fee and identify the specific authority within the code or other applicable laws, and/or specific evidence in support of reconsideration. A motion may be granted for any of the following causes that materially affects the right of the moving party:

- Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged.
- Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiner.
- The decision is not supported by substantial evidence in the record
- The decision is contrary to law



Thank you!

Comments and questions

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