



Appeals

Handout #22 Revised 08/24/09

What are the different types or levels of appeals?

A final decision regarding an application may be appealed to different levels depending on the type of review. A decision made by staff under a Type I or Type II review may be appealed to the county hearing examiner. A decision made by the county hearing examiner under a Type III review may be appealed to the Board of County Commissioners (BOCC). A decision by the BOCC may be appealed to Superior Court.

Who can appeal a decision regarding an application?

For Type I reviews, any interested party may appeal the decision. For a Type II reviews, only those who have submitted written comments to the Planning Director within the comment period and provided an accurate mailing address (i.e., know as "Parties of Record") may appeal the decision. For Type III reviews, only the applicant or "Parties of Record" may appeal the decision.

To qualify as a "Party of Record" you must:

Type II Review:

- Submit written comments to the Responsible Official before the close of the public comment period; and,
- Provide an accurate mailing address.

Type III Review:

- Submit written comments before the close of the public hearing;
- Present testimony at the public hearing before the hearing examiner;
- Sign the "Sign-In Sheet" at the public hearing; or
- Provide an accurate mailing address.

When must the appeal be filed?

Final decisions may be appealed only if a complete appeal application and appeal fee is submitted within 14 calendar days from the mailing of the land use decision.

Can I submit new evidence regarding the application being appealed?

For appeals of Type I and II reviews, new evidence may be submitted. For Type III reviews, new evidence may not be submitted, as the hearing is "on the record".

What are the appeal application fees?

Appeals before the Hearing Examiner for Type I or Type II review decisions require an application fee of **\$5,240** (Planning = \$4,826; Engineering = \$414)

Appeals before the BOCC for Type II review decisions require an application fee of **\$716**.

If the appellant files a written statement withdrawing the appeal at least 15 calendar days before the appeal hearing, the fee will be refunded.

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, together with 4 copies of the appeal letter to the Community Development Department or by mail to:

Public Service Center
Community Development Department, Permit Services Center, 1st Floor
1300 Franklin Street, P.O. Box 9810
Vancouver, WA 98666-9810.

The decision by the Land Use Hearing Examiner (under a Type III review process) will become final and conclusive unless a written appeal is filed with the Board of Clark County Commissioners, as explained below.

To appeal a Type III review decision to the BOCC, the appellant must submit one copy of the appeal letter and fee to the Board of County Commissioners in person or by mail to:

Public Service Center
Clark County Administration, 6th Floor
1300 Franklin Street
PO Box 5000
Vancouver, WA 98666-5000

Please note: The Hearing Examiner's procedural SEPA decision (i.e., determination that the proposal should be classified as a Determination of Non-Significance (DNS), Mitigated Determination of Non-Significance (MDNS) or requires an Environmental Impact Statement (EIS), is final and not appealable to the Board of County Commissioners.

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

- Fourteen (14) calendar days for the appellant's initial comments;
- Twenty-eight (28) calendar days for all responding comments; and,
- Thirty-five (35) calendar days for appellant reply comments, which are limited to the issues raised in the respondent's comments.

Written comments shall be limited to arguments asserting error in or support of the examiner decision based upon the evidence presented to the examiner.

Unless otherwise determined by the Board for a specific appeal, the Board shall consider appeals once a month, on a reoccurring day of each month. The day of the month on which appeals are considered shall be consistent from month to month as determined by Board.

The Board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the Board of Commissioners. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision.

The Board of Commissioners' office will mail notice of a decision on the merits of an appeal to parties entitled to notice and other parties who appeared orally or in writing before the board regarding the appeal.

What is required in the appeal application?

1. The project name;
2. The case number designated by the county and the name of the applicant;
3. The name, and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.020(E) 40.510.020 (H) or 40.510.030(H). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official. All contact with the responsible official regarding the petition, including notice, shall be with this contact representative;
4. Introduction: This should include a brief history of the case, a chronology of dates of related applications, including case numbers, and a description of the proposal as it relates to the decision being appealed and a brief summary of the standards of review and alleged errors;
5. Standard of Review: Describe in more detail what standard of review (i.e., board's discretion to reverse the examiner's decision) you believe applies to board's review of the alleged errors; and,
6. Alleged Errors/Response to Alleged Errors: Identify the specific aspect(s) 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 (i.e., reference the relevant exhibits and passages, court cases, etc.) A hearing's examiner's procedural SEPA decision is final and not subject to further.

The fee shall be refunded if the appeal is withdrawn in writing by the petitioner at least 15 calendar days before the public meeting to consider the appeal.

**Public Service Center
Community Development Department
1300 Franklin Street
P.O. Box 9810
Vancouver, WA. 98666-9810
Phone: (360) 397-2375
Web Page at: <http://www.clark.wa.gov>**



ADA COMPLIANCE PROGRAM:

For an alternate format, contact the Clark County
ADA Compliance Office, V (360) 397-2375-2025;
TTY (360) 397-2445; E-Mail: ADA@clark.wa.gov