

Are you using your land use hearing examiner to the fullest extent possible?

by Tanya Crites

While many WCIA member cities and towns are using hearing examiners for various land use and code enforcement matters, some may not be utilizing a hearing examiner to the fullest extent provided by law. RCW 35A.63.170 authorizes a local government's legislative body to adopt a hearing examiner system under which the hearing examiner may hear and decide on various types of issues, including but not limited to:

- (a) Applications for conditional uses, variances, subdivisions, shoreline permits, or any other class of applications for or pertaining to development of land or land use;
- (b) Appeals of administrative decisions or determinations; and
- (c) Appeals of administrative decisions or determinations pursuant to, RCW 43.21C, State Environmental Policy.

The legislative body prescribes the procedures to be followed by the hearing examiner and provides the authority for the hearing examiner to conduct open record hearings and decide applications for all types of permits and land use approvals.

The only two instances in which the legislative body must make decisions on land use permits and approvals are:

- (a) decisions on final plats (subdivisions), and
- (b) area-wide/general application zoning decisions/rezones.

There are many compelling arguments in favor of using a hearing examiner system. By using a politically neutral, specially trained professional hearing examiner to the greatest extent possible, the legislative body and planning commission have more time for other important planning, goal setting and law-making functions, in addition to reducing the risk of political influence and pressure. WCIA recommends that all members adopt a hearing examiner system that allows the hearing examiner to make final quasi-judicial decisions on land use permits and decide administrative appeals, and that hearing examiner decision appeals go to superior court.

Here is how WCIA can help members adopt or expand a hearing examiner system. Typically, the first step is educating the council on the benefits of a comprehensive

hearing examiner system. Through the legal consultation program, WCIA can provide information on the legal, political and community benefits of using a hearing examiner to the fullest extent. WCIA can provide this guidance in a written document specifically prepared for the member's council or with an on-site presentation. Contact your assigned Risk Management Representative to arrange for assistance.