

# Elected Officials Essentials webinar series

## Comprehending quasi-judicial hearings

November 12, 2025  
Noon

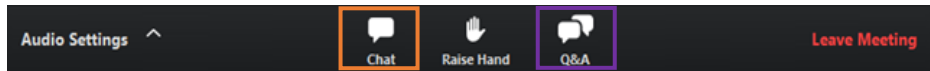


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## Zoom webinar technical tips

### Chat and Q&A features

Select **Chat**, type your technical concerns into the chat pane, and hit **Enter**.  
A staff member will respond to assist you.



Select **Q&A**, type your question in the Q&A pane and hit **Enter**.  
The moderator will get your question to the presenter.



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## Legal Disclaimer

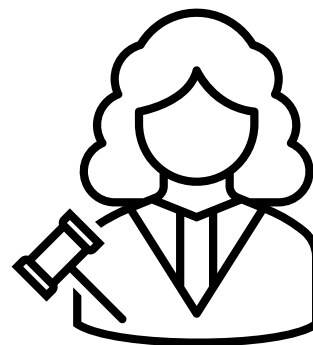
The information contained in this presentation is for general educational purposes only and is not intended to be legal advice. Please consult legal counsel for advice about specific questions.



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## Donning the robe

Quasi-judicial hearings:  
What they are and how to do them



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# Road map

- Bird's eye view: All quasi-judicial hearings
- Microscopic view: Land use hearings



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**Bird's eye view:**  
All quasi-judicial hearings



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# Quasi-judicial actions: What are they?

Acting like a judge:

- Specific parties
- Hearing or other contested action
- Determine rights, duties or privileges

(as defined for land use hearings, RCW 42.36.010)



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# Muni quasi-judicial examples

- Land use permit hearings, including site specific rezones
- Code enforcement hearings
- Dangerous dog appeals
- Dangerous building appeals
- Business license and tax appeals
- Drug forfeiture appeals
- Vehicle impound appeals
- Ethics code complaint hearings



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# Not a popularity contest

Politically based decision making:

*Westmark Development Corporation v. Burien*, 140 Wn. App 540 (2007) – \$10.7 million judgment

*Maytown Sand and Gravel LLC v. Thurston County*, 198 Wn. App. 560 (2017) – \$12 million judgment



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# Due process fundamentals

- Decision must be based upon code
- Must be unbiased – no prejudgment
- Complaints need to clearly identify code sections violated and why
- Right to cross-examination in contested hearings
- Final decision should identify code basis of decision



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# Procedural issues

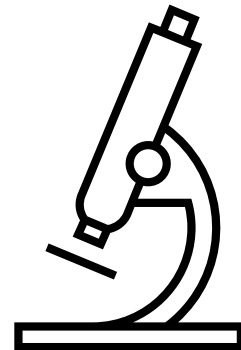
- Discovery – Depositions, interrogatories, admissions?
- Prehearing conference
- Superior Court rules as guide in absence of local rules
- Summary judgment and judgment on the pleadings
- **Don't forget to record the hearing!!!**



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# Micro view Land use hearings:

Appearance of Fairness  
Land use hearing procedures  
Regulatory Reform Act



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# Appearance of Fairness Doctrine

- A. Origins
- B. The test (\$\$)
- C. Quasi-judicial actions
- D. Ex parte contacts
- E. Exceptions
- F. Applications
- G. Violation consequences
- H. Compliance strategies



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## A. Origins

Magic: *Smith v. Skagit County*, 75 Wn.2d 715, 832 (1969)

Legislature: Chapter 42.36 RCW



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## B. The test (\$\$)

### Land use attorney employment test

“Would a reasonable person, apprised of the totality of a member’s personal interest or involvement be reasonably justified in thinking that the involvement ***might*** affect the member’s judgment?” *Swift v. Island County*, 87 Wn.2d 348, 361 (1976).



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## C. Quasi-judicial examples

- Yea: Development permit applications, site-specific rezones
- Nay: Comp plan amendments, area-wide rezones



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## D. Ex parte contacts

“Death of democracy”

**The rule:** No ex parte contacts with opponents or proponents during pendency of quasi-judicial action

**Exception:** Disclose substance and offer rebuttal

RCW 42.36.060



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## E. Exceptions

1. Regular business exception
2. Doctrine of necessity
3. Waiver
4. Campaign statements/contributions



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# 1. Regular business exception

“No members of a local decision-making body may be disqualified by the appearance-of-fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.”

RCW 42.36.020



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# 2. Doctrine of Necessity

- Appearance of Fairness doesn't apply if it results in loss of quorum or majority needed to approve pending matter.
- Must disclose basis for disqualification prior to rendering decision.

RCW 42.36.090



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### 3. Waiver

Use it or lose it

RCW 42.36.080



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### 4. Campaign statements

RCW 42.36.040: “Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17.020(5) and (25) no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance-of-fairness doctrine.”



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## F. Applications

- Prejudgment
- Business relationships
- Social/marital relationships
- Membership and organizations
- Personal benefit/detriment
- Ex Parte contacts/evidence outside record

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## G. Violation consequences

- Action void
- Damages?
- Ethics violation?

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## H. Compliance strategies

- Step down
- Get out
- Start over



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## Land use hearing procedures



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# Hearing pointers

- Must have ability to produce a verbatim transcript
- Assign a number or letter to each exhibit and refer to those numbers or letters thereafter
- Have each speaker identify him/herself, or have the Chairman recognize each speaker, so you know who is speaking
- Be sure to have each speaker speak into the microphone
- Do not verbally step on each other; no side bar conversations; don't rattle papers by the microphone
- Be sure to have the clerk or secretary monitor that the machine is recording
- You may impose reasonable time limits
- You may encourage speakers not to be repetitive



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# Suggested order of presentation

1. Inquiry by chair if any councilmembers have any conflict-of-interest or appearance of fairness problems
2. Challenges from the audience based on appearance of fairness
3. May ask legal counsel to review criteria
4. Open hearing
5. Staff presentation
6. Applicant comments (some cities do applicant before staff)
7. Speakers who have signed up indicating a desire to speak
8. Persons in the audience who have not signed up to speak but desire to speak
9. Staff's response/rebuttal
10. Applicant's response/rebuttal
11. Close hearing



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# Deliberation

- Discussion—Why supporting approval or disapproval
- Base reasons on criteria and ordinances or State law
- Point out how proposal does or does not meet criteria. Base reasons on written and oral record.
- Motion to approve or disapprove should instruct the staff to prepare draft findings and conclusions in line with the discussion to be presented at the next regular meeting for final approval and passage by council.



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# Decision

- a. Must be in writing
- b. Must be based on evidence deduced from the record
- c. A court will review the body's decision based on whether or not there is substantial evidence in the record to support the decision
- d. Facts must support the conclusions



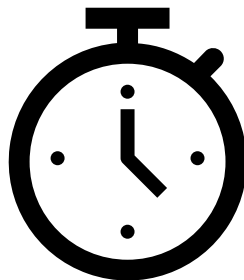
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# Why findings

- Judicial deference to findings and conclusions
- Aid court in determining if evidence supports decision
- Help protect against careless or arbitrary action
- Help parties plan cases for judicial review
- Keep agencies within their jurisdiction
- Prevent discrimination



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# Regulatory Reform Act



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# Regulatory Reform Act

- Purpose
- Applicability
- Review process

Chapter 36.70B RCW



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## Regulatory reform applicability

1. **Development permits.** Generally applies to quasi-judicial land use review.
2. **State exemptions.** Does not include the adoption or amendment of comprehensive plan, sub-area plan, or development regulations.
3. **Local exemptions.** Local government is authorized to provide for partial exemptions in limited circumstances. One hearing/one appeal cannot be waived.



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# Regulatory reform process in a nutshell

1. One hearing/one appeal
2. Decision deadlines



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# Hearing examiners

- Cities, towns and counties can have hearing examiners hold quasi-judicial hearings in place of other local decision makers except for site specific rezones
- Great flexibility in extent of examiner authority, e.g. limit them to make recommendations; final decisions subject to Council appeal; final decision subject to judicial appeal.
- Fallacy of municipal bias (according to an examiner)



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