

NO. **96 0632**

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING PROCEDURES )  
FOR APPEALS TO THE BOARD OF COUNTY ) **RESOLUTION**  
COMMISSIONERS FROM HEARING EXAMINER )  
DECISIONS UNDER SPOKANE COUNTY )  
RESOLUTION NO. 96-0171 )

**WHEREAS**, pursuant to the provisions of RCW Section 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

**WHEREAS**, pursuant to the provisions of RCW Section 36.70.970 and RCW Section 58.17.330, the Board of County Commissioners of Spokane County, under Resolution No. 96-0171, adopted a Hearing Examiner Ordinance, which Ordinance in Section No. 13 (Appeals), provides that the Board of County Commissioners (Board) shall adopt procedures to be followed by the Board in conjunction with matters appealable thereunder; and

**WHEREAS**, pursuant to the above-cited statutory provisions and County Resolution, the Board is desirous of adopting those procedures set forth in Attachment "A," attached hereto and incorporated herein by reference.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Board of County Commissioners of Spokane County, pursuant to RCW Section 36.70.970 and RCW Section 58.17.330, that the Board does hereby adopt those procedures set forth in Attachment "A," attached hereto and incorporated herein by reference as those procedures to be used with regard to matters appealable to the Board under Spokane County Resolution No. 96-0171.

PASSED AND ADOPTED this 25 day of June, 1996.



BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

*[Signature]*  
PHILIP D. HARRIS, Chairman

*[Signature]*  
JOHN ROSKELLEY

ATTEST:  
WILLIAM E. DONAHUE,  
Clerk of the Board

By: *[Signature]*  
ROSANNE MONTAGUE  
Deputy

*[Signature]*  
STEVEN HASSON

*ABSTAINED*

(RES\HEAREXAM.APP)

ATTACHMENT "A"

PROCEDURES FOR APPEALS TO THE BOARD OF COUNTY COMMISSIONERS  
UNDER RESOLUTION NO. 96-0171

**SECTION NO. 1: APPEAL OF HEARING EXAMINER DECISION  
TO BOARD OF COUNTY COMMISSIONERS**

Any party of record aggrieved by a written decision of the Hearing Examiner concerning (1) applications for zone changes or amendments to the classification of specific parcels of land, or (2) applications for preliminary plats being processed concurrently and in conjunction with a rezone (appellant) may file a written appeal with the Board of County Commissioners (Board) within ten (10) calendar days of the date of the written decision by the Hearing Examiner.

All appeals shall be accompanied by a \$225.00 appeal fee. Upon receipt of a written appeal and payment of the appeal fee, the appeal shall be forwarded to the Hearing Examiner.

All written appeals shall be on that form available in the offices of the Board or include the following information:

- (a) the name and mailing address of the appellant, and the appellant's attorney, if any;
- (b) identification of the Hearing Examiner, together with a copy of the written decision of the Hearing Examiner;
- (c) facts demonstrating that the appellant is a party Of record and has standing to bring the appeal;
- (d) a separate and concise statement of each error alleged to have been committed; and
- (e) a concise statement of facts upon which the appellant relies to sustain the statement of error.

**SECTION NO. 2: NO NEW FACTS OR EVIDENCE**

The Board shall not consider any new facts or evidence on a matter appealed to them under Section No. 1 hereinabove. Provided, however, neither this provision nor any other provision in these procedures, shall prohibit additional evidence related to:

- (1) grounds for disqualification of the Hearing Examiner that made the decision, when such grounds were unknown by the appellant at the time the record was created;
- (2) matters that were improperly excluded from the record after being offered by a party to the hearing before the Hearing Examiner; or
- (3) matters that were outside the jurisdiction of the Hearing Examiner.

### **SECTION NO. 3: PREPARATION OF TRANSCRIPT/TRANSCRIPT DEPOSIT FEES**

(1) Transcription/Record Deposit Fee - Payment. The appellant shall be required to pay all costs incurred by the Hearing Examiner in transcribing the hearing(s) before the Hearing Examiner and preparing the record. The appellant shall pay a transcript/record deposit fee in the amount of \$100 with the Hearing Examiner Office as a condition precedent to the Hearing Examiner preparing or having prepared the verbatim transcript and record. Following the preparation of the verbatim transcript and record, the appellant shall pay any costs for preparation of the verbatim transcript and record above and beyond the deposit fee or shall be refunded any amount paid in excess of the cost of preparing the verbatim transcript and record. The appellant shall pay any additional transcription and record fee that may be due within five (5) working days of the date the appellant is notified by the Hearing Examiner that the verbatim transcript and record have been prepared. If the balance due is not paid, the appeal may be dismissed by the Board.

(2) Preparation of Transcript/Record. The Hearing Examiner shall cause preparation of a verbatim transcription of the hearing and a certified copy of the documents in the record before the Hearing Examiner within fourteen (14) working days of receiving a copy of the appeal and payment of the transcript/record deposit. If the Hearing Examiner, the appellant, and the applicant, if different than the applicant, agree, or upon order of the Board, the verbatim transcript and/or record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the Board. Upon completion of the verbatim transcript and record by the Hearing Examiner and payment of any additional verbatim transcript/record cost, the Hearing Examiner shall forward a certified copy of the record of the hearing, to include verbatim transcript along with all written documents in the Hearing Examiner's file, to the Clerk of the Board. The Hearing Examiner shall also provide a copy of the record to the appellant, the applicant, if different than the appellant, each Board member, and the Prosecuting Attorney's Office.

At the next regular meeting of the Board following its receipt of the record from the Hearing Examiner, the Board shall schedule the date at which it shall consider the appeal. Such date shall not be earlier than thirty-five (35) calendar days from the Board's receipt of the record.

Notice of the meeting at which the Board will set a date to consider the appeal will not be provided to the appellant or applicant, if different than the appellant. The appellant or applicant, if different than the appellant, may speak to the matter of setting an appeal date either in person at the meeting or by filing a letter with the Clerk of the Board prior to the meeting.

Upon the Board setting a date for consideration of the appeal, the Clerk of the Board shall give notice of the time, place and date of such consideration to all parties of record by mailing notice to such parties of record at their addresses within the record filed with the Board. Such notice shall be at least fourteen (14) days prior to the date of consideration. A party of record under this section shall mean any individual who received a notice of the public hearing before the Hearing Examiner.

#### **SECTION NO. 4: SUPPLEMENTARY DOCUMENTS**

The appellant and any other party of record may file a supplemental memorandum in support of the appeal with the Clerk of the Board so long as it is filed by noon on the 2nd Friday preceding the date set for consideration of the appeal.

The respondent, and any other party of record, may file a response to the appeal and any supplemental memorandum with the Clerk of the Board so long as it is filed by noon of the Friday immediately preceding the date set for consideration of the appeal.

A supplemental memorandum or response shall not contain any new facts or evidence or discuss any matter outside the record except as provided for in Section No. 2 herein. Any supplemental memorandum or response containing information in violation of this section shall be stricken and not considered by the Board.

#### **SECTION NO. 5: PROCEDURES FOR REVIEW ON THE RECORD**

By the time the matter is before the Board for consideration, it is expected that the positions and reasons of all parties will be known. Although several persons may have different reasons for supporting or opposing the decision under appeal, it is expected that all parties can be aligned as either in support of or opposition to the appeal. All parties of record desiring to make argument to the Board have the obligation to communicate with the other party on their side of the question and try to reach an agreement for the selection of representatives or otherwise arrange for the allocation of the time allowed.

The Board, acting through the Chair, will allow the appellant (and any other parties of record in support of the appeal) up to thirty (30) minutes to make argument and respond to any questions from the Board. The appellant may reserve a specified portion of the thirty (30) minutes for rebuttal, in which case the reserved time is deducted from the time allowed for opening argument. Following the argument in support of the appeal, if any, the Chair will allow the respondent (and any other parties of record in opposition to the appeal) up to fifteen (15) minutes to make argument, respond to questions from the Board, and rebut the appellant.

This section authorizes the presentation of argument only. Argument shall be defined as a "line of reasoning designed to persuade that a particular conclusion follows logically from the state of facts established from the evidence in the record." This section does not authorize the presentation of evidence. Evidence shall be defined as "an oral or written assertion intended to persuade that a particular fact exists." (For example, the happening of an event or the existence of a condition.) An attempt to introduce evidence, to establish additional facts, or to argue from facts not in evidence, is improper. It is proper, however, to argue that the facts in evidence do not support the conclusions or decision of the Hearing Examiner.

## **SECTION NO. 6: BOARD OF COUNTY COMMISSIONERS ACTION ON APPEAL**

The Board may affirm<sup>1</sup>, reverse, modify, or remand the decision of the Hearing Examiner.

The Board may reverse or modify a decision of the Hearing Examiner if it finds that:

- (1) The Hearing Examiner engaged in unlawful procedures or failed to follow a prescribed process, unless the error was harmless;
- (2) the Hearing Examiner's decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (3) the Hearing Examiner's decision is not supported by evidence that is substantial when viewed in light of the entire record;
- (4) the Hearing Examiner's decision is a clearly erroneous application of the law to the facts; or
- (5) the hearing Examiner's decision is outside the authority or jurisdiction of the Examiner.

If the Board reverses or modifies an appealed decision, it shall set forth its reasons in writing and make written findings and conclusions to support its decision.

The Board may remand the decision to the Hearing Examiner for further consideration if the Board finds that either:

- (1) a substantial procedural error affecting the rights of an appellant was made; or

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<sup>1</sup> The Board of County Commissioners in their Motion adopting the procedures requested that the word "affirm" be added.

(2) that the appellant is seeking to enter information that was not previously available for reasons beyond the control of that party and that such information is more likely than not to effect the outcome.

If the Board remands the decision to the Hearing Examiner, it shall set forth in a written order its reasons and issues to be considered by the Hearing Examiner on remand.

#### **SECTION NO. 7: NOTICE OF BOARD'S DECISION**

The Clerk of the Board shall mail a copy of the Board's decision to the appellant, or the applicant, if different than the appellant, and the respondent, if different than the applicant. The decision shall include a statement that the decision can be appealed by filing a Land Use Petition with the Superior Court within twenty-one (21) calendar days as provided for in chapter 37.70C RCW and meeting other provisions of that chapter and that the decision shall act as official notice under RCW Section 43.21C.075.