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ON  
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## **CLOSED RECORD APPEALS HEARD BY THE BOARD OF COMMISSIONERS**

### **.1 APPLICATION OF RULES**

This Chapter applies to closed record appeals of decisions of the Hearing Examiner that approve, deny, or condition a land use permit application. A closed record appeal allows only an appeal argument. The submission of new evidence or information may not be allowed (see .13 EVIDENCE).

### **.2 DEFINITIONS**

See .2 DEFINITIONS in Policy & Procedure 921.

### **.3 FILING**

#### **3.1 Compliance with Rules**

All appeals must comply with the rules and with the requirements established in the applicable sections of the Clallam County Code under which the appeal is filed.

#### **3.2 Timeliness**

To be considered timely filed, an appeal must be received no later than the close of the regular office hours on the last day of the appeal period. The appeal must be filed with the Clallam County Department of Community Development, 223 East Fourth Street, Suite 5, Port Angeles, WA 98362, on forms specified by the Department.

#### **3.3 Fee**

Any filing fee as required by Code shall accompany an appeal.

#### **3.4 Contents**

An appeal must be in writing and contain the following:

- a. A brief statement as to how the Appellant is significantly affected by or interested in the matter appealed;
- b. A brief statement of the Appellant's issues on appeal, noting Appellant's specific exceptions and objections to the decision or action being appealed;
- c. The specific relief requested, such as reversal or modification, and should include optional outcomes desired by the Appellant; and

- d. Signature, address, and telephone number of the Appellant, and Appellant's designated representative, if any.

### 3.5 Briefs

Briefs or other memoranda of law may be submitted by the parties in support of or in response to an appeal. Each party is permitted one (1) primary brief not exceeding fifteen (15) double-spaced pages in length. In addition, the Appellant may submit a reply brief not exceeding ten (10) pages in length. The Commissioners may, at their discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

Briefs must be limited to the specific issues set forth in the Appellant's statement of appeal.

### 3.6 Motions

Motions and responses to motions shall not exceed fifteen (15) double-spaced pages in length without prior approval of the Commissioners.

## .4 DISMISSAL

### 4.1 Dismissal by the Board

An appeal may be dismissed without a hearing if the Board determines that it fails to state a claim for which the Board has jurisdiction to grant relief, or it is without merit on its face, frivolous, or brought merely to secure delay.

### 4.2 Dismissal at the Request of a Party

Any party may request dismissal of all or part of an appeal at any time with notice to all parties. The Board may make a ruling on a motion to dismiss based upon written arguments or may call for oral arguments.

## .5 PRE-HEARING CONFERENCE

The Board may designate a member of the County staff to hold a conference prior to the hearing to structure the scope of the hearing. The conference may be initiated by the Board or by request of a party to the closed record appeal. The Board may use the conference for:

- a. Identification, clarification, and simplification of the issues;
- b. Limitation of the record on review to those portions necessary for resolution of the issues;
- c. Argument of motions based on law; or

- d. Other matters deemed by the Board appropriate for the orderly and expeditious disposition of the proceedings.

Pre-hearing conferences may be held by conference call.

All parties to the closed record appeal have the right to participate in any pre-hearing conference. Participation is not required.

Following the pre-hearing conference, the Board may issue an order reciting the actions taken or ruling on motions made at the conference that shall be controlling on all participants.

At the hearing, the Board shall develop for the record, the time, purpose, and result of the conference. If any orders have been issued they will be part of the record.

Pre-hearing orders may not be appealed until the Board issues an appeal decision.

#### .6 WITHDRAWAL

An appeal may be withdrawn only by the Appellant upon submission of a written request.

Where an appeal is made by several persons, a group, organization, corporation, or other entity, withdrawal shall be made by the person who has been designated as the party representative.

An Appellant's "Request for Withdrawal" shall be granted as a matter of right and the appeal dismissed.

#### .7 PARTY REPRESENTATIVE

When a party consists of more than one individual, or is a group, organization, corporation, or other entity, the party shall designate an individual to be its representative and inform the Board's office of the name, address, and telephone number of the designated representative. The Boards' office shall coordinate with the Department of Community Development staff. The rights of such an Appellant shall be exercised by the person designated as the party representative. Notice or other communication to the party representative is considered to be notice or communication to the party.

#### .8 NOTICE OF HEARING

##### 8.1 Contents

The "Notice of Hearing" given to parties of record shall include:

- a. The time, place, and nature of the hearing;

- b. The legal authority and jurisdiction for the hearing;
- c. The file number, address, or other identifying information for the underlying decision or action being appealed;
- d. A brief statement as to the issue(s) to be considered;
- e. Reference to the applicable sections of the Code; and
- f. The name and telephone number of the County Official or staff member responsible for processing the appeal.

## 8.2 Time

Notice of the hearing shall be given within the time required by applicable sections of the Clallam County Code. If the time for "Notice of Hearing" is not specified by the applicable Codes, or applicable Codes conflict, minimum notice shall be fifteen (15) calendar days.

## 8.3 Responsibility

The office of the Board shall be responsible for serving "Notice of Hearing" for appeals in consultation/coordination with the Department of Community Development.

## 8.4 Record of Notice

A copy of the "Notice of Hearing" shall be made part of each record.

## .9 PARTIES' RIGHTS AND RESPONSIBILITIES

Parties to a closed record appeal hearing are limited to the Appellant, the Applicant, and Department staff. Others are welcome to attend and observe but shall not participate in the hearing. Although Appellants and Applicants have the right to be represented by an attorney, it is not required. When a party has designated a representative, the representative shall exercise the rights of the party.

All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

Throughout the process, parties are encouraged to resolve issues using the following methods:

- a. A settlement conference where the Board directs Department of Community Development staff to attempt to resolve the issues.
- b. Mediation where someone that is not a party to the appeal and agreed upon by the parties, serves as a mediator to attempt to resolve the issues.

.10 DEFAULT

The Board may dismiss an appeal by an "Order of Default" when the Appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

.11 HEARING FORMAT

Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Board to make the relevant evidence most readily and efficiently available to them and to provide the parties a fair opportunity to be heard.

The order of an appeal hearing will generally be as follows:

- a. Overview on process and conduct of hearing;
- b. Background presentation by Department;
- c. Appellant's argument;
- d. Applicant's presentation;
- e. Rebuttal; and
- f. Closing argument of parties.

Notwithstanding the provisions of the Clallam County Code, the order or content of the hearing may be modified or a different order established, as the Board deems necessary, for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Board's approval.

The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

.12 BOARD'S DECISION

A decision of the Board on appeal may include, but need not be limited to, a statement regarding the following:

- a. Background – The nature and background of the proceeding, including identification of party representatives participating in the hearing, pre-hearing determinations, and other similar information.
- b. Findings – The individual facts that the Board finds relevant, credible, and requisite to the decision, based on the record developed at the open record hearing.
- c. Conclusions – Legal and factual conclusions based upon specific provisions of law and the findings of fact.
- d. Decision – The Board's decision as to the outcome of the appeal (affirm, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.

.13 EVIDENCE

The evidence relied upon by the Board shall be limited to the record developed at the open record hearing. The Board shall not take additional evidence at the closed record appeal hearing, but may consider newly discovered evidence of a material nature that could not, with reasonable diligence, have been produced at the open record hearing. Newly discovered evidence must be presented by one of the parties to the action and may not be accepted ex parte.

Individual Commissioners may conduct a site visit for the purpose of understanding the area. This shall not be considered as evidence or as part of the record.

.14 RECORD

The record to be reviewed at a closed record appeal shall include:

- a. Decision being appealed;
- b. Appeal statement;
- c. Record of proceedings of the Hearing Examiner including oral testimony given at the hearing, all exhibits, and other materials admitted as evidence;
- d. The record on review may be limited as agreed to by parties, or as decided under Section 4.1; and
- e. Written arguments submitted by parties.

.15 EX PARTE COMMUNICATION

No person shall communicate ex parte, directly or indirectly, with the Board concerning the merits of a matter on appeal before the Board. All communication shall be directed to the Hearing Examiner Clerk at 223 East 4<sup>th</sup> Street, Suite 5, Port Angeles, WA 98362. Any communication received by the Board's office or a member of the Board shall be transmitted to the Hearing Examiner Clerk.

Members of the Board shall not communicate ex parte, directly or indirectly, with any person concerning the merits of a matter on appeal before the Board.

If a prohibited ex parte communication is made to or by a member of the Board, such communication shall be publicly disclosed and proper discretion shall be exercised by the member of the Board on whether to disqualify himself for that particular hearing.

Ex parte communication will not be considered by any member of the Board as part of his decision.