



CO00023038

SNOHOMISH COUNTY COUNCIL

ORDINANCE NO. 95- 032
ENACTING REGULATORY REFORM AMENDMENTS CONCERNING
PROCEDURES FOR NOTIFICATION OF APPEALS AND RECONSIDERATION;
AMENDING SNOHOMISH COUNTY CODE
TITLE 2
CHAPTER 2.02
RELATING TO THE HEARING EXAMINER

BE IT ORDAINED:

SECTION 1. Snohomish County Code Section 2.02.125, adopted by Ord.93-077 on September 8, 1993, is amended to read:

2.02.125 Procedures for appeals within the examiner's jurisdiction.

Administrative appeals over which the examiner has jurisdiction shall be subject to the following procedural requirements:

(1) Appeals shall be addressed to the hearing examiner but shall be filed in writing with the department of planning and development services within 15 calendar days of the date of action or, in those cases requiring personal or certified mail service, the date of service of the administrative action being appealed, and shall be accompanied by a filing fee in the amount of \$100.00; PROVIDED, That the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED, FURTHER, That the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of procedural defect such as but not limited to untimely filing, lack of standing, facial lack of merit, etc.

(2) An appeal must contain the items set forth in the following subsections in order to be complete. The examiner may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal if such appeal is incomplete in some manner.

(a) specific identification of the order, permit, decision, determination or other action being appealed (including the county's file number whenever such exists). A complete copy of the document being appealed must be filed with the appeal;

(b) specific identification of the county code provision which authorizes the appeal;

(c) the specific grounds upon which the appellant relies, including a concise statement of the factual reasons for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the appellant claims are violated. In the case of appeals filed pursuant to Title 23 SCC, a specific listing of the environmental elements alleged to be inadequately or inappropriately addressed in the environmental document and the reasons therefor shall be included;

(d) the name, mailing address and daytime telephone number of each appellant together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any;

(e) the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and

(f) the required filing fee.

(3) Timely filing of an appeal shall stay the effect of the order, permit, decision, determination or other action being appealed until the appeal is finally disposed of by the examiner or withdrawn; PROVIDED, That filing of an appeal from the denial of a permit shall not stay such denial. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county code.

(4) No new appeal issues may be raised or submitted after the close of the time period for filing of the original appeal.

(5) The department of planning and development services shall forward the appeal to the examiner's office within three working days of its filing.

(6) The examiner's office, within three working days of receipt of the appeal, shall send written notice of the filing of the appeal to the department whose decision has been appealed (hereinafter referred to as the "respondent") : PROVIDED, That such notice is not required when the department of planning and development services is the respondent. The respondent, within three working days of either receipt of an appeal or ((after)) notification by the examiner's office of the filing of an appeal, whichever comes first, shall transmit to the examiner's office all relevant public files on the order, permit, decision, determination or other action being appealed.

(7) The examiner's office, within five working days after receipt of the file from the respondent, shall send written notice of the filing of the appeal by ~~((certified))~~ first class mail, ~~((return receipt requested,))~~ to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person.

(8) The examiner may summarily dismiss an appeal in whole or in part without hearing if the examiner determines that the appeal is untimely, incomplete (but only after having allowed the appellant an opportunity to perfect the appeal), without merit on its face, frivolous, beyond the scope of his jurisdiction or brought merely to secure a delay. The examiner may also summarily dismiss an appeal if he/she finds, in response to a challenge raised by the respondent and/or by the permit applicant and after allowing the appellant a reasonable period in which to reply to the challenge, that the appellant lacks legal standing to appeal. Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a proper request for issuance of such an order, whichever is later.

(9) Appeals shall be processed by the examiner as expeditiously as possible, giving proper consideration to the procedural due process rights of the parties. In no event shall more than 60 calendar days elapse after the filing of a complete appeal without either a prehearing conference or a public hearing having been convened, or a summary dismissal order having been issued. The examiner may consolidate multiple appeals of the same action for hearing and decision making purposes where to do so would facilitate expeditious and thorough consideration of the appeals without adversely affecting the due process rights of any of the parties. In the event of a conflict between time deadlines when multiple appeals are consolidated, the time deadlines of the last filed appeal shall control.

(10) Notice of appeal hearings conducted pursuant to this section, containing at a minimum the information required in SCC 18.73.050(4)(a) - (e), shall be given as provided below not less than 15 calendar days prior to the hearing (~~((to))~~):

(a) The examiner's office shall give notice of ~~((For))~~ all appeal hearings~~((:))~~ by ~~((postage prepaid))~~ first class mail (unless otherwise required herein) to:

- (i) the appellant ~~((by certified mail))~~ ;
- (ii) the appellant's agent/representative, if any ~~((by certified mail))~~; and
- (iii) the respondent (by interoffice mail); and
- (iv) ~~((other parties of record as defined by SCC 2.02.165;))~~ to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person;

(b) The department of planning and development services shall give notice of ~~((For))~~ appeal hearings ~~((appeals))~~ arising from Title 20 SCC~~((notice shall be given))~~

(i) in the same manner as required by SCC 19.16.040 for hearings on preliminary subdivision applications; and

(ii) by first class mail to parties of record as defined by SCC 2.02.165 ~~((in addition to the notices required by subsection (a), above.))~~;

(c) The department of planning and development services shall give notice of appeal hearings ~~((For appeals))~~ arising from Title 23 SCC ~~((notice shall be mailed to))~~ by first class mail to:

(i) parties of record as defined by SCC 2.02.165 ~~((all persons listed in subsection (a), above))~~;

(ii) agencies with jurisdiction as disclosed by documents in the appeal file; and

(iii) All taxpayers of record and known site addresses within 500 feet of any boundaries of the property subject to the appeal; PROVIDED, That the mailing radius for written notice shall correspond to the mailing radius required for the notice of hearing of any discretionary permit or action

associated with the environmental document under appeal where such mailing radius is greater than 500 feet. ~~((The department of planning and community development shall perform the required mailing under subsection (e).))~~

(d) The examiner's office shall give notice of appeal hearings other than those covered by subsections (b) and (c), above, by first class mail to parties of record as defined by SCC 2.02.165.

(11) Notices required by the above subsections shall be deemed adequate where a good-faith effort has been made by the county to identify and mail notice to each person entitled thereto. Notices mailed pursuant to the above subsections shall be deemed received by those persons named in an affidavit of mailing executed by the person designated ~~((by the examiner))~~ to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

(12) The appeal hearing and examiner consideration of the appeal shall be limited solely to the issues identified by the appellants pursuant to the above subsections.

SECTION 2. Snohomish County Code Section 2.02.167, adopted by Ord. 93-077 on September 8, 1993, is amended to read:

2.02.167 Reconsideration by hearing examiner.

(1) Reconsideration must have been sought by one or more parties before the filing of an appeal pursuant to SCC 2.02.171, 2.02.195 or 21.16.090.

(2) Any party of record or a department of the county may file a written petition for reconsideration with the hearing examiner within 10 calendar days following the date of the examiner's written decision. The timely filing of a petition for reconsideration shall stay the effective date of the examiner's decision until such time as the petition has been disposed of by the examiner.

(3) The grounds for seeking reconsideration shall be limited to the following:

- (a) the examiner exceeded his jurisdiction;
- (b) the examiner failed to follow the applicable procedure in reaching his decision;
- (c) the examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of the Snohomish County Code, or other county or state law or regulation;
- (d) the examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) newly discovered evidence alleged to be material to the examiner's decision which could not reasonably have been produced at the examiner's hearing; or
- (f) changes to the application proposed by the applicant in response to deficiencies identified in the decision.

(4) The petition for reconsideration must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the specific grounds upon which relief is requested; describe the specific relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

(5) The petition for reconsideration shall be deemed to have been denied if one of the actions specified in subsection (6), below, has not been taken within 10 calendar days of the end of the reconsideration period established in subsection (2), above.

(6) The petition for reconsideration shall be disposed of in writing by the same examiner who rendered the decision, if reasonably available. If such examiner is not reasonably available, the petition shall be disposed of by another examiner. The examiner may at his discretion:

- (a) deny the petition;
- (b) grant the petition and issue an amended decision in accordance with the provisions of SCC 2.02.150 following reconsideration;

- (c) accept ~~((grant))~~ the petition and give all parties of record the opportunity to submit written comment. Notice of the filing of, together with a copy of, a petition for reconsideration to be handled in such a fashion shall be sent to all parties of record by the examiner's office. Parties shall have 10 calendar days from the date of such notice in which to submit written comments. The examiner shall either ~~((thereafter))~~ issue a decision in accordance with the provisions of SCC 2.02.150 or issue an order within 15 days after the close of the comment period setting the matter for further hearing in accordance with subsection (d), below; or

(d) (~~grant the petition~~) accept the petition and set the matter for further hearing to consider new evidence, proposed changes in the application and/or the arguments of the parties. Notice of such further hearing shall be mailed by the examiner's office not less than 15 days prior to the hearing date to all parties of record. The examiner shall issue a decision following the further hearing in accordance with the provisions of SCC 2.02.150.

(7) A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration; PROVIDED, That a decision which has been revised on reconsideration from any form of denial to any form of approval with preconditions and/or conditions shall be subject to reconsideration.

(8) The examiner may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

PASSED this 28th day of June, 1995

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

Chairperson Karen Meller

ATTEST:

Barbara Sidoroti
Clerk of the Council, Asst.

- () APPROVED
() VETOED
() EMERGENCY

DATE 6/27/95
[Signature]
County Executive

Michael Smith DPA
Approved as to form only on:
4/14/95
(Date)

ATTEST:
Marilyn B. Abel

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