



SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED ORDINANCE NO. 97- 075

AMENDING SNOHOMISH COUNTY CODE
CHAPTER 2.02
RELATING TO HEARING EXAMINER PROCEDURES

WHEREAS, the county executive and county council have identified regulatory reform of land use regulations as a high priority for county government; and

WHEREAS, with the assistance of the county council, the county executive and prosecuting attorney have established a regulatory reform process to make land use regulations more understandable to the public and more easily implemented by the county; and

WHEREAS, this ordinance is a result of that process;

THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 2.02.125, last amended by Ordinance 96-003 on February 21, 1996, 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 14 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; EXCEPT, That for a DNS, mitigated DNS, or DS requiring a comment period pursuant to WAC 197-11-340(2) and WAC 197-11-408(2), the appeal period shall run concurrently with and extend an additional 7 days beyond the end of the comment period. Appeals 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, if procedural time limitations allow, 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 two 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 two working days of either receipt of an appeal or 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 three working days after receipt of the appeal ~~((file from the respondent))~~, shall send written notice of the filing of the appeal by first class mail, 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, without merit on its face, frivolous, beyond the scope of the examiner's 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 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. An open record appeal hearing shall be held before a final decision is issued unless the summary dismissal provisions of subsection (8), above, are utilized or the appeal is withdrawn. 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.

(10) Notice of open record appeal hearings conducted pursuant to this section, containing at a minimum the information required in SCC 32.50.060(3)(b), (d) (~~through (e)~~) and (h), shall be given as provided below not less than 15 calendar days prior to the hearing:

(a) Except where notice has already been given pursuant to the combined notice provisions of SCC 32.50.080, ((The)) the examiner's office shall give notice of all open record appeal hearings by first class mail (unless otherwise required herein) to:

- (i) The appellant;
- (ii) The appellant's agent/representative, if any; and
- (iii) The respondent (by interoffice mail); and
- (iv) 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 open record appeal hearings arising from Title 20 SCC:

(i) In the same manner as required by SCC 32.50.060(4) for hearings on preliminary subdivision applications; and

(ii) By first class mail to parties of record as defined by SCC 2.02.165(1).

(c) The department of planning and development services shall give notice of open record appeal hearings arising from Title 23 SCC by first class mail to:

- (i) Parties of record as defined by SCC 2.02.165;
- (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.

(d) The examiner's office shall give notice of open record 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 to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

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

Section 2. Snohomish County Code Section 2.02.175, adopted by Ordinance 96-003 on February 21, 1996, is amended to read:

2.02.175 Appeal to county council from examiner's decision.

Where the examiner's decision is final and conclusive with right of appeal to the council, the following provisions shall apply:

(1) Appeals may be filed by any aggrieved party of record. Where the reconsideration process of SCC 2.02.167 has been ~~((utilized))~~ elected no appeal may be filed until the reconsideration process has been completed, and no appeal under this section ~~((by the petitioner for reconsideration))~~ may raise an issue which has not been the subject of a petition for reconsideration. Only the petitioner for reconsideration may appeal from the denial of a ~~((point))~~ petition for reconsideration. Appeals shall be addressed to the Snohomish County council but shall be filed in writing with the department of planning and development services ~~((with))~~ within 14 calendar days following the date of the examiner's decision and shall be accompanied by a filing fee in the amount of \$100.00. The filing fee shall not be charged to a department of the county or to other than the first appellant. The filing fee shall be refunded in any case where an appeal is summarily dismissed under subsection (7) of this section because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect.

(2) An examiner decision which has been timely appealed shall come on for council consideration at a closed record appeal hearing. Appeals shall be on the record with no new evidence allowed unless specifically requested by the council. Appeals shall be processed by the council as expeditiously as possible, giving proper consideration to the due process rights of the parties.

(3) The grounds for filing an appeal 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; or

(d) The examiner's findings, conclusions and/or conditions are not supported by the record.

(4) An appeal must contain the items set forth in the following subsections in order to be complete:

(a) A detailed statement of the grounds for appeal;

(b) A detailed statement of the facts upon which the appeal is based, including citations to specific hearing examiner findings, conclusions, exhibits or oral testimony;

(c) Written arguments in support of the appeal;

(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.

(5) Timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the council or withdrawn. The council 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 first filed appeal shall control.

(6) No new appeal issues may be raised or submitted after the close of the time period established in subsection (1), above, for filing of the original appeal. All council proceedings shall be limited to those issues expressly raised in a timely written appeal or appeals.

(7) The council may summarily dismiss an appeal in whole or in part without hearing if it determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of its jurisdiction or brought merely to secure a delay. The council may also summarily dismiss an appeal if it 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 applicant lacks legal standing to appeal. Except in ordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later.

(8) Parties of record may file with the council written arguments through the end of the fourteenth day following the date of the notice required in subsection (9), below. The appellant or appellants may file with the council written rebuttal arguments through the end of the twenty-first day following the date of the notice required in subsection (9), below. All such submittals shall become a part of the record.

(9) Notice of the council's closed record appeal hearing shall be given in the following manner:

(a) Within seven calendar days following timely filing of a complete appeal, notice of the appeal and of the date, time and place for the council's closed record appeal hearing, and of the deadline for submittal of written arguments as prescribed in SCC 2.02.175(8), shall be mailed by the council's office to the applicant/appellant, to the examiner, and to all other parties of record as defined in SCC 2.02.165;

(b) Publication in the official county newspaper no less than 10 days prior to the date set for hearing; and

(c) Conspicuous posting of the subject property by the applicant no less than 15 days prior to the date set for the hearing and in accordance with the public notice posting requirements for the underlying application.

(10) The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written or oral arguments received by the council for its hearing. All oral testimony requested by the council pursuant to subsection (2) of this section shall be given under oath.

(11) At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

(12) The council's decision shall be reduced to writing, entered into the record of the proceedings, and copies thereof mailed to all parties of record within 15 days of the conclusion of the hearing, but not later than 60 calendar days after the filing of an appeal unless the applicant (or appellant where there is no underlying applicant) agrees in writing to extend the time period or unless the time period has been extended under some other authority.


Section 3. Snohomish County Code Section 2.02.200, adopted by Ordinance 80-115 on December 29, 1980, is amended to read:

2.02.200 Examiner's report to council and planning commission.

The examiner shall report in writing to and meet with the Snohomish county council and the planning commission at least (~~semiannually~~) annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the examiner's decisions since the last report.


PASSED this 24th day of September, 1997

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON



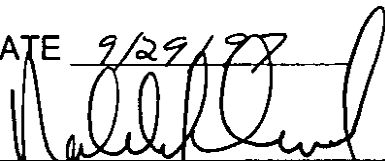
Chairperson

ATTEST:



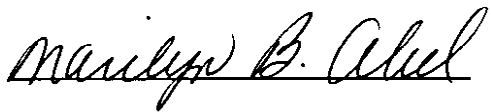
Asst. Clerk of the Council

- APPROVED
- VETOED
- EMERGENCY

DATE 9/29/97


County Executive

ATTEST:



ROBERT J. DREWEL
County Executive

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