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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 99 - *115*

RELATING TO APPLICATIONS FOR CONDITIONAL AND SPECIAL
USE PERMITS, PROVIDING FOR MEDIATION PRIOR TO APPEAL
OF CERTAIN HEARING EXAMINER DECISIONS, AND AMENDING
CHAPTERS 2.02 AND 18.72 SCC

BE IT ORDAINED:

Section 1. Snohomish County Code Section 2.02.175, last amended by Ordinance No. 97-075 on September 24, 1997, 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 elected no appeal may be filed until the reconsideration process has been completed, and no appeal under this section 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 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 within 14 calendar days following the date of the examiner's decision except as provided in SCC 18.72.030(3), 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 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.

(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 2. Snohomish County Code Section 2.02.195, last amended by Amended Ordinance No. 96-003 on February 21, 1996, is amended to read:

2.02.195 Appeal to court from examiner's decision.

(1) Where the examiner's decision on a land use matter is final and conclusive and may be reviewable by the filing of a land use petition in Snohomish County superior court, in accordance with the provisions of Chapter 36.70C RCW, the following provisions shall apply:

(a) Where the reconsideration process of SCC 2.02.167 has been utilized, no land use petition may be filed until the reconsideration process has been complete and no land use petition under this section by the petitioner for reconsideration may raise an issue which has not been the subject of a petition for reconsideration.

(b) Except as provided (~~(f)~~) in subsection (c) of this section or 18.72.030(3), a land use petition may be filed by any aggrieved party

of record within 21 calendar days following the date of the examiner's final decision; PROVIDED, That only the petitioner for reconsideration may file a land use petition from the denial of a petition for reconsideration. The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent copying and assembling the record and preparing the return for filing with the court shall be borne by the party filing the land use petition.

(c) A land use petition on an examiner's decision made pursuant to SCC 23.40.022 must be combined with a land use petition on the decision on the underlying permit. Where the underlying permit is heard on appeal by the county council, the land use petition on the examiner's decision shall be combined with a petition on the county council's decision, and shall be filed in accordance with SCC 2.02.190.

(2) Where the examiner's decision on a non-land use matter is final and conclusive and may be reviewable by an action for writ of review in Snohomish County superior court, the following provisions shall apply:

(a) Where the reconsideration process of SCC 2.02.167 has been utilized, no petition for a writ may be filed until the reconsideration process has been completed and no petition for a writ under this section by the petitioner for reconsideration may raise an issue which has not been the subject of a petition for reconsideration.

(b) Such an action may be brought by any aggrieved party of record by petition to the court for such a writ filed within 21 calendar days following the date of the examiner's decision on reconsideration; PROVIDED, That only the petitioner for reconsideration may file a petition for a writ from the denial of a petition for reconsideration. The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent copying and assembling the record and preparing the return for filing with the court shall be borne by the applicant for the writ.

Section 3. Snohomish County Code Section 18.72.030, last amended by Amended Ordinance No. 96-003 on February 21, 1996, is amended to read:

18.72.030 Variances, conditional use and special use permits — Effect of decision.

(1) The decision of the hearing examiner on a:

(a) Variance shall be final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167, and may then be reviewable by filing a land use petition in Snohomish County superior court as provided in chapter 2.02 SCC:

(b) Conditional use or special use permit shall be final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167, and may then be appealed to the county council pursuant to chapter 2.02 SCC.

(2) The decision of the department of planning and development services on a variance, or special use permit, shall be final and conclusive unless

appealed by any aggrieved person to the hearing examiner. Appeals shall be filed and processed pursuant to the provisions of chapter 2.02 SCC.

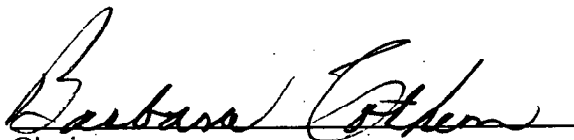
(a) At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence.

(b) The decision of the hearing examiner shall be final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167 and may then be reviewable by filing a land use petition in Snohomish County superior court as provided in chapter 2.02 SCC.

(3) As provided in RCW 36.32.525, a final decision by the hearing examiner involving a conditional or special use permit application that is requested by a party that is licensed or certified by the state department of social and health services or the state department of corrections is subject to mediation under RCW 35.63.260 before an appeal may be filed.

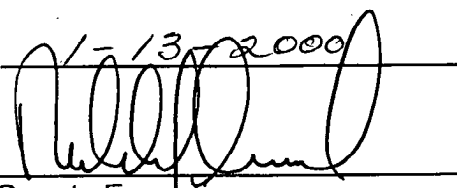
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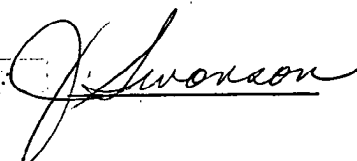
SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Chairperson


Clerk of the Council, Asst.

- APPROVED
- EMERGENCY
- VETOED

DATE: 1-13-2000

County Executive

ATTEST: 

Approved as to form only:


Deputy Prosecuting Attorney

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