

CHAPTER 17.20

HEARING EXAMINER SYSTEM

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17.20.010 PURPOSE. The purpose of this ordinance is to establish a hearing examiner system.
[Ord. 559 (2014) § 1]

17.20.020 OFFICE OF EXAMINER. Pursuant to Chapter 36.70 RCW and Chapter 58.17 RCW, the office of Benton County Hearing Examiner is created. Unless the context requires otherwise, the term Hearings Examiner as used herein shall include deputy examiners.
[Ord. 559 (2014) § 2]

17.20.030 APPOINTMENT. The Board of County Commissioners shall appoint a Hearings Examiner and may appoint deputy examiners who shall serve during the absence, disqualification, or inability of the Hearing Examiner to timely process the volume of applications. The qualifications of a deputy shall be the same as for the examiner. The Hearings Examiner, and any deputies, serve at the pleasure of the Board of County Commissioners.

[Ord. 559 (2014) § 3]

17.20.040 QUALIFICATIONS. The Hearings Examiner shall be appointed solely with regard to his or her qualifications for the duties of his or her office and have such training and experience as will qualify him or her to conduct administrative or quasi-judicial hearings utilizing land use regulatory codes. The Hearings Examiner shall have expertise and experience in land use planning and land use/environmental law. The Hearings Examiner shall hold no elective office with any local governmental agency located in Benton County.

[Ord. 559 (2014) § 4; Ord. 560 (2015) § 1]

17.20.050 DUTIES OF THE HEARINGS EXAMINER. The Hearings Examiner shall receive and examine available relevant information, including, but not limited to, environmental documents; conduct public hearings; cause preparation of a record thereof; and adopt findings and conclusions for the following:

- (a) applications for variances from the provisions of Chapter 3.24 BCC;
- (b) applications for mobile home park permits under Chapter 3.22 BCC;
- (c) applications for variances from Chapter 3.26 BCC;
- (d) appeals from determinations of significance under BCC 6.35.115(a) and, if applicable, mitigated determinations of non-significance under BCC 6.35.115(b);
- (e) short plat appeals under BCC 9.04.036;
- (f) decisions regarding multiple detached dwelling permits under BCC 11.52.065(e);
- (g) conditional use permits for Child Care Facilities, Type B, under BCC 11.52.068;

(h) applications for conditional use permits under BCC 11.52.089 and 11.52.090;

(i) applications for variances under BCC 11.52.088 and BCC 11.52.089;

(j) appeals of temporary dwelling permit decisions under BCC 11.52.0941;

(k) appeals of administrative decisions under BCC 11.52.131;

(l) appeals of temporary outdoor retail sales permit decisions under BCC 11.52.096;

(m) appeals of Planning Administrator's decisions regarding communication facilities under BCC 11.65.090; and

(n) such other matters as the Board of County Commissioners may from time to time authorize.

[Ord. 559 (2014) § 5]

17.20.060 HEARINGS EXAMINER - CONFLICT OF INTEREST. The Hearings Examiner shall not conduct or participate in any hearing or decision in which the Hearings Examiner has a direct or indirect personal interest which might exert such influence upon the Hearings Examiner that might interfere with his or her decision-making process. Any actual or potential conflict of interest shall be disclosed by the Hearings Examiner to the parties immediately upon discovery of such conflict.

Participants in a land use regulatory process have the right, insofar as possible, to have the Hearings Examiner free from personal interest and pre-hearing contacts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing desire for public access to public officials on any matter. Therefore, the Hearings Examiner shall attempt to avoid ex parte pre-hearing contacts and shall reveal any substantial interest or prehearing contact made with him or her concerning the matters at the commencement of each hearing. If such interest or contact impairs the Hearings Examiner's ability to act on the matter, the Hearings Examiner shall so state and shall abstain therefrom to the end so that the proceeding is fair and has the appearance of fairness.

Immediately after the announcement of any interest or pre-hearing contact, any person who objects to said interest or prehearing contact shall state the objection and any reasons supporting the objection. The failure to state such objection at the time of the announcement is deemed to be a waiver of said objection, and this objection cannot be raised at a subsequent time.

The Hearings Examiner, upon receiving an objection, shall decide whether the interest or contact will impair his or her ability to be fair and impartial, and shall hear the case or abstain accordingly.

No county commissioner, county official or any other person shall interfere with or attempt to influence the Hearings Examiner in the performance of his or her designated duties; provided that a county official or employee may, in performance of his or her own official duties, provide information for the Hearings Examiner as part of the case before the Hearings Examiner.

[Ord. 559 (2014) § 6]

17.20.070 APPLICATIONS. Applications and appeals requiring a determination by the Hearings Examiner shall be filed with the Planning Department as required by the Benton County Code.

[Ord. 559 (2014) § 7]

17.20.080 REPORT TO THE HEARINGS EXAMINER. When an application or appeal has been set for public hearing, the Planning Department shall coordinate and assemble the comments and recommendations of other county departments, agencies and affected utilities and shall prepare a report summarizing the issues involved, Planning Department proposed findings of fact, recommended conditions and/or recommended action.

[Ord. 559 (2014) § 8]

17.20.090 PUBLIC HEARING. The Hearings Examiner shall hold an open record hearing if required by the Benton County Code. The Hearings Examiner shall have the authority to prescribe rules and regulations for the conduct at the hearings before the Hearings Examiner, and also to administer oaths and preserve order.
[Ord. 559 (2014) § 9]

17.20.100 HEARINGS EXAMINER FINDINGS AND DECISION. When the Hearings Examiner renders a decision, he or she shall adopt written findings of fact and conclusions of law in support of such decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision carries out the standards set forth in the various land use regulatory codes and any other relevant codes and policies. Each final decision of a Hearings Examiner, unless a longer period is mutually agreed to in writing by the applicant and Hearings Examiner, shall be rendered within ten (10) working days following the conclusion of all testimony and hearings.
[Ord. 559 (2014) § 10]

17.20.110 RECONSIDERATION. (a) Any aggrieved party of record may request a reconsideration of the Hearings Examiner's decision. A party of record is any person who attended one or more of the public hearings on the matter, submitted written testimony or presents oral testimony.

(b) A request for reconsideration shall be in writing on a form provided by the Planning Department and must be accompanied by the required reconsideration fee as set by resolution of the Board of County Commissioners. Requests for reconsideration must be filed with the Planning Department within ten (10) calendar days of the date of adoption of the Hearings Examiner's final decision. If a request for reconsideration is timely filed, the date of final decision by the Hearings Examiner will be deemed to occur on the date a decision is entered on the request for reconsideration, and not the date of the original decision for which the request for reconsideration was filed.

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

(1) The Hearings Examiner exceeded his or her jurisdiction;

(2) The Hearings Examiner failed to follow the applicable procedures in reaching a decision;

(3) Irregularity in the proceedings before the Hearings Examiner caused a party to not obtain a fair hearing.

(4) The Hearings Examiner committed an error of law or misinterpreted the applicable statute, county code section, ordinance or resolution, law or regulation;

(5) The Hearings Examiner's findings, conclusion or conditions are not supported by the record;

(6) Discovery of new information not available at the time of the hearing that could be material to the outcome;

(7) Clerical mistake in the official file or record transmitted to the Hearings Examiner, including error arising from inadvertence, oversight, or omission, which may have materially affected the Hearings Examiner's decision on the matter.

(d) The Planning Department shall provide mailed notice that a request for reconsideration has been filed to all parties of record.

(e) The Hearings Examiner may consider the request for reconsideration without a hearing.

(f) Reconsideration of the decision is wholly within the discretion of the Hearings Examiner. The Hearings Examiner can choose to deny the motion without comment or choose to reconsider. He or she may revise the decision as they deem appropriate and may issue a revised record of decision. If a request for reconsideration is filed, a decision is not final until a decision on the reconsideration is issued.

(g) The decision of the Hearings Examiner shall be subject to request for reconsideration only during the ten day period set forth above, and no such request may be filed after a decision is made on a request for reconsideration.

[Ord. 559 (2014) § 11]

NOTE: This chapter continued on the following page.

17.20.120 APPEAL OF EXAMINER'S DECISION. The decision of the Hearings Examiner shall be final unless an appeal is filed in accordance with applicable county and state codes.
[Ord. 559 (2014) § 12]

17.20.130 ANNUAL REPORT TO THE BOARD OF COUNTY COMMISSIONERS. The Hearings Examiner shall annually report in writing to the Board of County Commissioners. The written report shall include a summary of Hearings Examiner decisions during the preceding period.
[Ord. 559 (2014) § 13]