

RESOLUTION NO. 2000- 201

Repealing Resolution No. 75-29

Re: Establishing the office of Chelan County Hearing Examiner; setting forth qualifications, duties and powers; the effect of decisions; and other administrative and operational particulars and repealing Resolution No. 75-29.

WHEREAS, quasi-judicial land use decisions have become increasingly complex and technical in nature to the extent that lay appointees find it difficult to reach legally sustainable decisions, and

WHEREAS, increasingly, proper land use decisions are based on complex legal interpretations of local, state and federal laws, and

WHEREAS, the Board of Chelan County Commissioners desires to shorten the time for processing quasi-judicial land use applications and to reduce the effects of political influence on land use decisions, and

WHEREAS, the board has determined that a professional hearing examiner skilled in properly weighing evidence, interpreting complex regulations and crafting findings of fact and conclusions of law would benefit the applicants, public and county, and

WHEREAS, a professional hearing examiner would render decisions that are more legally sound leaving the county less vulnerable to successful challenges and the many liabilities that result from less well founded decisions, and

WHEREAS, the limitations on public hearing processes imposed by RCW 36.70B, Local Project Review, renders the hearing examiner system a more efficient method to consider land use applications.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CHELAN COUNTY COMMISSIONERS, as follows:

Chapter 1.61 HEARING EXAMINER

SECTIONS:

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1.61.010 Purpose

The purpose of this chapter is to separate the land use regulatory function from the land use planning process; ensure procedural due process and appearance of fairness in regulatory land use hearings; and provide an efficient and effective land use regulatory system that integrates the public hearing and decision-making processes for land use matters.

1.61.020 Office Established

Pursuant to Chapter 36.70 RCW and Chapter 58.17 RCW, the office of Chelan County Hearing Examiner, hereinafter referred to as "examiner", is hereby created by the Board of Chelan County Commissioners. The examiner shall interpret, apply and implement land use regulations and policies as provided in this chapter or other resolutions. Unless the context requires otherwise, the term "examiner" as used herein shall include deputy examiners and examiners pro tempore.

Section 1.61.030 Appointment and Term

The examiner shall be appointed by the board of commissioners and shall serve at the pleasure of the board. The examiner will be a contracted position on the terms and conditions deemed appropriate by the parties. Said contract may provide for examiner(s) pro tempore to serve in the absence or disqualification of the examiner under such terms and conditions deemed appropriate by the commission.

1.61.040 Qualifications

The examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have training and experience as will qualify the examiner to conduct administrative and quasi-judicial hearings utilizing land use regulatory codes. The examiner must have expertise and experience in law, architecture, land use planning, environmental sciences or some combination of education and experience in these disciplines that demonstrates the ability to carry out the duties of the office. The person appointed to this position shall demonstrate experience in drafting decisions which incorporate findings of fact and conclusions of law. The examiner shall hold no other elective or appointive office or position with the county.

1.61.050 Standards of Conduct

The examiner shall avoid all appearances of impropriety in official conduct and shall ensure the appearance of fairness and actual fairness in official matters through adherence to the following provisions:

1. No person shall have ex parte (one-sided) contact with the examiner regarding any pending matter, and no person, including government officials and employees shall attempt to interfere with or influence the examiner outside of a public hearing. This section shall not prohibit county officials or employees from providing information to the examiner upon request when such request and the information provided is made part of the record of the hearing.
2. No examiner shall conduct or participate in any hearing or decision in which the examiner has a direct or indirect business, pecuniary or other interest or which the examiner has had substantial pre-hearing contacts with a party to the matter.
3. The examiner shall not participate in any hearing or render any decision involving any family member, in-law, partner or any business in which the examiner is now serving or has served within the previous two (2) years.
4. The examiner shall not participate in any way that would violate any rule of law.

1.61.60 Rules

The examiner shall have the power to prescribe rules governing the conduct of hearings and other procedural matters relating to the duties of the office, subject to confirmation by the board of county commissioners. Said rules shall provide, without limitation, that all testimony be audio taped, under oath, and subject to penalties for perjury. Said rules may also provide for cross-examination of witnesses.

1.61.070 Time Computation

In computing any period of time prescribed by this chapter, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a county legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or county legal holiday.

1.61.080 Duties and Powers

The examiner shall review all applications for conformance with the Chelan County Comprehensive Plan, all relevant development regulations, and all other substantive and procedural regulations that apply to the type of application being considered. The examiner shall receive and examine available information, conduct public hearings and appeals and enter findings of fact and conclusions of law based upon the facts in the record of decision. Decisions shall be rendered within ten (10) days of the conclusion of the hearing or appeal. The examiner is vested with the authority to hear and decide, but not be limited to, the following:

1. Applications for conditional use permits, variances, and Planned Development District applications under Title 11 of the Chelan County Code.
2. Applications for shoreline substantial development permits, time extensions to shoreline permits, revisions, shoreline variances, and shoreline conditional use permits under the shoreline master program.
3. Applications for plat alterations, preliminary and final major subdivisions, and plat vacations under Title 12 of the Chelan County Code.
4. Applications for current use assessment of open space or timberland.
5. Appeals of administrative decisions and interpretations relating to the subdivision resolution, the SEPA resolution, the zoning resolution and the shoreline master program.

6. Appeals of the administrative denials of short plat, certificates of exemption, and binding site plan, and boundary line adjustments under Title 12 of the Chelan County Code.

The examiner shall not review matters requiring policy decisions by the board of county commissioners, including, but not limited to: comprehensive plan text and map amendments, zoning resolution map and text amendments except planned development districts, and shoreline master program amendments. Policy determinations for these and similar issues are solely within the purview of the board of county commissioners following the recommendation of the planning commission. Nothing in this section is intended to restrain the examiner from offering commentary to the board of commissioners on potential legislative alterations to the development regulations to improve their condition or operation.

1.61.090 Examiner's Decision, Effect

The examiner's decision is a final decision and dispositive for all the types of applications that properly come before the examiner. There is no administrative appeal to any county official or body including the board of commissioners to the examiner's decision. Examiner decisions are appealable to superior court.

Within ten (10) working days of the conclusion of a hearing, unless the applicant agrees to a longer period in writing, the examiner shall render a written decision supported by findings of fact and conclusions of law based on the record. Such findings and conclusions shall also set forth the manner in which the decision would carry out and conform to the comprehensive plan and development regulations.

1.61.100 Applications

Applications for permits or approvals subject to review by the examiner shall be presented to the Chelan County Department of Building, Fire Safety & Planning on forms provided by the department. The department shall accept such applications and issue a notice of complete application only if all applicable filing requirements as defined by Title 14 of the Chelan County Code and the requirements of the governing resolution are met. The department shall be responsible for administrative processes including, but not limited to, assigning a file number, making referrals, setting a hearing date and ensuring that public notice requirements are met in accordance with the controlling resolution or statute.

1.61.110 Master Applications

A proposed development or project which requires more than one (1) of the permits or approvals listed in section 1.61.080 of this chapter may submit a master application to the department on forms furnished by the department containing the necessary information to process each permit or approval. The multiple fees for all permits or approvals must be paid. The master application shall thereafter be processed by the examiner subject to the longest time limitations applicable to any of the required permits or approvals. The examiner may consider two (2) or more applications relating to a single project concurrently and the findings, conclusions and decision on each application may be contained in one (1) written decision.

1.61.120 Report of Department

When an application has been declared complete and scheduled for public hearing, the Department of Building, Fire Safety & Planning, hereafter referred to as the "department", shall prepare a written report summarizing the factors involved along with the findings and

recommendations of the department. Where no specific provision for a report from the department is required by statute or resolution, the department may coordinate and assemble review comments from other county or city departments, other governmental agencies and franchised utilities having an interest in the subject application and prepare a report summarizing the factors involved and the department's findings and recommendations. At least ten (10) calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof mailed to the applicant and be made available for public inspection.

1.61.130 Reconsideration by Examiner

Any aggrieved party or agency that believes the decision of the examiner is unsound based upon errors in procedure, law, interpretation of adopted policy, fact, judgement, or the discovery of new factual evidence which, by due diligence, could not have been found prior to the examiner hearing, may make a written request for reconsideration by the examiner within ten (10) days of the filing of the written record of decision. The request for reconsideration shall be submitted to the department on forms provided by the department. Reconsideration of the decision is wholly within the discretion of the examiner. If the examiner chooses to reconsider, the examiner may take such further action deemed proper and may render a revised decision within five (5) days after the date of filing of the request for reconsideration. A request for reconsideration is not a prerequisite to filing an appeal under section 1.61.160.

1.61.140 Notice of Examiner's Decision

Unless different procedures are prescribed by the resolution or statute governing the application, the department shall mail copies of the examiner's decision by certified mail to the applicant and by regular first class mail to other parties of record not later than three (3) working days following the filing of a written decision by the examiner.

For the purposes of this chapter, "parties of record" means the applicant and all other persons who have either submitted written comment on any action or proposed action, or who have appeared at a public hearing or public meeting and specifically requested notice of the decision by signing a register provided for such purpose at the hearing or meeting.

1.61.150 Public Hearing

Before rendering a decision on any matter properly before the examiner, one (1) open record public hearing shall be held. Notice of the time and place of the public hearing shall be given as required by law.

The examiner shall have the authority to administer oaths and preserve order at hearings and prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of the office. Such rules shall provide for recording of the proceedings and for compliance with county, state and federal laws which may govern such proceedings. Rules of procedure for the scheduling and conduct of public hearings shall be subject to confirmation by the board of commissioners.

1.61.160 Appeal of Examiner's Decision

The actions taken by the examiner shall be final and conclusive unless a land use petition is timely filed in Superior Court pursuant to RCW 36.70C.040 (Section 705 of Chapter 347, Laws of 1995); provided, that no person having actual prior notice of the proceedings of the examiner

shall have standing to challenge the examiner's decision unless such person was a party of record at the examiner's hearing.

1.61.170 Annual Report

At least once each year, the examiner shall report in writing to the board of county commissioners for the purpose of reviewing the administration of the county's land use policies and regulating resolutions. The report shall include a summary of the number and type of decisions rendered since the prior report.

1.61.180 Conflicting Resolutions

The resolution codified in this chapter shall take precedence over any and all resolutions in conflict herewith.

1.61.190 Severability

If any provision of this chapter, or the application of the provisions of this chapter to any person or circumstance is declared invalid, the rest of the chapter, or the application of the provision to other persons or circumstances is unaffected, and thereby shall remain in full force and effect.

1.61.200 Repealer

Resolution No. 75-29 and all amendments relating thereto are hereby repealed as of the effective date of this resolution.

1.61.210 Effective Date

This resolution shall come into full force and effect on January 1, 2001

Dated this 26th day of December, 2000, at Wenatchee, Washington.



BOARD OF CHELAN COUNTY COMMISSIONERS

ABSENT

ESTHER STEFANTW, CHAIRMAN

Jim C. Lynch
JIM C. LYNCH, COMMISSIONER

John A. Hunter
JOHN A. HUNTER, COMMISSIONER

ATTEST: KATHLEEN L. WARD

Kathleen L. Ward
Clerk of the Board