

OKANOGAN COUNTY COMMISSIONERS

ORDINANCE NO. 2014 - 9

An Ordinance amending Okanogan County Code 2.65 Hearing Examiner.

**WHEREAS:** Revised Code of Washington (RCW) 36.70.970 authorizes counties to adopt a Hearing Examiners system for the review of certain land use proposals and decisions.

**WHEREAS:** Okanogan County adopted OCC 2.65 Hearing Examiner as an alternative means to review land use applications, and

**WHEREAS:** In 2014 Okanogan County began assigning the review of certain land use applications to the Office of Hearing Examine consistent with Okanogan County Code and Washington State law, and

**WHEREAS:** The Okanogan Board of County Commissioners desired to maintain a clear separation between the quasi-judicial duties of the Hearing Examiner and the legislative duties of the Regional Planning Commission and the Board of County Commissioners, and

**WHEREAS:** The Okanogan Board of County Commissioners desired to clarify those land use applications which were assigned to the Hearing Examiner for review and decision versus those which were assigned to County Staff for review and decision on an administrative level, and

**WHEREAS:** The Okanogan Board of County Commissioners recognized the need to review and amend Okanogan County Code 2.65 Hearing Examiner to achieve compliance with RCW 36.70B, RCW 36.70C, and other applicable state law, Be it therefore

**THEREFORE BE IT ORDAINED:** The Okanogan Board of County Commissioners adopts the amendments to Okanogan County Code 2.65 Hearing Examiner as attachment A to this ordinance, and be it further

**BE IT FURTHER ORDAINED:** The Okanogan Board of County Commissioners adopts attachment B findings of fact and attachment C conclusions of law.

DATED at Okanogan, Washington this 29 day of September, 2014.

BOARD OF COUNTY COMMISSIONERS  
OKANOGAN, WASHINGTON

Ray Campbell  
Ray Campbell, Chairman

Sheilah Kennedy  
Sheilah Kennedy, Member

Jim DeTro  
Jim DeTro, Member



ATTEST:

Laleña Johns  
Laleña Johns, Clerk of the Board

# Ordinance NO. 2014 - 9 Attachment A

## Chapter 2.65 HEARING EXAMINER

### Sections:

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### **2.65.010 Purpose.**

The purpose of this chapter is to provide an administrative land use regulatory system which will serve to provide a hearing process to that of the planning commission or board of adjustment, can use to ensure and expand the principles of fairness and due process in public hearings; and to provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making processes for land use matters. (Ord. 94-15, 1994).

### **2.65.020 Hearing examiner office established.**

The office of Okanogan County Hearing Examiner, herein referred to as "examiner," is hereby created by the board of county commissioners. The role of the examiner shall be to interpret, review and implement regulations as provided in this chapter. Unless the context requires otherwise, the term examiner used in this chapter shall also include examiner(s) pro tem. (Ord. 94-15, 1994).

### **2.65.030 Definitions.**

For purposes of this chapter the following words and phrases used herein shall have the designated meaning unless a different meaning is expressly provided.

A. "Applicant" means those applying to Okanogan County for approval of land uses that conform to Okanogan County's goals, policies, plans and programs of development.

- B. "County" means Okanogan County, Washington.
- C. "Commission" means the board of commissioners of Okanogan County.
- D. "Department" means the Okanogan County planning department.
- E. "Examiner" means the hearing examiner of Okanogan County.
- F. "Ex parte communication" means written or oral communications not included in the public record and made outside of a public hearing.
- G. "Party of record" means:
  - 1. Person who testifies at a hearing;
  - 2. The applicant, developer, or any of their agents;
  - 3. Person submitting written comments pertaining to the merits of a case prior to when the examiner closes the record on the case; and
  - 4. Okanogan County.
- H. "Record" means official documents that record all public hearing proceedings with regard to a specified land use application. Such record will include a recording from which a verbatim transcript may be created.
- I. "Staff" means departments of Okanogan County, Washington.
- J. All other words and phrases used herein will have their commonly accepted meanings. (Ord. 94-15, 1994).

#### **2.65.040 Appointment of examiner.**

The examiner shall be selected by the commission and shall serve at the pleasure of the commission. This position will be a contracted position and on conditions deemed appropriate by the commission. Said contract may also provide for examiner(s) pro tem to serve in the absence of the examiner on such terms and conditions deemed appropriate by the commission. The examiner(s) pro tem shall be selected by the commission. (Ord. 94-15, 1994).

#### **2.65.050 Qualifications.**

The examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have such training or experience as will qualify the examiner to conduct administrative or quasi-judicial hearings utilizing land use regulatory codes and must have expertise and experience in planning, and should have knowledge or experience in at least one of the following areas: environmental sciences, law, architecture, economics or engineering. Persons appointed to this position should have experience in drafting records of decisions which incorporate findings of fact and conclusions of law. Examiners shall hold no other elective or appointive office or position within the county. The examiner may be removed from office by the commission at will. (Ord. 94-15, 1994).

#### **2.65.060 Examiner pro tem – Qualifications and duties.**

The examiner(s) pro tem shall serve in the event of the absence or the inability of the examiner to act and shall have all the duties and powers of the examiner. The examiner(s) pro tem shall have such training or experience as to satisfy OCC 2.65.050. (Ord. 94-15, 1994)

#### **2.65.070 Authority and duties.**

The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter final decisions, subject to application, notice, and public hearing and appeal procedures of the Okanogan County Code, on the following matters:

1. Permit applications and requests pursuant to Okanogan County Environmental Code, OCC Title 14:
  - (a) Final determinations on quasi-judicial applications.
  - (b) Threshold determinations of significance on quasi-judicial applications;
2. Appeals of administrative decisions issued by the designated building official pursuant to OCC Title 15.
3. Land division applications pursuant to OCC Title 16:
  - (a) appeals of administrative decisions issued by the department;
  - (b) applications for preliminary plats;
4. Land Use applications pursuant to Okanogan County Zone Code, OCC Title 17:
  - (a) any appeal of an administrative decision issued by the Department;
  - (c) Applications for zone changes;
    - b. Review of preliminary plat of proposed subdivisions and dedications of land;
    - c. Plat vacations, non-administrative plat amendments and modifications, and plat alterations;
    - e. Replat approval, replat vacation, replat amendments and modifications and replat alterations.
    - f. Applications for non-administrative variances and conditional use permits.
    - g. Applications for shoreline, conditional use permits;
    - h. Appeals of zoning code interpretations;
    - i. Interpretation of zoning boundaries;
    - j. Appeals from planning department's interpretation of flood insurance rate map (FIRM);
    - k. Any other matters specifically assigned to the examiner by the commission.

#### **2.65.080 Rules.**

The examiner may prescribe rules or adopt rules by reference for the scheduling and conduct of hearings and other rules of procedure.

#### **2.65.090 Conflict of interest and freedom from improper influence.**

A. The examiner shall not conduct or participate in any hearing or decision in which the examiner or any of the following persons has a direct or indirect or substantial financial or personal interest or in which such conduct or participation would violate any rule of law applicable thereto:

1. The examiner's spouse, brother, sister, child, parent, in-laws, partner; any business in which the examiner is then serving or has served within the previous two years; or
2. Any business with which such examiner is negotiating for or has an arrangement or understanding concerning possible partnership or employment. Any actual or potential interest shall be disclosed prior to such hearing.

B. Participants in the land use regulatory process have the right, insofar as possible, to have the examiner and the commission free from personal interest or prehearing contacts on land use regulatory matters considered by them. It is recognized that there is a countervailing public right to free access to public officials on any matter. Therefore, the examiner and the commission shall reveal any substantial interest or prehearing contact made with them concerning the proceedings, at the commencement of such proceeding. If such interest or contact impairs the examiner's or a commission member's ability to act on the matter, such person shall so state and shall abstain therefrom to ensure that the proceeding is fair and has the appearance of fairness.

C. Immediately after the announcement of any interest or prehearing 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 an objection at the time of announcement is deemed to be a waiver of said objection, and therefore, this objection cannot be raised (for the first time) at any subsequent time.

D. The examiner or a commission member, upon hearing an objection, shall personally 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.

E. No commission member, county official, or any other person shall interfere with or attempt to interfere with or attempt to influence the examiner in the performance of his or her designated duties; provided, that a county official or employee may, in the performance of his own official duties, provide information for the examiner or process a county case before the examiner, when such actions take place or are disclosed in the examiner's hearing or meeting. (Ord. 94-15, 1994).

#### **2.65.100 Fees.**

All applications for examiner review submitted to the department shall be accompanied by the applicable fees as set by the commission. Said commission shall also set appeal fees. (Ord. 94-15, 1994).

#### **2.65.110 Applications.**

All applications to be submitted to the examiner for hearing shall be presented to the department on forms provided by the department. The department shall accept such applications only after all such applicable forms, checklists, plot plans, applications, notices, lists and other requirements, including fees, are met. After determining that the application is within the jurisdictional scope of the examiner, the examiner shall direct the department to assign a date for a public hearing, and provide public notice in accordance with all procedures and timing requirements set forth by the department. (Ord. 94-15, 1994).

**2.65.120 Public hearing.** 1) The public hearing will be informal in nature, but organized so that testimony and evidence can be presented efficiently. The hearing shall include at least the following elements:

- (a) An introductory outline of the procedure by the Hearing Examiner
- (b) Testimony by Department staff which shall summarize the written staff report and provide any additional exhibits or other information the staff believes should be brought to the Hearing Examiner's attention
- (c) Testimony by the applicant and the applicant's witnesses;
- (d) Testimony from other individuals or organizations wishing to be heard;
- (e) Questions by the Hearing Examiner;
- (f) Rebuttal witnesses (if any); Any participant in the hearing may make all or part of his or her presentation through witnesses;

(2) All testimony shall be taken under oath or affirmation;

(3) Hearings shall be electronically recorded and the recordings shall be made a part of the record. Copies of the electronic recordings shall be made available upon request and payment of the costs of reproduction;



(4) Technical rules of evidence will not be applied. The key requirements for evidence will be relevance and reliability. Relevant and reliable evidence will be admitted if it possesses probative value accepted by reasonable persons in the conduct of their affairs. The credibility of witnesses and the weight of evidence are within the sole discretion of the Hearing Examiner.

(a) Documents, photographs and physical evidence will be admitted as exhibits and each will be assigned an exhibit number. Exhibits will be retained until a decision is rendered and appeal proceedings, if any, have been concluded.

(b) The staff report or staff analysis produced by the Department will be admitted as Exhibit 1 in every hearing.

(c) Testimony may be presented orally, in writing, or both. Persons giving oral testimony shall be subject to questioning by the Hearing Examiner. Written testimony may be presented either in advance or at the hearing. When testimony is presented only in writing, the Hearing Examiner has discretion to leave the record open for written responses by other participants.

(d) Any decision by the Hearing Examiner on the admissibility of evidence shall be final.

5) The Hearing Examiner may impose reasonable limitations on the nature and length of testimony. In so doing the Examiner shall give consideration to:

a) The expeditious completion of the hearing;

b) The need to provide all parties a fair opportunity to present their cases;

c) Accommodating the desires of members of the public to be heard;

At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded. If all testimony cannot be presented in the time available, the hearing shall be continued;

(6) Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. Any communications with the organization by the Hearing Examiner or by any party during the course of proceedings shall be through the designated representative;

(7) Prior to the conclusion of a matter, including appeals therefrom, no communications with the Hearing Examiner outside of the hearing is allowed on the merits or facts of any matter which has been or will be scheduled to come before the Hearing Examiner. This prohibition includes, but is not limited to, communications with County employees, applicants, their representative, and others participating in the hearing process.

(8) The Hearing Examiner has the option to visit the site before or after a hearing. If the Hearing Examiner conducts a post-hearing visit in response to a request made at the hearing by a party, the hearing record will be held open until the site visit is completed.

(9) The Hearing Examiner may continue proceedings or reopen proceedings for good cause at any time prior to the issuance of the decision, subject to notice requirements.

(10) The Hearing Examiner may announce a decision at the hearing. The decision will be contained in a written order with supporting findings and conclusions. The order will be issued no later than ten (10) working days after the record closes.

(11) The Department will maintain a copy of the Hearing Examiner's decision, available for public inspection in the official file of each application or appeal. The applicant and any appellant will receive a copy of the Hearing Examiner's decision free of charge. Any other person may receive a copy upon payment for reproduction and postage.

#### **2.65.130 Reconsideration.**

Any aggrieved party or agency (including the planning commission) that believes the final decision of the examiner is unsound based upon errors in procedure, law, interpretation of adopted policy, fact, judgment, 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 14 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, he/she may revise the decision as they deem appropriate, and may issue a revised record of decision within 10 days of the reconsideration heard by the examiner. A request for reconsideration is not a prerequisite to an appeal. (Ord. 94-15, 1994).

#### **2.65.140 Appeal of examiner's decision.**

The decision of the examiner shall be final and conclusive unless a motion for reconsideration is timely filed pursuant to OCC 2.65.150.

Appeals of the Hearing Examiners final decision shall be filed in accordance with the Land Use Petition Act, RCW 36.70C.

#### **2.65.150 Commissioners Actions on examiners decisions**

In those cases such as rezones or approval of final plats where subsequent action is required by the Board of County Commissioners their actions will be based on the record and decision of the examiner. The action of the Board of County Commissioners shall not constitute a final decision for purposes of appeal. The final decision by the examiner shall in all cases be the only decision subject to an appeal in accordance with 2.65.150.

#### **2.65.160 Multiple applications.**

The examiner may consider two or more applications relating to a single project concurrently, and the findings of fact, conclusions and decision on each application may be covered in one written decision. (Ord. 94-15, 1994).

#### **2.65.170 Annual report.**

The examiner shall report in writing to and meet with the Board of County Commissioners at least annually to review the administration of the county's land use policies and regulating ordinances. The report shall include a summary of the examiner's decisions since the prior report. (Ord. 94-15, 1994).

#### **2.65.180 Replacement and substitution of the jurisdiction of other commissions to the hearing examiner.**

Upon implementation of the Office of Hearing Examiner the duties of the board of adjustment shall be substituted by those powers and duties, as stated herein unless the Hearing Examiner or Hearing Examiner Pro Tempore are unable to perform their duties respectively. The jurisdiction of the Okanogan County planning commission shall be modified and amended by those powers and duties granted the examiner as stated herein. The examiner shall hear and decide those land use matters and appeals as stated in OCC 2.65.070, notwithstanding the procedures mentioned in other ordinances and policies of the county. (Ord. 94-15, 1994).

Ordinance NO. 2014 - 9  
Attachment B  
Findings of Fact

- 1) Revised Code of Washington (RCW) 36.70.970 authorizes counties to adopt a Hearing Examiners system for the review of certain land use proposals and decisions.
- 2) In 1994 Okanogan County adopted ordinance 94-15 creating the Office of Hearing Examiner as an alternative process for the review of land use applications. The ordinance was codified as Okanogan County Code (OCC) 2.65.
- 3) Beginning in 2014 The Okanogan Board of County Commissioners (BOCC) elected to utilize the Office of Hearing Examiner for certain land use applications and administrative appeals.
- 4) Staff review of OCC 2.65 discovered inconsistencies with the duties assigned to the Hearing Examiner (HE) by local code versus the duties the BOCC wanted the HE to perform. The language of OCC 2.65 as adopted in 1994 was outdated and inconsistent with applicable state statutes and other local codes such as OCC 16 Subdivisions and OCC 17 Zoning.
- 5) When the BOCC was made aware of the inconsistencies found in OCC 2.65 they ordered staff from the planning department, working with the Chief Civil Deputy to propose amendments to correct the inconsistencies and bring OCC 2.65 up to date.
- 6) During the course of review of OCC 2.65 staff determined a new code section creating a consistent process for processing the appeal of administrative decisions should be proposed concurrent with the review of OCC 2.65. After consultation with the BOCC staff created OCC 2.67 Administrative Appeals for consideration.
- 7) During the course of review of OCC 2.65 and the subsequent creation of new section OCC 2.67 staff determined the appeal process for OCC 14.04.220 Environmental policy should remain separate from the process for appeals of other administrative decisions due to the nature of the SEPA process and the direction found in RCW 43.21C and WAC 197-11 for the processing of appeals brought against SEPA decisions. After consultation with the BOCC staff prepared amendments to OCC 14.04.220 Appeals for consideration.
- 8) Staff determined that amendments to OCC 15 Building and Construction, OCC 16 Subdivisions, and OCC 17 Zoning were necessary to bring the appeal of administrative decisions made pursuant to the enforcement of these codes consistent with the administrative appeals process proposed in new section OCC 2.67. Staff prepared amendments for consideration.



- 9) The SEPA Responsible Official for Okanogan County reviewed the proposed amendments and determined they were categorically exempt from SEPA review in accordance with WAC 197-11-800 (19) Procedural Actions.
- 10) A public notice was published on September 10, 2014 which scheduled a public hearing for September 22, 2014 to consider the proposed amendments to OCC 2.65, OCC 14.04.220, OCC 16, and OCC 17. The notice included the proposed new section OCC 2.67 and a new section to OCC 15.
- 11) The BOCC conducted the public hearing as scheduled at which the proposed amendments, staff report, and written comments submitted prior to the hearing were placed into the record. Testimony was taken from those present and wishing to be heard. Some submitted additional written comments.
- 12) The BOCC considered the verbal and written information placed into the record.
- 13) The BOCC finds that RCW 36.32.330 directs that decisions of the BOCC are appealed to Superior Court subject to applicable statutes.
- 14) The BOCC finds that RCW 36.70C Land Use Petition Act directs the process by which local land use final decisions are appealed to Superior Court.
- 15) The BOCC finds that RCW 36.70B.050 directs that each local government shall provide by ordinance or resolution for review of permit applications to achieve the following objectives: 1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits, and 2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075 provide for no more than one open record hearing and one closed record appeal.
- 16) The BOCC finds that preserving separation between the quasi-judicial duties of the hearing examiner and the legislative duties of the Planning Commission and Board of County Commissioners provides for a better process for the review of projects versus the making of broader policy and regulatory decisions.
- 17) The BOCC voted to approve these amendments to OCC 2.65 as well as OCC 14.04, OCC 15, OCC 16, and OCC 17 and creating a new section OCC 2.67 and directed staff to prepare enabling documents.
- 18) The BOCC continued the public hearing to September 29, 2014 to review and adopt this ordinance and others as listed above.

Ordinance No. 2014-9  
Attachment C  
Conclusions of Law

- 1) Okanogan County is authorized by the Revised Code of Washington (RCW) 36.70 Planning Enabling Act, RCW 58.17, RCW 36.70B and other applicable statutes to adopt land use controls and regulatory processes by which those controls are enforced.
- 2) Revised Code of Washington (RCW) 36.70.970 authorizes counties to adopt a Hearing Examiners system for the review of certain land use proposals and decisions.
- 3) Okanogan County is authorized by law to provide a process for the appeal of administrative decisions made by department staff in the course of enforcing the codes under their purview and concludes the availability of these processes promote the public health safety and welfare.
- 4) RCW 43.21C.075 establishes requirements and policies for the consideration of the appeal of administrative decisions made pursuant to implementation of the State Environmental Policy Act.
- 5) The BOCC had determined that amendments to OCC 2.65 Hearing Examiner are necessary to preserve a separation between legislative and quasi-judicial process and to bring that code section into compliance with other local land use regulation as well as RCW 43.21C, RCW 36.70, RCW 36.70B, RCW 36.70C, WAC 197-11 and other applicable state statutes.
- 6) At the direction of the BOCC staff prepared amendments to OCC 2.65 as well as OCC 14, OCC 15, OCC 16, OCC 17 and a new section OCC 2.67 Administrative Appeals.
- 7) On September 22, 2014 the BOCC conducted a properly noticed public hearing to consider amendments to OCC 14.04.220, OCC 2.65, OCC 15, OCC 16, OCC 17 and a new code section OCC 2.67 Administrative Appeals.
- 8) At the conclusion of the public hearing and after considering the public testimony and other information presented ordered the preparation of ordinances adopting the proposed amendments.
- 9) At a continued public hearing held on September 29, 2014 the BOCC adopted by ordinance amendments to OCC 2.65 Hearing Examiner as well as OCC 14.04, OCC 15, OCC 16, OCC 17 as well as new section OCC 2.67.