

ORDINANCE NUMBER 80 - 03

**AMENDMENTS TO THE MASON COUNTY DEVELOPMENT CODE TITLE 15
REGARDING CHANGES TO THE REVIEW OF DECISION APPEALS**

AN ORDINANCE amending the Title 15 Mason County Development Code reflecting certain changes to the review process that deletes the references to appeals to the Board of County Commissioners and adds text to notice of appeal hearings, under the authority and requirements of Chapters 36.70 (including 36.70.970), 36.70A, 36.70B, and 58.17 RCW.

WHEREAS, the Board of County Commissioners adopted these chapters and sections within the Mason County Development Code Title 15 in public hearings on December 17, 2002 and June 10, 2003;

WHEREAS, the Title 15 has review procedures for the appeals of administrative and quasi-judicial permit decisions, and has included the Board of County Commissioners in the appeal review of decisions by the Hearing Examiner;

WHEREAS, in the course of their duties, the Board of County Commissioners has found it increasingly more difficult to respond to the concerns of their constituents, while remaining impartial to the hearing of potential appeals of decisions made by the Hearing Examiner;

WHEREAS, the County Commissioners has requested that the Department of Community Development work on possible revisions to the Mason County Development Code Title 15 that could resolve this potential conflict in a fair manner;

WHEREAS, the Mason County Planning Commission reviewed the proposed revisions to Title 15 and formulated their recommendations after a public hearing on June 16, 2003;

WHEREAS, the Board of County Commissioners held a public hearing about the proposed revisions on July 22, 2003, to consider the recommendations of the Planning Advisory Commission, and the Mason County Department of Community Development and citizens' testimony on the proposed revisions to Mason County Development Code that makes certain changes to the review process that deletes the references to appeals to the Board of County Commissioners and adds text to notice of appeal hearings; and

WHEREAS, the Mason County Board of County Commissioners has approved findings of fact to support its decision as ATTACHMENT A;

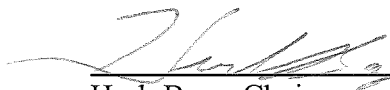
NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Commissioners of Mason County hereby approves and ADOPTS the amendments to the Mason County

Development Code, Title 15, as amended, that makes certain changes to the review process that deletes the references to appeals to the Board of County Commissioners and adds text to notice of appeal hearings, as described by ATTACHMENT B.


DATED this 22nd day of July, 2003.

Board of County Commissioners
Mason County, Washington

ATTEST:



Herb Baze, Chair

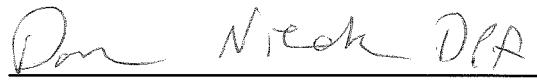


Clerk of the Board


Absent 7/22/03

Wesley E. Johnson, Commissioner

APPROVED AS TO FORM:



Deputy Prosecuting Attorney



Jayni L. Kamin, Commissioner

**AN ORDINANCE AMENDING
THE MASON COUNTY DEVELOPMENT CODE TITLE 15
REGARDING CHANGES TO THE REVIEW OF DECISION APPEALS**

**MASON COUNTY BOARD OF COMMISSIONERS
July 22, 2003**

FINDINGS OF FACT

1. Under consideration is the proposed ordinance to make revisions to Title 15 Mason County Development Code reflecting certain changes to the review process that deletes the references to appeals to the Board of County Commissioners and adds text to notice of appeal hearings.
2. The Mason County Development Code contains several procedural sections that refer to the Board of County Commissioners in the review of appeals to administrative and quasi-judicial decisions.
3. At the June 16, 2003 Mason County Planning Advisory Commission meeting, the Department of Community Development presented the proposed ordinance text that that deletes the references to appeals to the Board of County Commissioners. In their review, the Planning Advisory Commission members asked questions of staff on the current text and the proposed changes; following their discussion, members approved a motion to recommend adoption of the new proposed revisions to several sections of Title 15 Mason County Development Code.
6. At the July 22, 2003 Mason County Board of Commissioners public hearing, the Department of Community Development presented the current and the proposed ordinance text, as recommended by the Planning Advisory Commission, that addresses the review of appeals to administrative and quasi-judicial decisions and deletes the references to appeals to the Board of County Commissioners. The County Commissioner questions focused on their concern for appearance of fairness and how the ordinance changes would affect the permit review process and timing of decision-making.

From the preceding findings, the Mason County Board of Commissioners adopted a motion to include the proposed revised text to Title 15 Mason County Development Code reflecting certain changes to the review process that deletes the references to appeals to the Board of County Commissioners and adds text to notice of appeal hearings, as presented by the Mason County Department of Community Development.

 7/22/03

Chair, Mason County Board of Commissioners

Date

**DRAFT REVISIONS TO MASON COUNTY DEVELOPMENT CODE TITLE 15
TO ADDRESS REVIEW OF APPEALS OF DECISIONS**
Prepared by the Mason County Planning Department – PAC recommendation June 16, 2003

15.01.020 DEFINITIONS

The following definitions shall apply to this Title:

Final Decision: The final action by the review authority, **Hearing Examiner**, or Board of County Commissioners.

15.03.030 BOARD OF COUNTY COMMISSIONERS

~~In addition to its legislative responsibility,~~ The Board of County Commissioners shall review and act on **type IV applications including the following subjects:**

- A. ~~Changes to the Mason County Comprehensive Plan and land use regulations.~~
- B. ~~Appeals of the Hearing Examiner permit decisions, not including:~~
 - 1. ~~Enforcement decisions.~~
 - 2. ~~Decisions on appeal of the Building Official on the interpretation or application of the Building Code.~~
 - 3. ~~Decisions on appeal of the Fire Marshal on the interpretation or application of the Fire Code.~~

15.07.040 NOTICE OF APPEAL HEARINGS

~~In addition to the posting and publication requirements of Section 15.07.030,~~ For the notice of appeals of administrative decisions (**Sec. 15.11.010**) and **appeals to the Hearing Examiner (Sec. 15.11.020)**, notice shall be mailed to the parties of record from the permit review **and to all parties who requested to be notified of the decision.**

15.07.050 NOTICE OF FINAL DECISION

- A. When a notice is required for a final decision, such notice shall be sent to the applicant, all parties of record, all parties who requested to be notified, and the County Assessor's Office.
- B. This notice shall include the statement of threshold determination (RCW 43.21C), information on requesting assessed valuation changes by affected property owners, and the procedures of administrative appeal, if any.
- C. This notice may be combined with the transmittal requirements of other codes, state statutes, or ordinances, as appropriate.
- D. Notice of administrative decisions shall be the responsibility of the issuing county department. ~~Notice of County Commission final decision on a project permit or an appeal shall be the responsibility of the County Commissioners Office.~~

15.09.055 TYPE III REVIEW – SHORELINE MASTER PROGRAM

F. Permit Process.

- 2. Review by the Hearing Examiner
 - a. Upon receipt of the recommendation from the Review Authority, the Hearing Examiner shall either approve, conditionally approve, deny the application, or postpone for further information.

**DRAFT REVISIONS TO MASON COUNTY DEVELOPMENT CODE TITLE 15
TO ADDRESS REVIEW OF APPEALS OF DECISIONS**

Prepared by the Mason County Planning Department – PAC recommendation June 16, 2003

- b. The Hearing Examiner shall review the permit application at the first regularly scheduled public meeting of the **Hearing Examiner Board** following the expiration of the 30-day period required in Section 15.09.055 F.
3. ~~Appeal to the Board of County Commissioners. Appeal of Hearing Examiner decisions on proposed development covered by the Shoreline Master Program shall follow the standards of Section 15.11.020.~~
4. Washington State Department of Ecology Review. Development pursuant to a Substantial Development Permit, Conditional Use or Variance shall not begin and is not authorized until 21 days from the date the Review Authority files the permit decision with the Department of Ecology and the Attorney General, in the case of a Substantial Development Permit, or up to 60 days in the case of Variance or Conditional Use Permit PROVIDED all review and appeal proceedings initiated within 21 days of the date of such filing of a Substantial Development Permit or 21 days of final approval by the Washington State Department of Ecology for a Conditional Use Permit or Variance have been terminated.
54. Time Limit for Action. No permit or exemption authorizing construction shall extend for a term of more than five years. If actual construction of a development for which a permit has been granted has not begun within two years after the approval, the Hearing Examiner (or Review Authority, in the case of an exemption) shall, review the permit and upon a showing of good cause, may extend the initial two-year period by permit for one year. Otherwise the permit terminates; PROVIDED, that no permit shall be extended unless the applicant has requested such review and extension before the Hearing Examiner prior expiration date.

G. Appeal to State Shorelines Hearings Board. Any person aggrieved by the granting, denying, rescission or modification of a Shoreline Permit may seek review from the State Shoreline Hearings Board by filing an original and one copy of request for the same with the Hearings Board within 21 days of receipt of the final decision by the Hearing Examiner ~~or Board of Commissioners~~. Said request shall be in the form required by the rules for practice and procedure before the State Shoreline Hearings Board. Concurrent with the filing of request for review with the Hearings Board, the person seeking review shall file a copy of the request for review with the Department of Ecology, the Attorney General and the Hearing Examiner. The Shoreline Hearing Board regulations are contained in Chapter 461-08 WAC.

15.11.010 APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND DECISIONS

- A. Administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, to the following hearing body, based upon the relevant code or ordinance as follows:
Hearing Examiner: Title 6 (Sanitary Code) and other regulations listed in part 1 of section 15.03.005, Title 7 (Shoreline Master Program), Title 8 (Environmental Policy and Resource), Title 14 (Construction), Title 16 (Subdivision), and the Development Regulations, provided that appeals of the Building Official's notice and order shall be in accordance with section 401 of the Uniform Code of Abatement (hereafter section 401) and, shall be to the Hearing Examiner as specified in this chapter.
~~County Commissioners: Appeals of Hearing Examiner permit decisions, not including: enforcement decisions; decisions on appeal of the Building Official on the interpretation and application of the Building Code; decisions on appeal of the Fire Marshal on the interpretation and application of the Fire Code.~~
- B. The appeal shall be considered and decided within ninety (90) days of receipt of a date stamped application, provided that the parties to an appeal may agree to extend these time periods, and provided that a shorter time period is not specified in the applicable code or regulation.

**15.11.020 APPEAL TO THE HEARING EXAMINER ~~OR COUNTY~~
—COMMISSIONERS**

- A. **Filing.** Every appeal to the Hearing Examiner ~~or County Commissioners~~ shall be filed with the Clerk of the Board within fourteen (14) days after the date of the decision being appealed. The date of the decision and the date from which appeal periods shall be calculated shall be the date on which the written action was either mailed or transmitted by hand, whichever is done and whichever is earliest, to all parties for which transmittal is required for said action. This appeal period shall replace all other previously adopted appeal periods specified in the applicable ordinances.
- B. **Contents.** The application of appeal shall contain a concise statement identifying:
1. The decision being appealed.
 2. The name and address of the appellant and his/her interest(s) in the matter.
 3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
 4. The desired outcome or changes to the decision.
 5. The appeals fee as provided for in the applicable ordinance.
- C. **Procedure.** ~~The appeal to the Board of County Commissioners shall be held during a closed record public meeting.~~ An appeal before the Hearing Examiner shall be by procedures established by the Hearing Examiner consistent with RCW 36.70B.

15.11.030 APPEAL TO STATE REVIEW BOARDS

The appeal of the final decision of the Hearing Examiner ~~or County Commissioners~~ may be filed to the appropriate state review board and is subject to the appeal processes of the review board (notification, review, hearing, and decision). The State Environmental Hearings Office processes appeals of shoreline permits, conditional uses, and variances; the State Department of Health processes appeals of public health and air-water quality issues.

15.11.040 JUDICIAL APPEAL

- A. Appeals from the final decision of the ~~County Commissioners~~ or Hearing Examiner involving those codes and ordinances to which this title applies, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Mason County Superior Court within twenty-one (21) days of the date the decision or action became final, unless preempted by state law.
- B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the Clerk of the Board of County Commissioners and Prosecuting Attorney within the applicable time period. This requirement is jurisdictional.
- C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

15.13.050 CIVIL FINES

- H. The amount of the assessment lien shall be billed annually by the Treasurer's Office on the date of the assessment lien until paid and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. Notwithstanding the previous provisions, the foreclosure process and sale process may be commenced within a year of the creation of a lien when the Review Authority or the **Hearing Examiner** ~~County Commissioners~~ make a written request to the Treasurer's Office to commence the process.

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