

**RULES OF PROCEDURE
FOR THE
CLALLAM COUNTY
BUILDING CODE BOARD OF APPEALS**

**Adopted by the Clallam County Board of Appeals
April 21, 2011**

Section 1.0 – General Provisions

1.1 Title

The official title of the Board is the “Clallam County Building Code Board of Appeals”.

1.2 General

Ordinance 864, adopted June 1, 2010, amended the Board of Appeals (“Board”) process under the International Building Code (IBC), Section 112, as adopted under Chapter 19.27 RCW and Chapter 51-50 WAC. Pursuant to Clallam County Code 21.01, and section 112 of the IBC the Board shall adopt Rules of Procedure for conducting meetings and hearings.

1.3 Limitations on Authority

The Board shall have no authority to waive requirements of said codes adopted by Clallam County.

The Board shall hear and decide appeals of orders, decisions, and determinations made by the Building Official relative to the application and interpretation of the building codes adopted by Clallam County.

The Board may, in conformity with the applicable code or ordinance, reverse or affirm, in whole or in part; or modify the order, requirement, decision or determination appealed from.

The Board may hear and decide appeals of orders and decisions for the use of alternate materials and methods of construction, which are an equally good or better form of construction.

1.4 Board's Office

The administrative office for the Board shall be located at the Department of Community Development, Building Division, 223 East Fourth Street, Port Angeles, Washington. All records of the Board of Appeals shall be available for public inspection during regular office hours, 8:30 AM to 4:30 PM, Monday through Friday, with the exception of County observed holidays.

Section 2.0 – Chairman and Vice-Chairman

If a regular member is not able to attend a meeting or hearing, the Chairman will appoint an alternate member or members, as necessary to establish a quorum. If the Chairman is not available, the Vice-Chairman may also appoint alternate members as necessary.

Section 3.0 – Officers and Duties

3.1 Officers

The Board shall elect by a majority vote a Chairman and Vice-Chairman from among its members, at the first meeting conducted in January of each calendar year. The Chairman and Vice-Chairman shall serve for a term of one (1) calendar year.

3.2 Chairman

The Chairman shall perform all duties required by law by County administrative policies, and these rules and procedures, and preside at all meetings and hearings of the Board.

The Chairman shall conduct all meetings and hearings, and exercise and perform such other powers and duties as assigned by the Board of County Commissioners.

The Chairman shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of meetings and hearings.

The Chairman shall call a meeting whenever necessary.

3.3 Vice-Chairman

The Vice-Chairman shall serve in the absence of the Chairman, and shall have all of the powers of the Chairman during the Chairman's absence, disability, resignation, or disqualification.

In the absence of both the Chairman and Vice-Chairman of the Board, a Chairman Pro Tem shall be elected by a majority vote of a quorum of Board members present.

3.4 Secretary

An employee from the Department of Community Development shall serve in a non-voting, ex-officio capacity as Secretary to the Board.

The Secretary is responsible for:

- (a) Producing and forwarding to the Board, all meeting or hearing agendas and necessary meeting materials;
- (b) Scheduling the hearing room for meetings and hearings;
- (c) Providing necessary notice of hearings to local media;
- (d) Being present at all hearings;
- (e) Maintaining all meeting and hearing recordings;
- (f) Transcribing meeting minutes – No transcription of hearings;
- (g) Preparing and maintaining the official appeal record to include all documentation as submitted by the appellant(s), staff, parties of record, and Board of Appeals;
- (h) Forward the Decision to the appellant(s), staff, and all parties of record via U.S. Mail, supported by a Declaration of Mailing.

The Secretary is also responsible for the preparation of materials in order to satisfy a Public Records Request, and follow all laws in accordance with and set forth in the Public Records Act.

3.5 Communication

All Board members or alternate Board members should forward any notice of absence, questions, or concerns, directly to the Secretary, who will then communicate or inform the Chairman or Vice-Chairman, and Building Official, of the information provided.

3.6 Ex Parte Communication

No person, appellant, nor his or her agent, employee, or representative, who is interested in a particular appeal currently pending before the Board shall communicate ex parte, directly or indirectly, with the Board concerning the merits of that or a related appeal. This rule shall not prohibit ex parte communications concerning procedural merits. All communications should be directed to the Secretary to the Building Code Board of Appeals at 223 East Fourth Street, Port Angeles, WA 98362.

Board members shall not communicate ex parte directly or indirectly with any person, nor his or her agent, employee or representative, interested in a particular appeal that is pending before the Board with regard to the merits of that, or a factually related appeal.

If prohibited ex parte communication is made to or by a Board member, such communication shall be publicly disclosed at the beginning of a hearing, and proper discretion shall be exercised by the Board member on whether to disqualify himself or herself as a decision maker for that particular hearing.

Section 4.0 – Conflict of Interest

The term “conflict of interest” shall be construed to mean any direct or indirect interest or knowledge, personal or financial, in a matter before the Board, shall not vote thereon or participate in the deliberation of such matter at any meeting or hearing at which said matter is under consideration.

Any question of whether a particular issue involves a “conflict of interest” sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the Board members, excluding the member whose potential conflict is under consideration. The Building Official shall be notified of said facts.

Section 5.0 – Meetings

5.1 Frequency of Meetings

An annual organization meeting of the Board shall be conducted in the month of January of each calendar year, to elect a Chairman and Vice-Chairman, and to address any business before the Board of Appeals.

5.2 Special Meetings

The Chairman shall call a special meeting within ten (10) days of receipt of a written request from the majority of the Board, or a request submitted by the Board of County Commissioners. The written request shall specify matters to be considered at such special meeting. At least seventy-two hours written notice of the time, place, and business of meeting shall be given to each Board member, alternate member, Board of County Commissioners, Building Official, Department of Community Development, and to the applicant, if any is involved.

5.3 Order of Business for Regular Meetings

- A. Call to Order
- B. Roll Call
- C. Approval of Meeting Minutes
- D. Public Comment Period
- E. Announcements/Briefs
- F. Work Session Items
- G. Adjournment

All meetings of the Board shall be open to the public, except at an executive session.

5.4 Executive Session

The Board shall only hold an executive session for the purpose of consultation between the Board and its legal counsel concerning litigation or other legal matters. An executive session is not open to the public, therefore no voting shall be allowed during an executive session.

Section 6.0 – Voting

6.1 Quorum

A quorum shall consist of three (3) Board members. If a member has a conflict of interest, said member shall not be counted by the Board in establishing a quorum for such matter. No meeting or hearing of the Board shall be held, nor any action taken, in the absence of a quorum. Board members present are entitled to request the Chairman or Vice-Chairman to call a special meeting for a subsequent date if the planned meeting or hearing cannot be conducted due to lack of a quorum.

6.2 Appointing Alternate Members for a Quorum

The Chairman shall appoint an alternate member to act for a regular member who is disqualified from voting, unable to attend a hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.

6.3 Roll Call Vote

All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of those Board members present and voting. No votes may be taken by the Board outside of the public meeting or hearing.

Section 7.0 – Appeal Procedure

7.1 Appeal

Appeals may be made to the Board by any person, or representative, aggrieved by a final decision or action set forth by the Clallam County Building Official, for the following reasons:

- Review decisions of the Building Official regarding the suitability of alternative materials for equal or better construction;
- Review decisions of the Building Official regarding the suitability of alternative methods of construction for equal or better construction; and
- Review decisions of the Building Official regarding the correct interpretation or the applicability of the building codes and regulations enforced by Clallam County Building Division.

7.2 Appeal Application

Appeals shall be in writing on forms provided by the Department of Community Development Building Division located at 223 East Fourth Street, Port Angeles, Washington 98362, and filed along with any supporting reports, maps, drawings, documentation, and prescribed fee, with the Building Division within sixty (60) days following the issuance of the Decision being appealed. The application should include a brief statement of the project, a synopsis of the issue, relevant code sections, and whether alternative methods or solutions have been considered.

7.3 Appeal Application Fee

The fee to accompany an appeal application shall be \$100. No application will be considered complete or timely without payment of the prescribed fee. Checks may be made payable to Clallam County Building Division.

7.4 Burden of Proof

The burden of proof is on the appellant to submit sufficient evidence to substantiate the appeal.

Section 8.0 – Hearings

8.1 Hearing Procedures.

(1) Hearings shall be public and 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 Chairman.

(b) Testimony by the Department of Community Development staff which shall summarize the written staff report and provide any additional exhibits or other information the staff believes should be brought to the Board's attention.

(c) Testimony by the appellants and appellant's witnesses.

(d) Testimony from other individuals or organizations wishing to be heard.

(e) Questions by the Board.

(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 commonly 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 Board.

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

(b) The staff report or staff analysis produced by the Department of Community Development 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 Board. Written testimony may be presented either in advance or at the hearing. When testimony is presented only in writing, the Board has discretion to leave the record open for written responses by other participants.

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

(5) The Chairman may impose reasonable limitations on the nature and length of testimony. In so doing the Chairman 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, when public testimony is taken.

At the Chairman'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 Board 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 Board outside of the hearing are allowed on the merits or facts of any matter which has been or will be scheduled to come before the Board. This prohibition includes, but is not limited to, communications with County employees, applicants and their representatives and others participating in the hearing process.

(8) The Board has the option to visit the site before or after a hearing. If the Board 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 Chairman may continue proceedings or reopen proceedings for good cause any time prior to the issuance of the decision, subject to notice requirements.

(10) The Chairman may announce a decision of the Board at the hearing. The decision must also 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. The decision shall be written and signed by the Chairman or Vice-Chairman.

(11) The Department of Community Development will maintain a copy of the Board's decision, available for public inspection, in the official file of each application or appeal. The appellant and all parties of record will receive a copy of the Board's decision free of charge via United States Mail. Any other person may receive a copy upon payment of the costs of reproduction and postage.

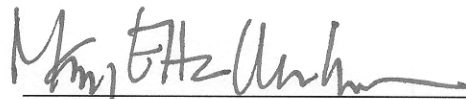
(12) Appeals of decisions of the Board shall be final and conclusive unless proceedings for review are thereafter properly and timely commenced, consistent with County Code and State law.

8.2 Scheduling and Pre-Hearing Process

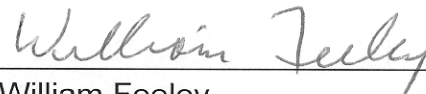
- A. The secretary of the Board shall schedule a public hearing on all appeals within not less than ten (10) days and not more than thirty (30) days of the acceptance of a completed appeal application.
- B. The secretary shall cause notice of the date, time, and place of such hearing to be given to the appellant and/or appellant's representative at least (10) ten days prior to the hearing by personal delivery or deposit in the United States Mail. The secretary shall also cause notice of the hearing to be given to the Board of County Commissioners, to the Building Official, to Planning Staff, and to Building Division Staff, at least one (1) week prior to the hearing.
- C. As outlined in Clallam County Code 21.01, Building and Construction Code, if the Board cannot hear an appeal by conducting an appeal hearing within thirty (30) days of the acceptance of a completed appeal application, because the Board cannot be constituted and convene, the matter shall be directed to the Clallam County Hearing Examiner by the authority of the Building Official. The Hearing Examiner will hear and decide the matter. All applicable Board procedures and requirements remain unchanged. All parties and interested persons shall be notified in writing that the Hearing Examiner will hear the matter.

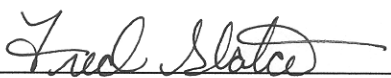
Adopted by the Board this 21st day of April, 2011.

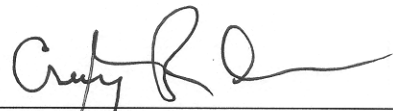

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Mary Ellen Winborn, Vice-Chair


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