

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

IN THE MATTER OF:

ORDINANCE 1373: ADOPT AMENDMENTS TO
LEWIS COUNTY CODE CHAPTER 2.25, HEARING
EXAMINER

ORDINANCE NO. 1373

NOW THEREFORE BE IT ORDAINED

DONE IN OPEN SESSION this 24th day of March, 2026.

APPROVED AS TO FORM:
Jonathan Meyer, Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

David Bailey
By: David Bailey,
Chief Civil Deputy Prosecuting Attorney

Lindsey R. Pollock, DVM
Lindsey R. Pollock, DVM, Chair

ATTEST:



Scott J. Brummer
Scott J. Brummer, Vice Chair

Rieva Lester, CMC
Rieva Lester, CMC,
Clerk of the Lewis County Board of
County Commissioners

Sean D. Swope
Sean D. Swope, Commissioner

Commentary

ATTACHMENT A – LEWIS COUNTY CODE 2.25.130 AMENDMENTS

RCW 36.70C.060 provides guidance with regards to whom has standing to file an appeal with the Hearing Examiner. A person or entity that does not have standing may not file an appeal.

In quasi-judicial actions, the applicant or property owner automatically has standing. A quasi-judicial decision describes an action that applies existing laws specific to a situation, rather than making new laws. Quasi-judicial actions include application of existing zoning designations and development regulations to one or more properties. Quasi-judicial actions also include rezones, which is changing the zoning designation as it applies to one or more properties. Policy decisions, such as amending a development regulation, is a legislative action, not a quasi-judicial action. Amending the boundary of an urban growth area boundary is also a legislative action, not quasi-judicial action.

2.25.130(1)

Clarification. Fees are established through the Fee Schedule, adopted by the Board of County Commissioners annually in November for the upcoming calendar year.

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

2.25.130 Appeals with the examiner.

Administrative appeals over which the examiner has jurisdiction, unless otherwise specifically provided for by county code section, shall be subject to the following procedural requirements:

- (1) (a) Appeals shall be addressed to the hearing examiner, shall be filed within 10 calendar days of the date of the action being appealed, and shall be accompanied by a filing fee of ~~\$100.00 unless a different fee is otherwise specified for such appeal~~ as established in the annual schedule of fees, in which case the latter shall control. To appeal an action taken by a department of the board of county commissioners, the appeal shall be filed with the director of the department. To appeal an action taken by the board of health or its subordinate, the appeal shall be filed with the director of the department of public health and social services. A land use decision appeal and a board of health appeal may be consolidated by an examiner, on its own motion or motion of a party, on any appeal involving the same subject property or matter, or case or controversy, with such appeal singularly being heard before the examiner. The filing fee shall not be charged to any department or official of the county nor to other than the first-in-time petitioner. In the event that an appeal or said party to an appeal is dismissed for procedural defect prior to submission of the matter to the examiner, such as but not limited to untimely filing, lack of standing or other facial defect, such filing fee shall be refunded and the next-in-time filing party, where applicable, shall be assessed the filing fee. The failure of the appropriate next-in-time party to pay the filing fee within 10 calendar days of notice, as stated in subsection (1)(b) of this section, shall result in waiver of appellate rights by that party, as stated in subsection (3) of this section, and each nonpaying, next-in-time party in succession thereafter from the appeal.
- (b) At the time of filing the appeal, a petitioner may request a waiver of the filing fee based upon economic hardship. The permittee must provide sufficient written evidence to support a claim of economic hardship in conjunction with such request for a fee waiver. The factors the examiner may consider as to whether a petitioner faces economic hardship include, but are not limited to, financial or personal distress of the permittee. A written decision granting or denying fee waiver shall be mailed by the examiner to petitioner (and in conjunction with the mailing of any notice of correction or completion, noted below). The examiner may allow not more than 10 calendar days after mailing of the decision denying fee waiver in which to receive the filing fee to perfect the appeal. The decision of the examiner is final for purposes of such determinations.

Commentary

2.25.130(2)

To have standing in a legislative action, a person or entity must meet all of the criteria of (2)(b).

An open record public hearing on a potential action by the Board of County Commissioners must be noticed pursuant to applicable RCWs and the public must be provided an opportunity to provide comment on the proposed action. The notice contains a description of when the record is open for public comment and how the public may provide comments. Typically, the record is open for 14 days prior to a public hearing and the public may provide written comment during the 14-day open record and/or may provide verbal comment at the public hearing. (Note, timelines and how to comment may vary depending on the proposed action and applicable RCWs.)

Comments provided outside of the open public record may not be relied upon when determining standing. For example, in Lewis County, the Planning Commission holds workshops on potential changes to development regulations before opening the public record. Workshops are held before the public record is open because the Planning Commission may decide not to advance a topic to a public hearing. Any public comment provided at the workshop is not part of the record and may not be relied upon when determining standing. Once the Planning Commission has decided to advance a topic, they will direct staff to issue a notice to open the record and set a public hearing date. Comments provided in writing during the open public record, as well as verbal comments at the public hearing, establish standing provided the other requirements are met.

Once testimony is taken at a public hearing the Planning Commission closes the public record, after which any comments will no longer establish standing. The Board of County Commission will open the public record again when they set a final public hearing to take action on the topic.

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

(2) Standing. Standing to petition for an appeal is limited to the following persons:

(a) In a quasi-judicial decision, the applicant(s) and owner(s) of property to which the decision is directed; or

(b) Another person aggrieved or adversely affected by the decision, or who would be aggrieved or adversely affected by reversal or modification of the decision, if all of the following conditions are met:

(i) The decision has caused, or is reasonably likely to cause, prejudice to that person;

(ii) That person is party to the record, meaning they have asserted their interests during the open public record, either in writing or verbally at a duly noticed hearing, on the topic and those interests are directly related to the stated criteria or findings that the local jurisdiction was required to consider when it made the decision;

(iii) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the decision; and

(iv) The petitioner has exhausted their administrative remedies to the extent required by law.

(23)

(a) A written petition for appeal must contain the items set forth in this section in order to be complete and perfected, and the party appealing the decision designated as "petitioner." The examiner shall immediately examine the petition for completeness and shall immediately notify the petitioner by mail of defects in the petition requiring correction or completion. The examiner may allow not more than 10 calendar days after mailing of notification of defect in which to receive a perfected appeal for filing. A petition for appeal shall contain all of the following:

(i) Specific identification of the order, permit, decision, determination or other action being appealed (including the county's file or application number where applicable). A complete copy of the document or written decision being appealed must be filed with the appeal;

(ii) Specific identification of the county code provision which authorizes the appeal;

Commentary

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

- (iii) The specific grounds upon which the petitioner relies, including a concise statement of the factual reason for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the petitioner claims are violated. In the case of appeals involving SEPA, shorelines and floodway hazard permits, a specific listing of the sections and elements alleged to be inadequately or inappropriately addressed and the reasons therefor shall be included;
 - (iv) The full name, mailing address, daytime telephone number of each petitioner, together with the signature of at least one of the petitioners, or the attorney for the petitioner(s), if any;
 - (v) The name, mailing address, daytime phone and signature of the petitioner's attorney, if any; and
 - (vi) The required filing fee.
- (b) The costs of transcribing the records of proceedings, of copying photographs, videotapes and any oversized documents, and of staff time associated with copying and assembling the record and preparing any records shall be borne by the petitioner (or equally by the petitioners, if more than one) for the review, with such monies being paid in advance of such transfer to the examiner.
- (~~34~~) Unless otherwise specified within this code, timely filing of an appeal shall stay the effect of the order, permit, decision, determination or other action being appealed until the appeal is finally disposed of by the examiner or withdrawn; provided, that filing of an appeal from the denial of a permit shall not stay such denial. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county jurisdiction.
- (45) No new appeal issues may be raised or submitted after the close of the time for filing of the original appeal, excepting the raising of errors affecting a constitutional right by parties to an appeal through amendment of their petition for appeal, and the appeal shall be by closed record appeal; except, an open record appeal is permitted when there has not been a previous open record hearing. New evidence and testimony may be given and received in an open record appeal only on issues and errors identified by petitioner on the appeal, except as otherwise provided for under the examiner's rules of procedure. Open record appeals shall be conducted in accordance with the examiner's rules of procedure for substantive hearings, where applicable, and shall serve to provide argument and guidance for the examiner's decision. Open record appeals shall otherwise be conducted as provided for closed record appeals.
- (~~56~~) The department shall forward the petition(s) for appeal to the examiner's office within three working days of its filing.

Commentary

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

- (~~67~~) The examiner's office, within three working days of receipt of the appeal, shall send written notice of the filing of the appeal to the department or official whose decision has been appealed, which such department shall be thereafter referred to as the "respondent." The respondent, within three working days of receiving notification from the examiner's office, shall transmit to the examiner all relevant and nonprivileged public files on the order, permit, decision, determination or other action being appealed.
- (~~78~~) The examiner's office, within three (3) working days after receipt of the file from respondent, shall send written notice of the filing of a perfected appeal by certified mail or email, ~~return receipt requested~~, to the person named in the order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person, and to all parties of record by regular mail.
- (~~89~~) The examiner may summarily dismiss an appeal in whole or in part without hearing if the examiner determines that the appeal is untimely, incomplete (having complied with subsection (2) of this section), without merit on its face, frivolous, beyond the scope of examiner jurisdiction or brought merely for the purpose of delay. The examiner may also summarily dismiss an appeal where it is found in response to a written challenge raised by the respondent or permit, etc., applicant and after allowing the petitioner five calendar days in which to reply to the challenge that the petitioner lacks legal standing to appeal or failed to perfect appeal. Except in extraordinary circumstances, summary dismissals shall be decided, with or without oral argument at the discretion of the examiner, within five calendar days of receipt of such reply or the expiration of such time for reply, whichever is the later.
- (~~910~~) Appeals shall be processed by the examiner as expeditiously as practicable, giving proper consideration to the procedural due process rights of the parties.
- (a) Except as otherwise provided hereunder, no more than 30 calendar days should elapse from the date of the perfection of an appeal and the date of a closed record hearing on the appeal, and no more than 40 calendar days should elapse from the date of perfection of the appeal to the issuance of an examiner decision on the appeal.
- (b) Except as otherwise provided hereunder, appeal hearings on board of health matters under LCC 2.25.090(2)(a) and (b) should be set not less than 20 days nor more than 30 days following perfection of an appeal.
- (c) The parties to an appeal may agree or the applicant/permittee and the county may mutually agree upon specific extensions of the date of the appeal hearing and decision. The examiner may consolidate multiple appeals of the same action for hearing and decision making purposes to facilitate expeditious and thorough consideration of the appeal, without adversely affecting the due process rights of such parties. In the event of a conflict between time deadlines with consolidated appeals, the time deadlines for the last filed appeal shall control all deadlines.

Commentary

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

~~(1011)~~ Notice for appeal hearings shall require that the petitioner, the person named in the order or the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person, and all parties of record, the respondent, and all persons otherwise entitled notice by specific statute or county code section, shall be given at least seven calendar days' written notice of the date upon which the matter will be considered at public hearing. Mailing of notice shall be the responsibility of the department, or the department/official responsible for the permit, decision or other action being appealed.

(a) Notices required under this subsection shall be deemed adequate where a good-faith effort has been made by respondent to identify and mail notice to each person entitled thereto.

(b) Notices mailed pursuant to this chapter shall be deemed received by those persons named in an affidavit of mailing executed by the person designated by the examiner, the department, or department or official to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

~~(1112)~~ The appeal hearing and the examiner consideration of the appeal shall be limited solely to the issues and errors identified by the petitioner in advance of hearing, and based solely on the record of proceedings, subsection (12) of this section, or upon such additional evidence as may be provided in an open record appeal, pursuant to subsection (4) of this section.

~~(1213)~~

(a) The examiner shall render a written decision which shall include findings of fact and conclusions based only on the record on appeal. Except as stated under LCC 2.25.090 and 2.25.100 as to recommendation matters, or under statute or other county code section, the decision of the examiner shall be final and conclusive on the fifteenth day after the date of execution of the decision, unless a notice of appeal to the superior court is filed pursuant to LCC 2.25.140. The examiner's decision together with his findings, conclusions, and the record and exhibits of the proceedings shall be filed with the appropriate department or official. If the effect of the decision is a recommendation to the board, the original thereof shall be transmitted to the legislative body.

(b) The examiner may issue a decision on an appeal which may, in conformity with applicable statutes and county code sections, reverse or affirm, in whole or in part, or modify the order, permit, decision, determination or other action appealed from; the examiner thereby having full authority to exercise the authority of the department or official from whom the appeal is taken on that particular issue.

Commentary

*Code text to be removed is shown
with a ~~strike through~~ and code text to be added is shown with an underline.*

- (~~13~~14) Unless different procedures are prescribed by statute or county code section, the department or, ~~in the alternative, the appropriate department or official shall mail copies~~ provide or make available a copy of the examiner's decision to the petitioner, the person named in the order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person, and all parties of record, the respondent, and all persons otherwise entitled notice by specific statute or county code section by regular mail not later than three (3) working days following the entry of the decision by the examiner.
- (~~14~~15) No individual examiner shall adjudicate at both an examiner open record hearing on any matter and an open or closed record appeal on such matter through the office of the examiner.
- (a) For all proceedings subject to Chapter 17.15 LCC, involving lands within the urban growth boundary (UGA) of any municipality and subject to an interlocal agreement empowering the respective municipality with land use decision making and regulatory authority within its UGA, a special deputy examiner(s) shall adjudicate at the initial examiner hearing on any matter, whether as an open record hearing or as an appeal.