

# *Washoe County Board of Adjustment*

## ***RULES, POLICIES AND PROCEDURES***

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December 2, 2010

### **GENERAL POLICIES**

#### **Board Determines Policies**

The Washoe County Board of Adjustment, under State law and by Washoe County ordinance, has responsibility for reviewing and approving variances and special use permits for the unincorporated portions of the county. In addition, the Board of Adjustment, under State law and by Washoe County ordinance, is responsible for making final determinations on appeals of administrative decisions concerning any zoning regulation or any regulation concerning the location or soundness of structures made by County officials.

#### **Duties and Responsibilities**

Members of the Board shall inform themselves on planning laws and ordinances. Members shall be prompt and diligent in attendance. Failure of a member to attend three (3) successive regular meetings, or miss more than 25% of scheduled meetings annually, will be reported to the governing body and may be considered justifiable cause for replacement.

Members of the Board of Adjustment shall complete a conflict of interest statement on a form provided by the District Attorney's Office, in compliance with State law, within one month of appointment. Members shall be responsible for updating the information on the form when changes occur that warrant such an update.

The five (5) Board members shall express concern for, and represent the best interests of unincorporated Washoe County.

#### **Prejudicial Actions – Board Members**

Members shall be discreet in the discussion of pending matters outside regular meetings of the Board, and shall make no commitments or prejudicial comment in advance of official action.

It is the policy of the Board that each member shall endeavor to be as completely informed as possible on each matter to be considered by the Board. Inspections by Board members to acquaint themselves with the site and nature of the application and unplanned contact with the applicant or interested parties to the application may constitute ex parte contact. Board members should, when feasible, follow the procedures enumerated when unplanned ex parte contact occurs.

Members shall endeavor to avoid ex parte (outside of noticed meeting) contact with interested parties on matters pending before the Board, unless such contact can be arranged for the Board as a whole. Ex parte contact shall not automatically result in the disqualification of a contacted Board member from discussion and voting on an item under consideration by that Board.

When ex parte contact is initiated by an interested party to an application before the Board, the contacted member shall recommend that the interested party not proceed with the conversation, but rather present any information to the full Board by either attending and testifying at the meeting or by providing written comments to the staff for distribution to the full Board. Members shall notify the staff/Board of said contact, shall declare that contact occurred and the nature of the contact at the meeting when the matter is being discussed by the Board, and shall offer the other members of the Board the opportunity to comment on the information provided during the ex parte contact.

Any member who has a financial interest in any matter under discussion by the Board shall disclose the full nature and extent of such interest and shall declare his/her ability to fairly discuss, deliberate, and vote on the subject. A financial interest means any ownership interest, either directly or through a household member, in a specific parcel of property under consideration for a variance, special use permit or appeal of an administrative decision or other similar matter. A financial interest also includes any relationship with an applicant for one of the above whereby any income of a member is received.

Any member who is an affected property owner in any matter under discussion by the Board, or who cannot clearly discuss, deliberate and vote on a particular matter without bias, shall abstain from any discussion of the subject and from voting thereon as a member of the Board without the need to state any reason for such abstention. For the purpose of this paragraph, "affected property owner" shall mean an owner of property who would be noticed pursuant to the County Code or the State Statutes.

In the event that a member is an applicant in any matter, such member can excuse himself from the Board and join the audience to state his case. After the hearing is closed, the member, who is also the applicant and has stated his own case, shall leave the room during Board discussion, deliberation and vote on the matter in which he/she has an interest.

### **Ethical Principles for Planning**

The Board has adopted the American Planning Association Ethical Principles in Planning (appended to the Rules, Policies and Procedures) as the guiding principles for the conduct of Board members.

### **QUORUM AND VOTING**

#### **Number of Commissioners Required to Conduct Business**

Three (3) Board of Adjustment Members shall constitute a quorum necessary to consider general matters of business.

#### **Voting**

1. An affirmative vote by a majority of the Board members present is required to approve all other matters.
2. The Chair shall be a voting member.
3. The Chair may call for, or a member may request, a roll call vote on any issue.

4. A tie vote on a matter shall result in the finding that the motion has failed. If an affirmative vote for approval cannot be approved, the tie shall constitute a denial of the project. In the event that the full membership of the Board is not present, the applicant shall be given the opportunity to request a continuance to the next scheduled meeting or accept the tie vote as a negative vote.
5. A vote to abstain shall be a non-considered vote, one that is neither considered to be in favor or in opposition to the motion on which the vote was taken. A vote to abstain does not affect the quorum necessary for action.

## **MEETINGS**

### **General**

1. Except in an emergency, written notice of all meetings will be given at least three working days before the meeting in accordance with the Nevada Revised Statutes. The public notice will consist of the agenda and include date, time, place and location of the meeting.
  - a. A copy of the public notice will be posted at the Department of Community Development Office and in at least three (3) other separate prominent places within the County readily available to the public.
  - b. The public notice will include the following statements: "In accordance with NRS 241.020, this agenda closes three (3) days prior to the meeting date. Only items of interest and not requiring Board action may be added to the agenda within the three-day period." "Facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g. sign language interpreters or assisted listening devices) at the meeting should notify the Washoe County Department of Community Development, at 328-3600, 24 hours prior to the meeting.
  - c. A person requesting notification will be advised that the request will lapse after six (6) months unless continuance is requested in writing.
2. Regular and called meetings of the Board shall be open to the public.
3. Board meeting information should be mailed with the U.S. Postal Service to each member at least five (5) calendar days in advance of the meeting date, or hand delivered at least three (3) calendar days in advance of the meeting date.
4. All meetings of the Board will be held in accordance with the Open Meeting Law of the State of Nevada.
5. Except as otherwise provided herein, Robert's Rules of Order, as amended, shall govern the Board meeting procedures when a question or controversy arises.

### **Regular Meetings**

1. The first Thursday of each month is the regular meeting day. Should the first Thursday of the month fall on a holiday, the meeting shall automatically be held on the following Thursday, unless changed by a majority of the Board members.
2. The Chair may call for alternate meeting dates when a conflict arises, including but not limited to holidays.

## **Special Meetings**

Special meetings may be held, as required, upon call of the Chair or Acting Chair, or upon the call of not less than three (3) Board members.

## **Emergencies**

1. An emergency meeting may be called or an emergency item may be added to any regular or special meeting when unforeseen circumstances require action and include, but are not limited to:
  - a. Disasters caused by fire, flood, earthquake, or other natural causes; or
  - b. Any impairment of the health and safety of the public.
2. Before proceeding with any emergency meeting or considering any emergency item, the Board must, by the affirmative vote of a majority of the members present, find that an emergency exists and specify the reasons therefore.

## **Adjourned Meetings and Continued Items**

1. Any meeting may be adjourned to a specified place, date, and time by a majority of the members present.
2. An item that appears on an agenda posted pursuant to the Open Meeting Law may be continued to a specified place, date and time by a majority of the members present, providing that the continuance does not violate any other provisions of State law or County Code.

When the staff receives a request to continue an agendized item from the applicant before the Board of Adjustment information packet is mailed or delivered, staff will forward to the Board the written request for continuance, without preparing a staff report or recommendation.

When the staff receives a request to continue an agendized item from the applicant after the Board of Adjustment information packet is mailed or delivered, the following shall occur:

- Staff will forward to the Board the written request for continuance;
- Staff will provide a supplemental staff report, if appropriate to the Board with a recommendation concerning the request for continuance.

It shall be the responsibility of the Board to grant a continuance, or hold a hearing on the agendized item. If the Board of Adjustment decides to continue the item, the Chair shall first ask if anyone in the audience wishes to testify on the matter even though it may be continued to another date and time certain.

3. Should an item appearing on an agenda be continued to another specified place, date and time, and a Board member is absent for the first meeting, but present for the next meeting for which the item is scheduled, the absent Board member shall make himself/herself knowledgeable with the minutes and tapes of the first meeting, and shall declare at the next meeting that he/she is familiar with the minutes and tapes and is prepared to discuss, deliberate and vote on the matter.

## **Order of Business**

1. Determination of Quorum
2. Approval of Agenda
3. Review, Possible Amendment and Approval of Minutes
4. Public Comments
5. Chairman and Member's Items
6. Director's Items
7. Project Review Items – Public Hearing Items
8. Other Items
9. Adjournment

## **Procedures for Business Items**

1. General
  - a. Chair, or Director or his/her representative, upon request of the Chair, shall introduce agenda items and call upon staff for a presentation.
  - b. Speakers, including applicants and their representatives, wishing to testify before the Board of Adjustment shall sign and submit a Request to Speak/Testimony Declaration and deliver it to the staff present to assist the Board of Adjustment. The form shall contain the following:
    - (1) Speaker's association with the project;
    - (2) An indication of which agenda item or case number the speaker wishes to provide testimony on;
    - (3) Name, address, organization, if any, and signature line.
  - c. Unless otherwise modified by the chair or board in accordance with standard procedure, speakers shall limit their presentation times as follows: 15 minutes for staff; 15 minutes for an applicant; 5 minutes for a group representative and 3 minutes for individual speakers. Speakers will, further, be encouraged to direct their comments to factual errors in the staff report, disagreements with the recommendation submitted by the staff and recommended conditions of approval. The applicant will also be encouraged to limit his/her comments regarding the background of the application. Those persons who are part of a group will be encouraged to provide their name and address and their agreement with the group's spokesperson, rather than repeating the points that the spokesperson or previous speaker(s) has made. When speakers have exceeded the recommended time, the Chair will endeavor to remind them that they have gone past the recommended time limits. Exceptions to this may be permitted if:
    - (1) The Chair establishes a different speaking time limit prior to opening a hearing to testimony that shall be adhered to by the applicant, staff and speakers from the audience; or

- (2) The staff, the applicant, or an individual notifies the Chair prior to, or at least by, the time the Board of Adjustment conducts its caucus meeting that a longer time is needed to make a presentation. When making the notification, an approximate amount of time needed to make the presentation must be provided. The Chair has the discretion to grant, modify, or deny such a request.
  - d. The hearing procedures shall be posted at each regular and special meeting of the Board of Adjustment.
  - e. Staff may include on the agenda under consent items any items not requiring a public hearing.
  - f. The Chair may call recesses, as necessary. In general, they should be at least every two (2) hours.
  - g. The Board of Adjustment requires at least ten (10) copies of any written material that is to be provided for an agenda item. Any written material over three (3) pages in length submitted six (6) days or less prior to a scheduled Board of Adjustment meeting does not require consideration by the Board of Adjustment due to the possibility that the staff will not have sufficient time to provide the material to the members in a timely manner and because members may not be able to fully comprehend the material in so short a time span.
  - h. Tape recorded testimony and/or phone messages shall not be considered as public testimony.
  - i. All graphics, photos and materials used as part of the public testimony shall be delivered to the clerk of the Board of Adjustment and retained as part of the public record subject to the provisions of the Nevada Revised Statutes.
2. Procedures for the Conduct of a Public Hearing
- a. Chair calls upon Director or his/her representative to introduce agenda item.
  - b. Chair advises audience of general hearing procedures.
  - c. Chair may request a show of hands of those in attendance for the agenda item under consideration.
  - d. Chair opens the public hearing for the presentation of testimony.
  - e. Staff makes presentation. Presentation should include a brief overview of the requested action, as well as conditions of approval and recommendations.
  - f. Applicant makes presentation. Presentations should focus on:
    - (1) Project features with emphasis on conformance with the Washoe County Comprehensive Plan and the Washoe County Development Code.
    - (2) New information not contained in staff report or presentation.
    - (3) Factual errors in staff report or presentations.

- (4) Response to staff recommendation/proposed conditions.
  - (5) Request for clarification of items in staff report or presentation.
  - g. Board of Adjustment members may ask questions of staff and/or applicant.
  - h. Speakers will be called to testify in the order that the staff receives the Testimony Declarations.
    - (1) Initial speakers for and against the agenda item under consideration will be requested to provide their name, address, and the degree of support and opposition to the agenda item.
    - (2) Subsequent speakers will be requested to provide their names, addresses, and any new pertinent information not covered by previous speakers.
  - i. Board members may ask questions of staff, applicant, or members of the audience. At the discretion of the Chair, the applicant, a member of the public who previously testified, or staff may be asked to comment on any factual errors presented during the public hearing.
  - j. Chair closes the public hearing to the presentation of testimony.
  - k. Chair may call for discussion or a motion or may recognize a member for the purpose of making a motion. A motion is not accepted, nor can it be debated, until it has been seconded. If a motion is not seconded, it is considered moot and the Chair may call for further discussion, or a new motion. If a motion is accepted, it shall be:
    - (1) In accordance with the staff's recommendation, proposed conditions and findings; or
    - (2) An amendment of the staff's recommendation or proposed conditions or findings, said changes to be noted in the motion; or
    - (3) Different from the staff's recommendation, proposed conditions and findings, said motion to state the new recommendation, any new proposed conditions and new findings.
  - l. Chair shall call for a vote on any amendments to the motion, then on the motion, in that order.
3. Procedures for Other Business Items
- a. Chair shall follow the procedures as listed in "Procedures for the Conduct of a Public Hearing" Items 2a, 2k and 2l (above).
  - b. In addition, the Chair may choose to follow any combination of other procedures listed in "Procedures for the Conduct of a Public Hearing."

## **SPECIAL CIRCUMSTANCES**

### **Request to Withdraw a Development Application**

It is the policy of the Board that an applicant has the ability to withdraw a development application submitted for consideration by the Board at any point prior to a motion for action being made by a member. A request for withdrawal of the application shall be stated by either the authorized agent with power of attorney to represent all of the interests of the property owners of record party to the application, or by all of the property owners of record who submitted the development application as attested by the signed and notarized affidavits accompanying the original application. After a motion has been made by a member, followed by a second on the motion and deliberation, the application cannot be withdrawn. If the motion is not seconded, the applicant can request the application be withdrawn prior to any new motions. The request for withdrawal of the application shall be clearly entered into the record, and cannot be construed as a request for deferral or continuation of the application until a future meeting. The withdrawal of an application shall terminate any further deliberation, analysis, or consideration of the originally submitted request. A withdrawn application is not a denied application, and therefore is not subject to the "one year wait on denials" provisions of the Washoe County Development Code for submitting a new development application request.

### **Motion and Action for "Denial Without Prejudice" of a Special Use Permit**

It is the policy of the Board that a motion for "Denial Without Prejudice" can be offered by a Board member if the following special circumstances are supported by the public record:

1. All the necessary findings for approval of the development application cannot be fully met or supported by the information presented at the time of the Board of Adjustment action.
2. There is sufficient information to demonstrate that all the necessary findings could potentially be met within a one-year period if federal, state or local regulatory programs are changed, or physical conditions on or near the development site change, or that infrastructure availability and capital improvement programs change to allow development as requested in the original application.
3. There is sufficient information to demonstrate that the requested development application would clearly support implementation of one or more goals and policies of the Washoe County Comprehensive Plan if the findings for approval could have been made at the time of the Board of Adjustment's action to "Deny Without Prejudice".

An action to "Deny Without Prejudice" a development application is not subject to the "one year wait on denials" provisions of the Washoe County Development Code for submitting a new development application request as long as the new application is substantially the same as the original application, and clearly responds to the three (3) special circumstances listed above.

## **OFFICERS OF THE BOARD**

### **Titles**

The officers of the Board shall be:

1. Chair, who shall preside at all meetings, maintain order, call special meetings as they are needed, appoint committees, and generally represent the Board.
2. Vice Chair, who will serve in the absence of the Chair.
3. Secretary (non-voting), who shall be the Director of the Washoe County Department of Community Development or his/her representative, and who shall maintain the Board records; Rules, Policies and Procedures; and attachments.

### **Election of Officers**

The first meeting of July shall include the election of officers, and the election shall be the first order of business under Chair and Board Items. All officers shall take office at this meeting.

### **Terms of Office**

Each officer of the Board shall be elected by the Board and shall serve for one (1) year or until his successor is elected and takes office. Each officer shall be limited to one successive term. However, in the case the Chair does not complete his term of office, the Vice Chair who succeeds him may serve as Chair for the following full term.

### **Authority to Sign**

The Secretary may sign such documents as may require certification on behalf of the Board. Transmittals of Board action or intent to the Board of County Commissioners will generally be the responsibility of the Secretary. The Chair shall sign such documents as required by the Nevada Revised Statutes.

### **Delegation of Authority**

The Chair may designate one or more members, or the Secretary, to act for the Board in the conduct of hearings or the performance of its duties. The Board may delegate to such members, when appropriate, such authority as may be necessary.

### **Committees**

1. The Chair may establish such other committees as he/she deems necessary.
2. The Chair may appoint one Commissioner or the Secretary as Parliamentarian.
3. The Chair shall appoint two members of the Board of Adjustment to the Design Review Committee; one as a primary representative of the Board and one as an alternate representative of the Board. The Board may select a person who is not a member of the Board to represent them for both or either position on the Design Review Committee. The appointments shall be for a period of one year, commencing each July.

## **RECORDS AND DOCUMENTS**

### **Office Files**

All records and documents pertaining to the work of the Board shall be kept in safe, orderly files maintained under the supervision of the Director of the Department of Community Development. Said records shall be accessible to the members of the Board and to the public.

**Minutes**

1. Written minutes of each meeting will be kept and are public record. They will be made available within a reasonable time after adjournment.
2. The Secretary shall provide a Recording Secretary for each meeting who shall be responsible for a record of the meeting. Said minutes will bear the name of the Recording Secretary.
3. Copies of the minutes of the past regular meeting shall be furnished the Board members in advance of the next regular meeting. Upon correction and/or approval, the Secretary shall sign a master copy to be a permanent record, noting either:
  - a. Approved by Board in session on \_\_\_\_\_, or;  
date
  - b. Amended and approved by Board in session on \_\_\_\_\_.  
date

**Plans and Other Documents**

Documents relating to matters upon which the Board has taken formal action shall be signed by the Secretary or his/her representative.

**AMENDMENT OF RULES, POLICIES AND PROCEDURES**

The Rules, Policies and Procedures may be amended or added to by a notice of intent to amend or add, said intent to amend or add to be approved by a majority vote of the Commissioners present. The proposed amendment or addition would then be placed on the agenda for the following Board meeting, and would become effective at the next Board meeting upon a majority affirmative vote of the full Board.

Adopted: May 4, 1995  
Amended: April 4, 1996 and February 3, 2000

Attest: \_\_\_\_\_  
Secretary to the Board of Adjustment

# APPENDIX

## Ethical Principles in Planning

(As Adopted May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision-makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community. Section A presents what we hold to be necessary elements in such a view.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants. Section B presents specific standards.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism. These are presented in Section C.

Section D is the translation of the principles above into the AICP Code of Ethics and Professional Conduct. The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

### **A. The planning process must continuously pursue and faithfully serve the public interest.**

#### **Planning Process Participants should:**

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;

4. Assist in the clarification of community goals, objectives and policies in plan-making
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

**B. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.**

**Planning Process Participants should:**

1. Exercise fair, honest and independent judgment in their roles as decision-makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker (see also Advisory Ruling Number 2, "Conflicts of Interest When a Public Planner Has a Stake in Private Development" under Section D);
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision-maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest;
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome (see also Advisory Ruling Number 4: "Honesty in the Use of Information" under Section D);
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations (see also Advisory Ruling Number 1: "Sexual Harassment").

**C. APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.**

**APA Members who are practicing planners:**

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability

of a customary solution without first establishing its appropriateness to the situation;

10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;

11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning. (See also Advisory Ruling Number 3: "Outside Employment or Moonlighting").