

MAY 25, 2010

WELLS COUNTY BOARD OF ZONING APPEALS

RULES OF PROCEDURE

[I.C. 36-7-4-916.]

ARTICLE I

GENERAL RULES

1. The regular meeting of the Wells County Board of Zoning Appeals will be held the fourth Tuesday of each month in the Wells County Carnegie Government Annex at such location and time as determined by the Director of the Wells County Area Plan Commission in the published notice.
2. Special meetings may be held upon call of the Chairman, written request by two (2) members of the Board of Zoning Appeals to the Secretary, or as determined at a regular meeting of the Board of Zoning Appeals. All members shall be notified, in writing, of the time and place of such special meeting, except when called at regular meeting. I.C. 36-7-4-307.
3. Decisions of the Wells County Board of Zoning Appeals, on a petition, shall be by roll call vote of the members in their alphabetical order, except that the Chairman shall vote last. All members present shall vote on every petition, unless that member disqualifies themselves or is excused from voting by the Chairman for good cause shown on the record.
4. The Wells County Board of Zoning Appeals shall vote and adopt with or without corrections, the minutes of the previous Wells County Area Plan Commission meeting, and the same shall be deemed approved when signed by the President and attested to by the Secretary.
5. No member of the Wells County Board of Zoning Appeals shall participate in the hearing or decision upon any zoning matter, in which he is directly or indirectly interested in a financial sense. In this event, he shall disqualify himself and take no part in the discussion or decision. The act of disqualification shall be entered in the record. If the legislative body that appointed the disqualified Board of Zoning Appeals Member or the Board of Zoning Appeals, if they made the appointment, elects to do so, a replacement member may be appointed for the sole purpose of voting on the petition for which a member is disqualified. Any such substitute member must be appointed, in writing, by the appropriate legislative body, or the Board of Zoning Appeals, at least three (3) days prior to the date of the hearing. The Chairman shall not make a motion on a petition; however, he may second a motion on a petition.
6. All fees and assessments allowable by State Statute or this Ordinance shall be promulgated by the Wells County Area plan Commission. The fees and assessments may be modified by the Wells County Area Plan Commission at any time.

ARTICLE II
COMPOSITION OF THE BOARD

1. The Wells County Board of Zoning Appeals shall elect from its members a Chairman and Vice-Chairman, at the first regular meeting in each year. The Vice-Chairman shall serve in the absence of the Chairman. A Secretary shall be selected at the first meeting each year; however the Secretary need not be a member of the Board of Zoning Appeals. I.C. 36-7-4-912
2. In the absence of both the Chairman and Vice-Chairman the Secretary may serve as chairman until a temporary Chairman can be elected. The Board of Zoning Appeals may choose to elect the Secretary to serve as Chairman of the meeting in the absence of both the Chairman and Vice-Chairman, but the Secretary has no voting privileges unless he is a member of the Wells County Board of Zoning Appeals. I.C 36-7-4-912
3. The Board may appoint and prescribe the duties of a secretary or such employees as are necessary for the discharge of its duties. The secretary need not be a member of the Wells County Board of Zoning Appeals.
4. A majority of the members of the Wells County Board of Zoning Appeals shall constitute a quorum, however, no action of the Wells County Board of Zoning Appeals shall be official unless passed by a majority vote of the entire membership of the Wells County Board of Zoning Appeals at any regular or special meeting. [I.C. 36-7-4-911.]

ARTICLE III
PREPARATION OF PETITION

1. The office of the Wells County Area Plan Commission shall cause to be prepared petitions and legal notice in the appropriate news paper as prescribed by law ten days prior to the date of the meeting for which the petition is to be held. It is the responsibility of the Petitioner to prepare the application for all hearings.
Note: When advertising the legal notice the day of the hearing shall not be included as one of the ten day requirements.
Ref. I.C. 36-7-4-920.

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2. All costs, including legal notices, of the petition shall be assessed to the petitioner, and must be paid at the time of the filing of the petition.
3. Petitions shall be prepared and filed in the Wells County Area Plan Commission Office not less the Fifteen (15) days before the date of the hearing. The Wells County Area Plan Commission Office shall not be required to give individual notice to adjoining property owners. However, the director may by regular U.S. Mail give notice to any person or entity, which in his judgment, may be affected by the petition. Ref. I.C. 35-7-4-920.
4. In addition to the public notice the Board of Zoning Appeals shall require the petitioner to post upon the premises, for which a petition is filed, a sign, as provided by the Wells County Area Plan Commission, stating the time and place of the hearing, brief description of the petition, and the phone number of where further information may be obtained.
5. The sign shall be placed in a conspicuous location along the front lot line on a public right-of-way midway between the two side lot lines
6. All such signs shall be provided for by the Wells County Area Plan Commission for such public notice, with applicant responsible for such costs.
7. The Wells County Area Plan Director shall require the petitioner to show proof of the sign having been posted not less than ten (10) days prior to the scheduled meeting for such hearing.
8. The applicant shall provide the Wells County Area Plan Commission Office with a copy of the deed showing all owners of the real estate for which the petition is to be filed.
9. All petitions shall be signed by all the owners of the subject real estate or in an estate his duly appointed agent, if written authorization of the owners is submitted with the petition. A contract buyer may file a petition on a property to be heard by the Wells County Board of Zoning Appeals, provided a copy of the contract for said property accompanies the Petition.
10. Upon receipt of a petition the office of the Wells County Area Plan Commission shall enter the petition on the agenda of the next regularly scheduled meeting. I.C. 36-7-4-919.
11. The Wells County Area Plan Commission office shall prepare the agenda for the meetings.

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12. All petitions shall be numbered as prescribed by the Wells County Area Plan Commission Office.
13. If in the judgment of the Director of the Wells County Area Plan Commission there is insufficient time for necessary legal notice and forms and all information necessary to adequately present the petition for hearing be prepared or if the agenda is overcrowded, the director may at his discretion schedule the petition on the next regularly scheduled meeting.
14. The agenda shall be posted at the place of the hearing and where the Legislative Bodies meet, not less than forty eight (48) hours before the hearing.
15. A petition may not be heard by the Wells County Board of Zoning Appeals unless it has been properly advertised and is on the agenda of the Wells County Board of Zoning Appeals. The Wells County Board of Zoning Appeals may grant an advisory hearing on a matter not on the agenda but such opinion is not binding upon the Wells County Board of Zoning Appeals or any future board.

ARTICLE IV.
MEETINGS AND HEARINGS

1. The Wells County Area Plan Director may change the location of a public hearing, when in his judgment the regularly scheduled meeting room will not accommodate the anticipated crowd. A notice will be placed at a prominent location in the courthouse and at the regularly scheduled meeting room to advise those persons planning to attend the meeting where the meeting will be held.
2. All petitions will be heard in the order they appear on the agenda, unless otherwise ordered by the Chairman.
3. All meetings shall be open to the public, except executive meetings as permitted by law.
4. The Wells County Area Plan Commission office shall keep minutes of all the proceedings before the Wells County Board of Zoning Appeals, showing the recorded vote of each member on all motions before the Wells County Board of Zoning Appeals, or if member abstains from voting so indicate. The Wells County Board of Zoning Appeals shall keep written records of all official actions which shall be a matter of permanent records. These records are to be kept on file in the

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office of the Wells County Area Plan Commission and are public record. [I.C. 36-7-4-915].

5. At a public hearing before the Wells County Board of Zoning Appeals, the applicant or his duly authorized representative shall first present the facts in support of the petition. The Board may interject questions or comments at any time during the presentation by the petitioner for clarification. Upon completion of petitioner's petition the Board may ask questions and discuss the petition with the petitioner.
6. The Chairman shall cause to be read into the minutes at this time any and all written comments received by the Area Plan Commission office.
7. The Chairman may ask for a report on the petition from the Director and/or staff of the Area Plan Commission.
8. After all statements and letters have been read, the Chairman shall permit any and all persons in attendance, either in opposition or support of the petition, to be heard.
9. All comments and question in regard to the petition shall be addressed to the Chairman of the hearing. The Chairman at his discretion may permit the petitioner to answer the question but all remarks shall be addressed to the Chairman.
10. In the presentation of a petition, the burden of proof shall be on the petitioner.
11. The Wells County Board of Zoning Appeals may table a petition, when in its judgment insufficient information has been provided to render a decision. The petitioner may ask for the petition to be tabled until a motion has been made to either approve or disapprove the petition. In no event shall the petitioner request the petition to be tabled after the Chairman has called for a vote on the petition.
12. A tabled petition shall be placed at the beginning of the agenda of the next meeting. The Wells County Board of Zoning Appeals by motion of a member present at the meeting lift the petition from the table before the hearing is began.
13. A petition may be left on the table for only one meeting unless the petitioner request it be delayed until the second meeting, in no

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event can a petition be tabled beyond the third meeting.

14. After all comments and discussion have been received, the Chairman, may close the discussion.
15. Upon completion of the discussion by the Board, the Chairman shall ask for a consensus of the Board Members to be included in the minutes.
16. The petitioner, or his legal representative, may submit to the Wells County Board of Zoning Appeals the conclusions of law and findings of fact for the petition. The Wells County Board of Zoning Appeals may accept the conclusions of law and findings of fact as submitted by the Petitioner or his representative and make a motion based on these conclusions of law and findings of fact.
17. The member making the motion shall give conclusions of law and findings of fact in support of his motion. The Chairman shall then ask for a second to the motion. A member seconding the motion may ask to amend the motion with additional facts in support of the motion. Upon a motion duly made and seconded, a vote on the petition shall be made and recorded in the minutes of the meeting.
18. Each decision of the Wells County Board of Zoning Appeals on each petition before them shall be in the form of a written Conclusions of Law and Findings-of-Fact stating the statutory reason for the decision.
19. A member, at his discretion, may give a reason as to why he voted as he did upon the petition.
20. The Chairman may not make a motion. When there are Wells County Board of Zoning Appeals members absent, he may, at his discretion, second a motion, if he is a member of the Wells County Board of Zoning Appeals.
21. A petition which has been withdrawn by the petitioner shall not be refilled with the Wells County Board of Zoning Appeals for consideration within twelve (12) months after the date of withdrawal, except that at the time of withdrawal, by the petitioner, the Wells County Board of Zoning Appeals, may by unanimous vote of those members present, may waive the twelve month requirement.

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22. An appeal which has been decided against a petitioner shall not again be placed upon the agenda for consideration by the Wells County Board of Zoning Appeals within a period of twelve (12) months from the date that the decision was rendered.
23. Every person appearing before the Wells County Board of Zoning Appeals shall abide by the orders of the Chairman. Discourtesy, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board of Zoning Appeals and shall be dealt with as the Board of Zoning Appeals directs.

ARTICLE V.
POWERS & DUTIES
[I.C. 36-7-4-918]

1. The Wells County Board of Zoning Appeals shall have the following powers and it shall be their duty to:
 - 1-A. Hear and determine appeals from and review any order, requirements, decision or determination made by the Director of the Wells County Area Plan Commission in the enforcement of the Ordinances. [I.C. 36-7-4-918.1.]
 - 1-B. Hear and decide petitions for Special Exceptions to the terms of the Wells County Zoning Ordinance upon which the Wells County Board of Zoning Appeals is required to act. In making a decision on granting a Special Exception, the Wells County Board of Zoning Appeals must follow the language of the Ordinance exactly and then act only after all necessary conclusions of law and findings-of-fact have been made. [I.C. 36-7-4-918.2.]
 - 1-C. Authorize upon appeal in specific cases such variances from the terms of the Wells County Zoning Ordinance or the Wells County Subdivision Control Ordinance as will not be contrary to the public interest, where special conditions fully demonstrate on the basis of the facts presented. A literal enforcement of the provision of this Ordinance will result in unnecessary hardship and so the spirit and intent of these Ordinances shall be observed and substantial justice done. [I.C. 36-7-4-918.3.]
 - 1-D. Hear petitions in regard to Non-conforming Uses as prescribed in the Wells County Zoning Ordinance.

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1-E. The Wells County Board of Zoning Appeals shall not grant a variance from the use district or classification.
[I.C. 36-7-4-918.3]

1-F. When granting variances these conditions must be met:

1-F-1. There must be a proven hardship due to a unique characteristic of the property; and

1-F-2. The hardship cannot be self-created by the present owner or a previous owner; and

1-F-3. The hardship cannot be financial.

1-G. The Wells County Board of Zoning Appeals may not hear a petition from any decision of the Wells County Area Plan Commission. I.C. 36-7-4-918-(b)-(2)

2. The final deposition of any appeal before the Wells County Board of Zoning Appeals shall be in the form of either reversing or modifying the requirement, order, decision, or determination appealed from or affirming the order and denying the appeal. The Wells County Board of Zoning Appeals may dismiss an appeal for want of prosecution or lack of jurisdiction.
3. The Wells County Board of Zoning Appeals by majority vote, may make Board Policy in matters not clearly stated in the Ordinances. Such Board Policy may be modified, changed, or rescinded by a majority of the members of the Wells County Board of Zoning Appeals on any subsequent meeting.

ARTICLE VI.
POWERS OF DIRECTOR
and
APPEAL OF DECISIONS

1. The Wells County Board of Zoning Appeals may permit the director to make certain decisions and grant variances in some cases. Such board policy shall be in writing.

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- 2. An appeal from any order, requirement, decision or determination made by the director or any duly appointed enforcing officer by whatever title, in the enforcement of the Wells County Zoning Ordinance or the Wells County Subdivision Control Ordinance may be reviewed by the Well County Board of Zoning Appeals.
- 3. Any appeal shall be filed within thirty (30) days after the decision of the director or enforcing officer, in accordance with the applicable state statutes.
- 4. The director or enforcing officer shall provide the Wells County Board of Zoning Appeals with all the facts, documents, and materials used in the decision for the purpose of the Appeal. I.C. 36-7-4-919)

ARTICLE VII.
 APPEAL OF BOARD OF ZONING APPEAL DECISION
 [I. C. 36-7-4-1003.]

- 1. Every decision of the Wells County Board of Zoning Appeals is subject to review by Certiorari as permitted by applicable state law.

ARTICLE VIII.
 AMENDMENT OF RULES OF PROCEDURE

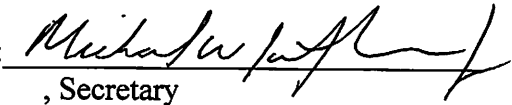
- 1. These Rules of Procedure for the Wells County Board of Zoning Appeals may be amended, in full or in part, by the majority vote of the members of the Wells County Board of Zoning Appeals.

ARTICLE IX.
 ADOPTION OF RULES OF PROCEDURE

Rules of Procedure of the Wells County Board of Zoning Appeals are approved by the affirmative vote of a majority of the members of said Board at the regular or special meeting of the Wells County Board of Zoning Appeals. Upon approval of these Rules of Procedure all prior Rules of Procedure are repealed.

Dated this _____ day of Aug, ~~1994~~ ²⁰⁰⁹.

By: 
 Chairman

ATTEST: 
 , Secretary