

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2007-193

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	GER	3-21-07	RECEIVED  APR 03 2007  WHATCOM COUNTY COUNCIL	4/10/07	Introduction
Division Head:	GER	3-21-07		4/24/07	Hearing
Dept. Head:	HHH	3-21-07			
Prosecutor:	ALB	3-21-07			
Purchasing/Budget:					
Executive:	DK	4-2-07			

**TITLE OF DOCUMENT:**  
*Ordinance to establish the county Board of Appeals*

**ATTACHMENTS:**  
*Cover Sheet, Ordinance and signature page*

SEPA review required?	( ) Yes	( x ) NO	Should Clerk schedule a hearing?	( x ) Yes	( ) NO
SEPA review completed?	( ) Yes	( ) NO		Requested Date:	

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

An ordinance to update the county Board of Appeals for building and fire codes. It sets forth the make-up of the Board, the authority, duties and responsibilities.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

4/10/2007: Introduced  
 4/24/3007: Council Adopted 7-0  
 Ord. 2007-024

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Ord. 2007-024

**Please Note:** *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).*

SPONSORED BY: Consent  
PROPOSED BY: PDS  
INTRODUCED: 4/10/07

**ORDINANCE NO.** 2007-024

Ordinance #85-12

AN ORDINANCE TO ESTABLISH THE COUNTY BOARD OF APPEALS AND TO SET FORTH THE MAKE-UP OF THE BOARD, THE AUTHORITY, DUTIES AND RESPONSIBILITIES THEREOF AND THE CRITERIA FOR APPOINTMENT THERETO

WHEREAS, The Whatcom County Council has adopted certain International codes and ordinances which provide standards for life safety, structural and fire prevention in building construction; and

WHEREAS, Several of these International codes and related ordinances provide for a board of appeals or similar body to hear appeals of administrative interpretations of each respective code; and

WHEREAS, The Whatcom County Council has determined that it is neither desirable nor practical to establish a separate appeals board or similar body to hear appeals for each separate code or standard for fire prevention and building construction.

WHEREAS, A single County "Board of Appeals" will provide an effective and efficient means of reviewing such matters. This County Board of Appeals may be referenced as the "Board" in this document.

WHEREAS, The IBC has an Appendix B chapter that provides for the Board of Appeals,

NOW THEREFORE BE IT ORDAINED:

That the currently adopted IBC with the current Appendix chapter on the Board of Appeals is hereby adopted along with the following provisions except those that remain in effect,

**Section 1**                      **Purpose**

The purpose of this ordinance is to establish a single board of appeals to be known as the County Appeals Board with the authority, duties and responsibilities to function in the capacity of the Board of Appeals as set forth in the currently adopted editions of the International building and related Codes as adopted by the county, Specifically, Appendix B of the IBC entitled BOARD OF APPEALS.

**Section 2**                      **Board Established – Appointment of Members**

The Board shall be established as provided for in Addendum A (Appendix B, Board of Appeals). Whatcom County may appoint board members simultaneously or staggered as per Addendum A (Appendix B, Board of Appeals).  
Whatcom County may choose to substitute a lay person in place of the electrical engineer or contractor.

**Section 3**                      **Regulations Regarding Compensation and Interest in Subject Matter**

Members shall not receive compensation from the county for their services as member for the Board. Provided that, if the Board, by majority vote, convenes a special Board meeting at a location within Whatcom County other than that established by Board rules, the members of the Board shall be reimbursed for travel expenses at the usual counter per-mile travel expense rate computed at twice the distance from the Board members place of residence to the special Board meeting location. A member, the member's firm, or any agent or representative of the member shall not be precluded from receiving compensation from the county for services rendered outside his/her duties as a Board member, provided, that any member having an Interest or who is contemplating acquiring an Interest in any particular transaction, contract or project must abstain from any participation in the deliberations of the Board regarding said subject matter, and provided further that in any event a Board member shall abstain from any deliberation upon a given subject if a disinterested person, having apprised of the totality of a Board member's personal Interest in a matter being acted upon, whether financial or otherwise, would be reasonably justified in thinking that partiality may exist.

**Section 4**                      **Fees**

Fees may be charged in accordance with the currently adopted Unified Fee Schedule. If a specific fee is not specified then the current hourly rate may be utilized to cover some of the cost of the appeal.

**Section 5**                      **Cooperation of County Officials**

The Board may request and shall receive so far as may be necessary in the discharge of its duties, the assistance and cooperation of the county.

**Section 6**                      **Powers Designated – Appellate Function**

The Board shall have the power and jurisdiction to receive and rule on appeals from any administration decision concerning the currently adopted International building and related codes.

Any person aggrieved by a ruling made pursuant to the administration of the above listed codes and ordinances may obtain review thereof by filing an appeal within **20** days of the date of the administrative decision. The appeal shall be initiated by submitting a written notice of appeal to the Clerk of the Board. Notice of appeal shall be on a form provided by the Clerk of the Board and shall include at a minimum the following information: name, address and telephone number of appellant, location of the job or building site, decision being appealed, and applicable code or ordinance. Answer to the appeal shall be made by the official whose decision is being appealed within **20** days of receipt of the appeal notice.

**Section 7**                    **Record and Findings on Appeal**

All hearing on appeals before the Board shall be open to the public. Each final decision of the Board shall be in writing and shall include findings and conclusions, based upon the record, to support the decision.

**Section 8**                    **Scope of Review**

In exercising the powers granted herein, the Board may, in conformity with the applicable code or ordinance reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as should be made, and to that end, shall have all powers for the officer from whom the appeal is being taken, in so far as the decision, on the particular issue is concerned, and in making its determination the board may hear any pertinent facts bearing on the case.

**Section 9**                    **Finality of Board Decision – Reconsideration**

- (a) The decision of the Board shall be deemed final, except that the Board may reconsider any decision made by it upon a timely motion in writing submitted by a party to appeal within seven days of the date of mailing of the board's decision.
- (b) Reconsideration may be granted to all or any of the parties and on all or part of the issues, when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties;
  - 1 Irregularity in the proceedings of the Board, by which such party was prevented from having a fair hearing;
  - 2 Misconduct or a prevailing party; or
  - 3 Newly discovered evidence, material for the party making the application which he could not with reasonable diligence have discovered and produced at the hearing.
- (c) When a motion for reconsideration is served and filed, the Board shall determine whether the motion shall be heard and, if so, schedule the time and nature of the hearing. The Board shall notify the parties whether the motion or motions shall be heard on oral argument or submitted on briefs, and if on brief, shall fix the time within which the brief shall be served and filed.

- (d) The decision of the Board, upon reconsideration, shall be made in writing. In the event that the Board modifies its previous decision or deems that new findings and conclusion of law are necessary as a part of the decisions then the Board shall proceed to have new findings and conclusions drafted.
- (e) Should a party aggrieved by a decision of the Board desire to seek judicial review of the Board's decision, as hereinafter provided, it shall not be deemed necessary for the party to first seek a reconsideration of the Board's decision in order to satisfy the doctrine of the exhaustion of administrative remedies.

### **Section 10            Appeal of Board Decision**

Any party to an appeal who is aggrieved by a final decision of the Board may appeal said decision by filing the appropriate pleadings in the Superior Court of Whatcom County within 30 days of notification of the Board's decision in accordance with RCW 34.04.130. For purposes of measuring the 30 day period, the period shall begin from the date of mailing such decision.

Provided, in the event a timely motion for reconsideration is filed pursuant to Section 10, supra, the time period for appeal shall be ten days from the date on which the motion is decided. The ten-day period in such instance shall begin from the date of mailing such decision, provided that such period may not expire less than 30 days from the time of the original decision.

### **Section 11            Quorum**

A majority of the Board shall constitute a quorum. A quorum of the Board shall be necessary to hear all appeals. A quorum shall constitute the membership at any given time.

### **Section 12            Emergency Hearings**

In the even that it appears that the public health, safety or welfare may be significantly affected by a delay in scheduling a hearing or rendering a decision, the chairperson of the Board shall be empowered to convene the Board for purposes of hearing said appeal, or rendering such decision, at such earlier date, time, and location as he or she shall deem appropriate.

Notice of such hearing shall be given to the parties at the earliest point in time possible and shall also be posted in The County Courthouse.

**Section 13**      **Records – Notice of Meetings and Hearings**

- (a) Notice shall be given prior to any hearing on an appeal to all parties to the appeal by placement of the notice in the mails at least ten days prior to the date of hearing; except as hereinbefore provided.
- (b) Notice shall also be posted in the County Courthouse of any and all hearings and meetings at least ten days in advance of such hearings or meetings except as hereinbefore provided,
- (c) The Board shall maintain records and minutes of all meetings, hearings, and of any actions it may take. Such records shall be kept in a file open to the public in the office of Building Official by such person as he may delegate, and for such time period as may be required by law.
- (d) The Director of Planning and Development shall designate a Clerk of the Board.
- (e)

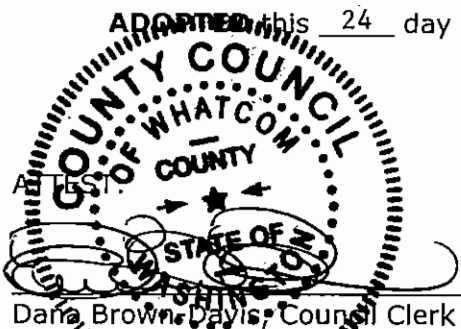
**Section 14**      **Repealer**

Repealing all other existing ordinances and resolutions in conflict herewith.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council

That the currently adopted IBC with the current Appendix chapter on the Board of Appeals is hereby adopted along with these provisions except those that remain in effect,


ADOPTED this 24 day of April, 2007.

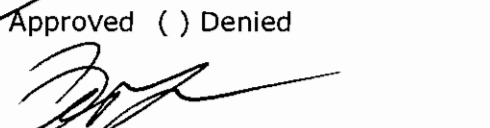
The seal of the Whatcom County Council, State of Washington, is circular with a double-line border. The outer ring contains the text "COUNTY COUNCIL" at the top and "STATE OF WASHINGTON" at the bottom. The inner ring contains "COUNTY OF WHATCOM". In the center, there is a five-pointed star. The seal is stamped over a signature and the text "Attest: Dana Brown-Davis, Council Clerk".

Attest:  
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
\_\_\_\_\_  
Carl Weimer, Council Chair

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Civil Deputy Prosecutor

() Approved ( ) Denied  
  
\_\_\_\_\_  
Pete Kremen, County Executive

Date: 5-4-07

## APPENDIX B

# BOARD OF APPEALS

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION B101 GENERAL

**B101.1 Application.** The application for appeal shall be filed on a form obtained from the building official within 20 days after the notice was served.

**B101.2 Membership of board.** The board of appeals shall consist of persons appointed by the chief appointing authority as follows:

1. One for five years; one for four years; one for three years; one for two years; and one for one year.
2. Thereafter, each new member shall serve for five years or until a successor has been appointed.

The building official shall be an ex officio member of said board but shall have no vote on any matter before the board.

**B101.2.1 Alternate members.** The chief appointing authority shall appoint two alternate members who shall be called by the board chairperson to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership and shall be appointed for five years, or until a successor has been appointed.

**B101.2.2 Qualifications.** The board of appeals shall consist of five individuals, one from each of the following professions or disciplines:

1. Registered design professional with architectural experience or a builder or superintendent of building construction with at least ten years' experience, five of which shall have been in responsible charge of work.
2. Registered design professional with structural engineering experience
3. Registered design professional with mechanical and plumbing engineering experience or a mechanical contractor with at least ten years' experience, five of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience or an electrical contractor with at least ten years' experience, five of which shall have been in responsible charge of work.
5. Registered design professional with fire protection engineering experience or a fire protection contractor with at least ten years' experience, five of which shall have been in responsible charge of work.

**B101.2.3 Rules and procedures.** The board is authorized to establish policies and procedures necessary to carry out its duties.

**B101.2.4 Chairperson.** The board shall annually select one of its members to serve as chairperson.

**B101.2.5 Disqualification of member.** A member shall not hear an appeal in which that member has a personal, professional or financial interest.

**B101.2.6 Secretary.** The chief administrative officer shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

**B101.2.7 Compensation of members.** Compensation of members shall be determined by law.

**B101.3 Notice of meeting.** The board shall meet upon notice from the chairperson, within 10 days of the filing of an appeal or at stated periodic meetings.

**B101.3.1 Open hearing.** All hearings before the board shall be open to the public. The appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

**B101.3.2 Procedure.** The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

**B101.3.3 Postponed hearing.** When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

**B101.4 Board decision.** The board shall modify or reverse the decision of the building official by a concurring vote of two-thirds of its members.

**B101.4.1 Resolution.** The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

**B101.4.2 Administration.** The building official shall take immediate action in accordance with the decision of the board.