

To: FNSB Planning Commission Special Committee
From: Gary Newman, past Platting Board and Planning Commission member
Date: September 16, 2019
Re: Discussion on the Quasi-Judicial Process

Thank you for taking this issue under discussion in support of the public process.

Having observed the procedures and process in action, I have since reviewed Title 17, Title 18, the relevant section 4.04.150 on procedures, and researched the two cases that led to creation of the FNSB quasi-judicial process. I do not know if this process is being used by other boards or commissions. Planning staff researched the other major boroughs in Alaska to compare our process with theirs and we are plainly the most restrictive in limiting input on platting and planning issues.

My understanding is this process was developed for certain boards and commissions as a result of a couple of Superior Court suits where the litigant appealed FNSB decisions to the Superior Court and were ruled they had no standing. I make the following points in critique of the current FNSB procedures related to the quasi-judicial process and appeals.

1. While a litigant may be ruled as not having standing in Superior Court, nothing would restrict them from having the opportunity to offer their input at the borough level. The establishment of the current quasi-judicial process thus violates that opportunity. It is good due process to hear public input and has more potential to assist in making informed decisions than not.
2. It is a duty of members of these boards and commissions to weigh the testimony heard. Requiring a limitation on who can testify or submit written testimony pre-judges the testimony itself thus taints the process. In addition, members are not necessarily legal experts and the process is heavily guided by Legal staff, limiting the discretion of the members
3. Such a prescriptive process for volunteer commissioners and board members is difficult to execute properly for those without that expertise, further risking due process.
4. The members of the public wishing to testify or present written testimony are confused as to whether they are to be allowed to do so. Denial leaves a bad taste for the "government".
5. There is a choice to be made between being risk aware and risk averse. You can't have them both, but on this and other issues, the FNSB has gone far to the risk averse. It's not healthy for efficiency or due public process or good PR.

Perhaps it would be good to look back at the procedures for the hearings and appeals prior to the changes in code and compare?

One Relatively Simple Opportunity to Enhance the Public Process - Appeals

While the special committee's work may require an extended deliberate effort to untangle the quasi-judicial procedures, I offer one easy change to make which seems to have no valid reason beyond discouraging legitimate appeals of actions by a board or commission.

This is a policy that includes requiring a court signed transcript of the hearing being appealed. This begs the fact that the entire audio of that hearing is available to all and accompanies the minutes that the FNSB appropriate clerk has already provided. There are limited court reporter resources in Fairbanks and the cost to the appellant can often exceed \$1,000.

In addition, the appellant is required to agree to write a blank check to the FNSB for the FNSB's undetermined costs of appeal. The recommended changes still leave some skin in the game for appellants, but is not overly burdensome as is the current list of requirements.

Recommended changes to Title 4.24.030

~~strike-outs are deletions,~~

bold/underlined are additions

Title 4.24.030

C. Notice of Appeal. An appeal must be perfected no later than 15 days after the date of notification of decision. The appeal is perfected by the filing of a notice of appeal, appeal fee and cost bond in accordance with this subsection.

1. The notice of appeal must be filed with the [borough clerk](#) on a form prescribed by the [borough clerk](#) and must contain detailed and specific allegations of error.
2. The appellant shall pay a nonrefundable appeal fee of \$75.00. In addition, the appellant shall file a cost bond of \$200.00 **to contribute to the cost of appeal.** ~~Following completion of the record, the appellant shall pay the actual cost of the record.~~ However, should the decision of the lower body be reversed in whole or in part, the cost bond shall be refunded in full.
3. An untimely notice of appeal or a notice of appeal which does not conform with the requirements of this subsection shall be denied. No further proceedings shall be made on a defective notice of appeal unless the defect is corrected within the period provided for an appeal.

D. New Evidence. Changed Circumstances. Appeals alleging new evidence or changed circumstances shall not be heard by the board of adjustment or hearing officer but shall be remanded forthwith by the [clerk](#) to the lower administrative body, which shall determine whether to rehear the matter.

E. Preparation of Record.

1. Upon timely perfection [*ed. Odd word*] of an appeal, the [borough clerk](#) shall prepare an appeal record. The record shall contain:
 - ~~a. A verbatim transcript of any proceedings before the administrative body from which the appeal has been taken prepared in accordance with subsection [\(E\)\(2\)](#) of this section;~~
 - a.b.** Copies of all documentary evidence, memoranda and exhibits, correspondence and other written **and other media** material submitted to the administrative body prior to the decision from which the appeal is taken;
 - b.e.** A copy of the written decision of the administrative body, [including](#) its findings and conclusions.
2. ~~The appellant shall arrange for the preparation of the transcript by a court reporter and shall pay the cost of such preparation. The appellant shall file this transcript with the [borough clerk](#). If the appellant fails to file the transcript within 30 days of the filing of the notice of appeal, the appeal shall be automatically denied.~~
- 2.3. Upon completion of the record, the [clerk](#) shall ~~notify the appellant by certified mail of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the appeal shall be automatically denied. Upon timely payment of costs, the [clerk](#) shall, by certified mail, serve a copy of the record on the appellant. The [clerk](#) shall also notify by certified mail the appellees who have filed a notice of intent to file a brief that the record is available for pickup and the date the record was mailed to the appellant. Upon request, the [clerk](#) shall provide a copy of the record to an appellee or the public.~~