

Procedure for Hearings on Vested Rights

Notwithstanding any other rule of procedure of this Board, the following rules and procedures shall apply to public hearings on applications made pursuant to Chapter 189 of the Henderson County Code (“Chapter 189”):

Rule 1: Definitions

- a) **Board.** Board shall mean the Henderson County Board of Commissioners.
- b) **Critical Findings of Fact.** Critical Findings of Fact shall mean facts determined as true by the Board, which are pertinent to the decision rendered to approve, not approve, or approve with conditions any application under Chapter 189, including the basis for any such conditions. .
- c) **Evidence.** Evidence shall mean anything offered before the Board, which tends to prove or disprove a fact.
- d) **Other Parties.** Other Parties shall mean persons or entities other than the Petitioner(s) who have a substantial interest in the outcome of the Proceeding and who may be adversely affected by the decision to be rendered by the Board for a particular Proceeding. Other Parties shall include any Henderson County government staff acting as such. Persons identified by the Board as having a sufficiently substantial interest to be identified as an Other Parties shall have standing to call and cross-examine witnesses. Other Parties may, but are not required to, oppose the petition.
- e) **Party.** The Petitioner(s), and any Other Parties.
- f) **Petitioner.** Petitioner shall mean the person requesting that the Board grant it vested rights under Chapter 189.
- g) **Sworn Testimony.** Sworn Testimony shall mean testimony given by a witness who has sworn or affirmed that the testimony, which they are about to give, is true to the best of their knowledge.
- h) **Witness.** A Witness shall mean any person who testifies in a proceeding under Chapter 189. A Witness need not be called to testify by the Petitioner(s) or an Other Party.

Rule 2: Duties of the Chair

- a) **Conduct Proceedings.** The Chairman shall conduct the Proceedings in an orderly and efficient manner under these rules.
- b) **Rule On Matters of Procedure and Evidence.** The Chairman shall be responsible for ruling on questions of Procedure or admissibility of evidence

- c) Written Decision. The Chairman shall, in conjunction with the Clerk to the Board and the County Attorney, be responsible for formulating the written decision of the Board.

Rule 3: Procedure

- a) The Board shall commence the proceeding by going into public hearing after motion and majority vote.
- b) The Chairman, or such person as he shall direct, shall give a preliminary statement of the Proceeding. The preliminary statement shall contain the name of the Petitioner and the determination requested by the Petitioner. Such statement may also contain the names of any Other Parties which the Chairman believes would be appropriate to be an Other Party to the proceeding.
- c) Any Other Parties not named by the Chairman wishing to appear before the Board and act as an Other Party with respect to the Proceeding shall then apply to the Board for the same, and may be allowed as parties in the discretion of the Board.
- d) Only the Petitioner and Other Parties, and members of the Board, may question witnesses.
- e) All witnesses appearing in a case shall be sworn in by the Clerk to the Board.
- f) A Witness, whether or not presented by a party, shall be limited to three (3) minutes direct presentation. The Board has discretion to extend the period of direct presentation for any Witness.
- g) Cross-examination shall be allowed by the Parties of any Witness who is presented by or on behalf of any other Party, and, in the discretion of the Board, of any Witness by all Parties. Any witness may be cross-examined by any member of the Board. The time allowed for such cross-examination shall be in the discretion of the Board.

Rule 4: Order of Presentation

- a) After the preliminary statement by the Chairman, Henderson County Planning Staff shall provide a summary of the pending project, without recommendation.
- b) The Petitioner shall then present evidence in favor of its position.
- c) Henderson County Planning staff shall then present any position it wishes to take regarding the Petition.
- d) Other Parties shall then present evidence in favor of their position(s).
- e) All other Witnesses may then present their evidence.

- f) At the conclusion of all evidence, the Board may, but is not required to, allow summation by the Parties.
- g) The Board may, at its discretion, request additional facts and information from Parties before arriving at a determination of the case. Once all evidence is received, the Board shall close the hearing.
- h) The Board shall discuss the evidence presented in public.
- i) The Board shall determine any findings of fact and determine any conclusions of law by a majority vote. The Board may delegate to staff the drafting of proposed findings and conclusions, subject to vote by the Board.
- j) The Board's final decision shall be made in writing, and provided to all Parties who have indicated to the Clerk to the Board their desire to receive a copy of the decision.

Rule 5: Evidence

Neither the Board, nor the Petitioner, nor the Opponents, nor Other Interested Parties, shall be bound by the Rules of Evidence.