

SIXTH DRAFT
OCTOBER 10, 2002
9:00 A.M.

PROCEDURE AND PRACTICE
BEFORE THE REGIONAL PLANNING COMMISSION
AND THE REGIONAL PLANNING GOVERNING BOARD
ON THE TOPIC OF COOPERATIVE PLANNING

A. APPLICABILITY

The purpose of these rules is to establish procedures for conducting appeals of disputes arising as a result of Cooperative Planning as is contemplated in the Settlement Agreement of October ___, 2002 in the case commonly known as *Washoe County v. Regional Governing Board, et al.*, CV02-03469, and filed in the Second Judicial District Court in and for the County of Washoe, Nevada.

B. DEFINITIONS

As used in these rules,

1. “Agency” means the Regional Planning Governing Board, the Regional Planning Commission, and the Regional Planning Agency, including their executive, professional and administrative staffs.
2. “Appellant” means any party appealing a decision to the Commission, the Board or the Second Judicial District Court in and for the County of Washoe, Nevada .
3. “Appellee” means any party opposing an appeal of a decision to the Commission or the Board.
4. “Board” means the Regional Planning Governing Board.
5. “Commission” means the Regional Planning Commission.
6. “Director” means the Executive Director of the Regional Planning Agency.
7. “Intervenor” means a person other than a party to the Cooperative Planning effort who is aggrieved by and directly and substantially affected by a decision resulting from the Cooperative Planning effort and who either:
 - a. submits an appeal to the Commission as provided in D.1 of these rules; or

- b. who requests, in writing, not later than five (5) working days before a hearing, to appear and present testimony or otherwise participate at the hearing.
8. "Party" means any representative of a governmental agency participant in the Cooperative Planning effort or any representative of an intervenor as defined in B.7 of these rules.

C. APPEALS TO COMMISSION

Any party may appeal any dispute between itself and any other party to a Cooperative Planning effort to the Commission.

D. PROCEDURE ON APPEALS TO COMMISSION

1. An appeal from a Cooperative Planning effort must be filed with the Commission within ___ days of _____.
2. Within ___ working days of receipt of an appeal from a Cooperative Planning effort, the Agency will provide all parties to the appeal with a copy of the appeal and schedule the matter for a public hearing.
3. The appeal must state, at a minimum, the name of the party appealing, the date of the issue being appealed or the date of the action being appealed, and a detailed description of the issue being appealed, such description containing enough specificity to provide a person of reasonable intelligence with a basic understanding of the issues involved.

E. PUBLIC HEARINGS BEFORE COMMISSION

1. Public hearings before the Commission will be conducted in an informal and professional manner.
2. To the extent possible, public hearings before the Commission will be conducted in the following order:
 - a. At the beginning of the public hearing, the Commission will announce the matter to be heard, explain the rights and responsibilities of all parties and explain any future proceedings that may occur in relation to the matter to be heard.
 - b. Presentation by appellant.
 - c. Brief synopsis by agency describing the nature of the appeal, summary of

issues and recommendations.

- d. Testimony or legal argument by appellant.
 - e. Testimony or legal argument by appellee.
 - f. Cross examination of witnesses by appellant.
 - g. Cross examination of witnesses by appellee.
 - h. Final argument or summation by appellant.
 - i. Final argument or summation by appellee.
 - j. Summation by agency.
3. Taking testimony
 - a. The Commission may refuse to hear any testimony that, in the Commission's opinion, is irrelevant, repetitive, defamatory or spurious.
 - b. All witnesses will be sworn.
 - c. Letters or other written statements may be made part of the record of the case and may, in the discretion of the Commission, constitute the basis for a decision by the Commission.
 4. The Commission may take notice of all state and county laws, local ordinances and other such matters as are generally recognized by the Courts of the State of Nevada when such Courts take judicial notice.
 5. Notice of a hearing before the Commission will be given as provided in NRS chapter 241.

F. CONTINUANCES

If, in the opinion of the Commission, any testimony, documentary evidence, information presented at a hearing or any other matter properly before the Commission justifies allowing additional research, review or time in order to properly decide the case, the Commission may continue the matter to a specific time and date to allow for such research or review. The Commission's decision to grant or deny such a continuance is not subject to review.

G. DECISION

1. The Commission will render a written decision ___ days/weeks/months following the completion of the public hearing.
2. The Commission's written decision must contain the following:
 - a. Identification of the subject matter of the appeal, the parties to the appeal and the action requested by the appealing party.
 - b. A summary of the evidence and testimony in the matter, including the recommendations of the agency staff.
 - c. Findings of fact and conclusions of law based on the evidence and testimony in the matter.
 - d. A decision on whether to grant or deny the appeal.

H. SERVICE OF COMMISSION'S DECISION

The Commission's decision will be served on all parties to an appeal by United States Mail. Service is effective on the date the Commission's decision is placed into the United States Mail.

I. APPEALS TO BOARD

Any party participating as a party in an appeal to the Commission and aggrieved by the Commission's decision may appeal the Commission's decision to the Board.

J. PROCEDURE ON APPEALS TO BOARD

1. An appellant seeking Board review of the Commission's decision must serve and file position paper in support of its position within ___ days after the record of the proceeding before the Commission has been filed with the Board.
2. The appellee must serve and file a position paper opposing appellant's position paper within 21 days after service of appellant's memorandum of points and authorities.
3. The appellant may serve and file a position paper in which the appellant replies to the appellee's position paper not later than 10 days after service of appellee's position paper opposing appellant's original position paper.
4. Any party may request a hearing before the Board and the Board is obligated to conduct a hearing on an appeal arising under these rules in response to such a request.

5. Notice of a hearing before the Board will be given as provided in NRS chapter 241.
6. In deciding an appeal, the Board will make its determination at a regularly scheduled public meeting of the Board.
7. At any party's request, the Board shall permit the record prepared before the Commission and filed with the Board pursuant to J.1 of these rules to be supplemented by any relevant testimonial or documentary evidence.
8. The Board's decision on an appeal will, in the Board's discretion, be reduced to writing or recorded in the minutes of the Board and will contain findings of fact and conclusions of law, separately stated.
9. Findings of fact and decisions of the board must be based upon substantial evidence contained in the record prepared before the Commission.
10. The Board may request a party to the appeal to prepare and submit proposed findings of fact, including a ruling on each proposed finding.
11. The Board's decision will be served on all parties to an appeal by United States Mail. Service is effective on the date the Board's decision is placed into the United States Mail.

K. PARTY REPRESENTATION

A party to an appeal before the Commission or the Board may appear personally or appear through a representative. If a party to an appeal before the Commission or the Board appears through a representative, that representative need not be a member of the State Bar of Nevada.

L. JUDICIAL REVIEW

1. A decision of the Board is subject to judicial review. Although the parties to the Settlement Agreement recognize they are not subject to the provisions of NRS chapter 233B, they agree that the Court, in processing an appeal from a final decision of the Board, should follow, in addition to any rules applicable to the operation of the Courts of the Second Judicial District Court in and for the County of Washoe, the guidelines, deadlines, procedures, and standard of review set forth in NRS 233B.130 and 233B.135, except that any petition for judicial review submitted under these rules must be filed with Department 9 of the Second Judicial District Court in and for the County of Washoe under that Court's continuing jurisdiction with respect to matters arising under the case commonly known as *Washoe County v. Regional Governing Board*, CV02-03469.

2. The parties to the Settlement Agreement agree that they enjoy no right of appeal to the Nevada Supreme Court from a final decision of Department 9 of the Second Judicial District Court in and for the County of Washoe.