

Town of Leeds

Agenda
Town of Leeds
Electronic Planning Commission
Wednesday, May 6, 2020

PUBLIC NOTICE is hereby given that the Town of Leeds Planning Commission will hold a electronic **PUBLIC MEETING** on Wednesday, May 6, 2020 at 7:00 P.M. This will be an electronic Planning Commission meeting.

Regular Meeting 7:00 p.m.

1. Call to Order/Roll Call
2. Invocation
3. Pledge of Allegiance
4. Declaration of Abstentions or Conflicts
5. Consent Agenda:
 - a. Tonight's Agenda
 - b. Meeting Minutes from February 5, 2020
6. Announcements
7. Public Hearings
 - a. Revise Chapter 3 – Board of Adjustments
8. Action Items:
 - a. Discussion and possible action on revising Chapter 3 – Board of Adjustments
9. Discussion Items
10. Training
11. Staff Reports
12. Adjournment

The Town of Leeds will make reasonable accommodations for persons needing assistance to participate in this public meeting. Persons requesting assistance are asked to call the Leeds Town Hall at 879-2447 at *least* 24 hours prior to the meeting.

The Town of Leeds is an equal opportunity provider and employer.

Certificate of Posting;

The undersigned Clerk/Recorder does hereby certify that the above notice was posted April 30, 2020 at these public places being at **Leeds Town Hall, Leeds Post Office**, the **Utah Public Meeting Notice website** <http://pmmutah.gov> and the **Town of Leeds website** www.leedstown.org



Peggy Rosebush, Clerk/Recorder

Town of Leeds

Electronic Planning Commission Meeting for Wednesday, May 6, 2020

1. Call to order:

Chairman Swenson called to order the regular meeting of the Planning Commission at 7 PM on Wednesday, May 6, 2020. This was an electronic meeting.

ROLL CALL:

	<u>Present</u>	<u>Absent</u>
CHAIRMAN: DANNY SWENSON	<u>x</u>	<u> </u>
COMMISSIONER: BRAD ROBBINS	<u>x</u>	<u> </u>
COMMISSIONER: KEN HADLEY	<u>x</u>	<u> </u>
COMMISSIONER: TOM DARTON	<u>x</u>	<u> </u>
COMMISSIONER: MARK ROSENTHAL	<u>x</u>	<u> </u>

2. Invocation: Chairman Swenson

3. Pledge of Allegiance: Chairman Swenson

4. Declaration of Abstentions or Conflicts: None

5. Approval of Agenda:

Commissioner Rosenthal moved to approve tonight’s agenda and to postpone approval of the February 5, 2020 meeting minutes until the June, 2020 meeting. 2nd by Commissioner Darton. All voted. Motion passed.

ROLL CALL VOTE:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
CHAIRMAN: DANNY SWENSON	<u>x</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: BRAD ROBBINS	<u>x</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: KEN HADLEY	<u>x</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u>x</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARK ROSENTHAL	<u>x</u>	<u> </u>	<u> </u>	<u> </u>

6. Announcements: None

7. Public Hearings:

a. Ordinance 2020-02, Revise Chapter 3 – Board of Adjustments – Land Use Ordinance 2008-04

Commissioner Darton made a motion to open the Public Hearing. 2nd by Commissioner Robbins. All voted, Motion passed.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	x	_____	_____	_____
COMMISSIONER: BRAD ROBBINS	x	_____	_____	_____
COMMISSIONER: KEN HADLEY	x	_____	_____	_____
COMMISSIONER: TOM DARTON	x	_____	_____	_____
COMMISSIONER: MARK ROSENTHAL	x	_____	_____	_____

Chairman Swenson said the Public Hearing is now open. Would anyone from the public like to comment?

Chairman Swenson said seeing none, may I have a motion to close the Public Hearing?

Commissioner Darton made a motion to close the Public Hearing. 2nd by Commissioner Robbins. All voted. Motion passed.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	x	_____	_____	_____
COMMISSIONER: BRAD ROBBINS	x	_____	_____	_____
COMMISSIONER: KEN HADLEY	x	_____	_____	_____
COMMISSIONER: TOM DARTON	x	_____	_____	_____
COMMISSIONER: MARK ROSENTHAL	x	_____	_____	_____

8. Action Items:

a. Ordinance 2020-02, Revise Chapter 3 – Board of Adjustments – Land Use Ordinance 2008-04

Chairman Swenson said I will give a brief synopsis on this. I have been briefed by Peggy and the Mayor. I will review Chapter 3. Basically, if there was an appeal after going through the Planning Commission and Town Council, the appeal would go before the Board of Adjustment, which would be made up of 5 residents of the Town of Leeds who have knowledge of the Land Use Agreements. It would be difficult to find 5 individuals with knowledge of the Land Use Agreements. There is a desire and a need to simply this and make it more professional. That is what this is attempting to do. He continued to read from Chapter 3. Are there any questions?

Commissioner Robbins said you are saying a decision would come to us. We would approve or deny it and then it would go to this person?

Chairman Swenson said no. Town Council.

Commissioner Robbins said so Town Council would approve or deny it and then it would go ...

Chairman Swenson said let us back-up a little bit. The appeal does not come to us. If an individual wants to put up a block wall and it is not according to our ordinance, but applicant says it is valid because we want to do this or that. We could disapprove it or approve it. It goes to Town Council and they will review

it. If the Town Council then disapproves then there is an appeal process. At that point, it would then go to this individual attorney and he would be the arbitrator.

Commissioner Darton said yes, but I would not use the word arbitrator. It is a quasi-judicial function. He is basically acting as the judge.

Chairman Swenson said correct. But I think arbitrator may be in the verbiage.

Peggy Rosebush said his title is Hearing Officer.

Commissioner Rosenthal said he is the final decider.

Chairman Swenson said yes, they are.

Commissioner Rosenthal said if an individual feels that the Hearing Officer has not ruled in their best interest, they can pursue it civil court.

Chairman Swenson said yes, after this process.

Commissioner Darton said I have a question. Before we start looking at the proposed new statute, who put together this Chapter 3. Who drafted this?

Chairman Swenson said the Town Attorney. Is that right, Peggy?

Peggy Rosebush said correct. Basically, the only thing he is changing is the fact that it is going from a 5-member Board of Adjustments to a one person Hearing Officer.

Commissioner Robbins said so this already exists now?

Peggy Rosebush said no. This revision takes it from a 5-member board made up of residents of the Town of Leeds to a one person Hearing Officer.

Commissioner Darton said I think the question is do we currently have a statute that creates a 5-member board, and this is just changing it to a Hearing Officer?

Chairman Swenson said correct.

Commissioner Darton said have we ever had an appeal?

Chairman Swenson said not that we know. We have not had one since Mayor Peterson has been mayor or any history prior to that. There is no record at this point in time of an appeal board taking place. Not in 8 years has there been an appeal.

Commissioner Robbins said just to follow-up on Tom's question, a Board does exist, correct, Peggy.

Peggy Rosebush said correct.

Commissioner Robbins said so we are taking what should be 5 people to 1 independent arbitrator.

Commissioner Darton said it could go to more than 1 person, but only 1 person would be the Hearing Officer on any given appeal.

Commissioner Robbins said I have never heard of someone coming in and overruling an elected Council. I have heard of judges doing it and juries do it, but never an arbitrator. But if it already exists in the Code and it is going from 5 people to 1 person, I guess that is the way it is going to be.

Chairman Swenson said I do think they are trying to simplify it. The 1-person legal authority also has to be familiar with Land Use Ordinances. It must be a qualified authority who is familiar with these ordinances. The way it was written before, they would have to have 5 members from the Town familiar with the ordinance. That may be difficult.

Commissioner Robbins said this applies to only Land Use, right?

Chairman Swenson said correct. Just Land Use. And this is a statute for the State of Utah. The State of Utah authorizes 1 of 2 things – either a 5-member board or a Hearing Officer. We presently have the statute for the 5-member board, but we are now looking to go to 3-year term professional. We are legal right now.

Commissioner Darton said I do have a few questions. I do not really care what we have on the books right now, but if we are looking to amend it then I want to look at the whole thing to make sure that what we are putting in place is going to be appropriate. He read Section 3.3.1.1 of the new ordinance. Then he read Section 3.11. In other words, according to this, not only is this Hearing Officer quasi-judicial, but he or she is also quasi-legislative because he or she is viewed with the powers of the Town Council or the Planning Commission, whichever the appeal is from. That, to me, seems a little odd. Normally, with a judicial officer you see them as being a judicial officer, not a legislator. I would like to have Scott give us a little background on that. I look at the State law on what is allowed to be done. That seems like an awful lot of power to be given to 1 person.

Chairman Swenson said that is what it comes down to. That is the State law. You have either 1 person or 5 members.

Commissioner Darton said does the State law also provide that a 5-person board or that 1 person has legislative powers as well as judicial powers? That goes beyond a normal appellate court.

Commissioner Robbins said that is what I was saying at the beginning when we started this. I have never seen a process like this. Not where a single person can overrule what a 5-person Council has done. The Council could say we want to do this and then this 1 person could say no you cannot. That person has the power to overrule a 5-person board.

Chairman Swenson said remember this is an appeal. The Town Council, if they approve it, it will never go to an appeal. If Town Council approves, he goes on with his project. If Town Council does not approve, applicant may present a few more times with adjustments. If he still disagrees with Town Council, he can go to the appeal process. Right now, the appeal would go to 5 members.

Commissioner Robbins said the assumption is only an applicant can appeal. Why can't a member of the public appeal?

Commissioner Rosenthal said it says the applicant.

Commissioner Robbins said just the applicant?

Commissioner Rosenthal said there is no mention that a member of the public can appeal a decision.

Commissioner Darton read an excerpt from Chapter 3. The public does not have the right to appeal. No one is going to appeal a decision in their favor. We will only contemplate appeals where the person's request was denied. Normally, in the appellate process, if we were dealing with a court situation, when you appeal a lower court's decision the higher court either affirms or denies, and if they overturn the lower court's decision, they may have some direction for the lower court to rehear or redetermine based on their ruling. But in this case, the Hearing Officer is given judicial and legislative authority and is able to completely substitute his or her own judgment regardless of what the Town Council may have decided.

Chairman Swenson said go to Section 3.14. It gets into the judicial part. Let us say that the committee of 5 or in this case, if we change it, the single person, there still is another process through the courts.

Commissioner Darton said if the decision still does not go in their favor, they can further appeal it.

Chairman Swenson said Tom, please read Section 3.14 to see if that validates it.

Commissioner Darton read Section 3.14.

Chairman Swenson said Brad, I think that helps.

Commissioner Robbins said it is not binding arbitration.

Commissioner Darton said this is like adding a layer of appellate court to the Town's decisions.

Commissioner Robbins said if it already exists, and it sounds like it does, we have a 5 member and we are going to a 1 member, to me that is a minor change. You are right, Danny, I do not see 5 people in Town who can understand land issues well enough to do it.

Chairman Swenson said I do not either. That would be difficult.

Commissioner Darton said there is more than just understanding the Town's Land Use Ordinances. You need to also understand State law because the interpretation of our Town ordinances is greatly impacted by State law.

Commissioner Rosenthal said the purpose of this amendment is to expedite the process. The most recent discussion that we just had challenges folks' understanding the Town's ordinances, taking the time to understand them and research the State law that those ordinances come from. We have an individual employed, this is theoretical or hypothetical, by the Town, an attorney, one who is receiving compensation for their review and decision process, as opposed to 5 members of the community who are doing so on a voluntary basis. Any concern along those lines?

Commissioner Robbins said the City Attorney also represents the Town Council. He does not represent the community members. He is there to protect the Council and the Town, not the people. I do not have a problem.

Commissioner Darton said I do not have a problem. I was a little surprised at the breadth of the authority being granted to the Hearing Officer.

Commissioner Rosenthal said it is the same authority that was granted to the board of 5. It is just being reduced to 1 and that certainly can tip the checks and balances process.

Commissioner Darton said out of interest sake, I would be interested in what State law provides for these types of appellate processes, either the board or the single Hearing Officer. How broad is the authority under State law? That is just a curiosity. I do have some questions on some of the ...

Commissioner Rosenthal said I have 1 more question ...

Chairman Swenson said just as a reminder, the State of Utah allows either or.

Commissioner Rosenthal said do we know of other towns that have used the single person process opposed to the 5-person board?

Peggy Rosebush said I know a little about it. I was told that most of the towns and cities in this area have gone to the 1 person Hearing Officer.

Commissioner Rosenthal said do we know why? Peggy, is there any stated reason why?

Peggy Rosebush said none that I am aware of, but if I had to second guess it, it would be because the other towns and cities are faced with the same problem of being able to find 5 residents who are educated on the Land Use Ordinances. I believe they are having the same problems that we could have if we were trying to find 5 residents. This is my understanding. It is not written in stone.

Chairman Swenson said I could imagine the bigger the town, the more complicated it could be.

Commissioner Darton said I would think in the smaller communities like Leeds, it makes more sense to have a single Hearing Officer rather than trying to put together a 5-member panel to hear an appeal.

Chairman Swenson said related to that, and to validate that statement, many of the communities have gone to this with an attorney familiar with Land Use Ordinances because it is cheaper. It is much cheaper to pay an individual to be retained for our Town as opposed to go to court on these issues.

Commissioner Rosenthal said it could still end up in court. I think at that point, your decider, presumably an attorney, would then be representing the Town in court.

Chairman Swenson said I suspect few will go to court. And the thing is we want the individuals to be able to do their project. It is not like we will not be working with them.

Commissioner Darton said I noted a few instances. I really tend to dislike statutory provisions that are vague that do not have standards. What happens is you get 10 different people with 110 different

interpretations of what that word means and no standard application from person to person, applicant to applicant, situation to situation. I really hate that. A couple of things that I noticed in going through this ... In Section 3.3.3.5, 1 of the 6 things that you have to show in order to get an exception for hardship is "the spirit of the Land Use Ordinance is observed, and substantial justice done." What is the spirit of the Land Use Ordinance? There is nothing that helps us understand what the spirit of a particular Land Use Ordinance is. That bothers me a little bit. Then in Section 3.4, the last sentence says "The Leeds Town Council shall have the right to remove any Hearing Officer for misconduct and may remove any member for cause. Cause shall include, but not limited to, such things as misconduct and non-performance of duty." Non-performance of duty is something we can all understand. But misconduct, there is absolutely no standard on what constitutes misconduct.

Commissioner Robbins said all of this stuff might be in State Code.

Commissioner Darton said that is why I really wish Scott were here. I really want to see what the State statutes are that apply to this because some of these questions may be answered. But right now, just looking at this, I am a little concerned there is insufficient detail in here. Misconduct is not defined. You can be removed for misconduct or for cause, and cause is misconduct. It is a little bit odd. It seems like it should be cleaned up a little bit. Then in the appeal process, and maybe this is set forth in the State statutes, I do not know. He read Section 3.8.1.1. That, to me, indicates that an appeal could be made from a Planning Commission negative decision rather than them going on to the Town Council. They could just automatically appeal from Planning Commission. I think people would be foolish to do that and not try to put the Town Council first. So, my question is

Chairman Swenson said I think that whole paragraph sounds good except for the Planning Commission in there. Everything else sounds appropriate.

Commissioner Darton said normally, in the appeal process 30 days is a normal appeal time, but normally it is filing a notice of appeal and then after the notice of appeal other things have to happen. After all of the information is available, for example, under Utah Law it is 40 days after the district court's filing of the record and then notice will be sent out to the parties and then there is 40 days for the appellant's brief to be filed. There is no description of a brief here. Is this 30-day filing requirement supposed to be the brief? If it is, that is a little bit short for someone to hire an attorney, do all their legal research and file their brief. I am a little concerned that there may not be sufficient time in here and there may not be sufficient detail. Maybe Utah laws will provide that detail. I just do not know.

Chairman Swenson said I guess you could bring in an attorney here because the attorney would definitely...

Commissioner Darton said you will definitely need an attorney to help you with the filing. You have to include a detailed description of the land use being appealed along with references to all ordinances. The appeal should include the justification that the applicant feels has not been interpreted properly. Those are all legal issues.

Chairman Swenson said I can see that.

Commissioner Rosenthal said it does not dictate that an attorney needs to do that work. It certainly makes sense that you could do it yourself.

Commissioner Darton said in every court you can represent yourself.

Chairman Swenson said I agree with you, but when I look back on our process, we have had individuals to come back 3, 4 or 5 months. Each time, we have discussed it. Then they go back and make a change, or they go to their designer and they come back and present something to us. And then we do not approve. They can make more changes and come back 3 or 4 times. Is this talking about the appeal after our final, final decision?

Commissioner Darton said it would be very simple for someone to come in and for us to say no we do not approve it. We think you need to do X, Y, Z. They can look at what we are saying they have to do in order to get approval. They can say no that is not what the statute says. I am not going to do something that I am not required to do by statute. They can appeal directly to the Hearing Officer.

Chairman Swenson said I guess they could, but the process would be to go from us to Town Council.

Commissioner Darton said not necessarily.

Chairman Swenson not according to this.

Commissioner Rosenthal said they can appeal a Planning Commission decision to a Hearing Officer. Someone comes before us, presents a project and we disapprove. They could at that point, the way this is written, take their case to the Hearing Officer.

Commissioner Darton said if the Planning Commission denies something, they appeal, the Hearing Officer decides in their favor and says here is how this statute applies. What is own Council going to do?

Chairman Swenson said they will have to go along with it.

Commissioner Darton said they will have to follow the hearing Officer's decision.

Chairman Swenson said this is something that needs to be spelled out. It may be in Utah State law, but we are not familiar with that.

Commissioner Darton said right. That is why I said I wish Scott were here because I have a lot of questions that might be answered in the State statutes, but I just do not know. Let me raise another issue. There seems to be 2 sections dealing with the same thing. He read Section 3.6. And then he read Section 3.13. It seems like these 2 sections say the same thing and maybe they need to be consolidated.

Craig Hall, Town Attorney joined the meeting.

Commissioner Darton said Craig, I have a few questions. I noted that in the proposed Chapter 3 that the Hearing Officer is both quasi-judicial, but also quasi-legislative in that he or she can pretty much hear the matter de novo and substitute his or her judgment for that of the Planning Commission and/or the Town Council in hearing any appeal and issue whatever ruling he or she deems appropriate.

Craig Hall said the Utah State statute that was enacted, let us say, 5 to 10 years ago, does give that authority to a Hearing Officer. I think the language in the State Code says grant, deny or modify. I believe that is the language. I have some practical experience in being a Hearing Officer for 3 or 4 cities in Salt Lake County and Utah County and I have modified an order of the Planning Commission. Tom, you are reading the

language correct. If you want to recommend to the Town Council a more restrictive scope of authority, you have that right to recommend those potential changes.

Commissioner Darton said I have not seen an appellate court being granted all the powers of the Officer from whom the appeal is taken. Unless we are referring to a lower judge as opposed to the legislature who wrote the statute.

Craig Hall said if the appeal is not on the record, the appeal would be from the Hearing Officer directly to the District Court. The District Court does have the authority to modify it, but it cannot change the statute. When you use the term legislative modification, we need to be careful with that term because you cannot change the statute.

Commissioner Darton said I was a little concerned about whether we would be granting 1 person too much authority and too much discretion, but I see they will not be modifying statutes.

Craig Hall said or ordinances.

Commissioner Darton said right. I have a couple of questions. I tend to dislike vagueness in statutes. There are a couple of places that I think are a little vague. Section 3.3.3.5 ...

Craig Hall said this is in the area of granting variances.

Commissioner Darton said in granting a variance, one of the required elements is that the spirit of the Land Use Ordinance is observed, and substantial justice done.

Craig Hall said that is a regurgitation of the State Code.

Commissioner Darton said is there anything in State Code that helps define what the spirit of something is?

Craig Hall said no. This is really the mercy rule. Often when I have served as a Hearing Officer, there is no way they can comply with #1, #2, #3 or #4. It makes the applicant feel good that he can at least meet 1 of the criteria. Mercy says yes, we should probably go ahead and grant the variance, but I cannot grant it because you do not comply with all of the rest of the requirements. That is a regurgitation right out of the State Code.

Commissioner Darton said okay. Section 3.4 talks about removing a Hearing Officer. He read an excerpt of this section. Is there anything in State law where misconduct is defined?

Craig Hall said I think I could probably find a definition of misconduct. Let me give you an example. Since this is a quasi-judicial position, on appeals, not for granting variances, if the Hearing Officer engaged in ex parte communication with 1 of the parties to the appeal, that is misconduct. At least in my mind it would be. Or if someone says I appealed it and the Hearing Officer never gets around to scheduling the hearing. That is not performing your duties.

Commissioner Darton said it says non-performance of duties. And we can understand that. Here is my fear. Somebody in power does not like a decision of a Hearing Officer and decides to get rid of this Hearing Officer because they are not deciding the way I want to have things decided. They trump up some

misconduct. Especially for this, I think it would behoove us to maybe put in some definition of misconduct so that we can be fair to all parties.

Craig Hall said I can take a shot at doing that. Let me see what I can come up with.

Commissioner Darton said okay. That is the one that really bothered me because if someone were to get dismissed for misconduct that could really harm their reputation.

Craig Hall said absolutely.

Commissioner Rosenthal said I have a question. Looking back at a discussion that was happening a few moments ago, the Hearing Officer, in this case using your example, you decided that an 8 foot fence, based on prior circumstances, was the appropriate fence opposed to a 6 foot fence. If you had decided 6 foot was appropriate, and the Town Council felt that that was not a good decision, could the Town Council actually appeal your decision?

Craig Hall said the answer is yes, but it would be based on the record. It would not be a trial de novo and the standard on appeal, when there is a record, is whether or not the decision was based on substantial evidence in that hearing and in that record upon which as individual could come to that decision. It does not mean that could not have decided the other way because there may have been substantial evidence in record for 6 foot versus 8 foot. That is a very tough standard to over come on appeal when there is a record. We have provided that the Hearing Officer must create a record, it must be recorded, and the decision must be in writing. That would be the standard which would be substantial evidence. Said another way, if the decision was arbitrary and capricious, then it could be overturned, or not substantial evidence.

Commissioner Darton said but as long as there was evidence in the record to support that conclusion, it will not be overturned on appeal.

Craig Hall said that is generally a true statement.

Commissioner Darton said maybe the last real question that I have is looking at the appeal process in Section 3.8.8.1, it says you have 30 days to file your appeal. I am not real familiar with these types of appeals. I am a little more familiar with the normal appellate process in courts. Thirty days to file your notice of appeal is not an uncommon time period. But usually then there is quite a bit more time before the appellate brief has to be filed. It seems to me, if 30 days is all the time you have to secure counsel and put together your brief and get it on file that seems a little short.

Craig Hall said let me tell you the process I use when I am sitting as a Hearing Officer in Salt Lake County. If I get the notice of appeal, I will then have a scheduling conference with the appellant and the representative of the city. I will then ask both parties at the same time to prepare a memo or a brief to be submitted before the hearing. I generally hold the hearing within 2 or 3 weeks after I receive the notice of appeal. I do not give them the opportunity to prepare response to the other party's brief and that sort of thing because, at that point, I want to know what their argument is, I want to know what the Town Council's position is based on the decision, I am going to get the record within that 2 or 3 weeks and then I hold a hearing and I hear argument. I move expeditiously on the ones that I hold. Any Hearing Officer that the Town Council would appoint, if this is approved, I think Wayne and I will create those types of expectations with that Hearing Officer.

Commissioner Darton said so your view is this 30 days to file, it would be more in the form of a notice to appeal, and then the Hearing Officer would say to both sides I want to see your briefs in 2 weeks.

Craig Hall said right. And the hearing would be the next week.

Commissioner Darton said I like that because this process should be a relatively truncated process, but still giving people time to adequately set forth. If they do not include it in their appeal, it is a lost issue.

Craig Hall said that is true.

Commissioner Darton said so would you envision these rules that need to be put forth and approved by Town Council and by the Hearing Officer as including the briefing process or is it just ad hoc?

Craig Hall said I think, if this passes, the Mayor and Town Council, with the assistance of me, would create an RFP for Hearing Officers who apply. And at that point, we would ask them to tell us the process and procedure by which you would employ if we engage you as the Hearing Officer. That will tell me very quickly if they have any experience or not in working through these appeals. And we could actually put in the RFP that these are the rules and procedures that we would expect you to employ in conducting the hearings.

Commissioner Rosenthal said if that is the case, and if you did put that in the RFP, shouldn't that be stated in the ordinance?

Craig Hall said Mark, sometimes I think we over ordinance things. We have been talking about appeals, Now, there is also the area of variances. Variances are very easy to schedule very quickly. The burden is on the applicant. We do not need by-laws for variance type of issues. We only need these rules and guidelines in the appeal setting. I would advise, and I think it would be better, not to put them in the ordinance because situations may come up when the Hearing Officer may need to modify them in some fashion. I would suggest that we do not put these types of things in the ordinance, but create expectations by policy coming from the Town Council and Mayor.

Commissioner Darton said I do not disagree with that. I would highly recommend that the rules that are adopted address in some detail the process for the appeal. I would also strongly recommend that the proposed statute here, Section 3.8.8.1, should clarify that the writing that needs to be filed within 30 days is a notice of appeal.

Craig Hall said that is easily fixed.

Commissioner Darton said when I looked at that I was a little uncertain whether it is a notice of appeal which is more in the nature of a notice of pleading if it is the whole enchilada.

Craig Hall said good point. Let us talk about a notice of appeal. Is that too long?

Commissioner Darton said that is the normal timeframe. Most people who come into the Town, either to the Town Council or Planning Commission, they are not represented by counsel. If they decide they are going to appeal an adverse decision from either body, they will have to go out and obtain counsel. You and I both know that to find counsel and getting counsel to focus on this and get something filed within 30 days can sometimes be a challenge.

Craig Hall said well said.

Commissioner Darton said I think 30 days is an appropriate time and I do think it is appropriate, in whatever rules and procedures that are adopted, that the process be kept brief and truncated.

Craig Hall said I agree with you 100%.

Commissioner Darton said my last issue is Section 3.6. it talks about rules and procedures and then Section 3.13 talks about rules. These seem to be duplicate.

Craig Hall said I will clean that up. I think you are right.

Commissioner Darton said although I do like the statement in 3.13 a little better. It talks about being in compliance with State law and I think that is a good idea.

Craig Hall said okay.

Commissioner Darton said I think that is it from me. Craig, I really want to thank you for coming on tonight. You cleared up a lot of things for us.

Craig Hall said you are welcome. I would like to say one thing about variances. Variances throughout the State over the last number of years have been a source of contention where the decisions have not followed what the State statutes require. If you look at those 5 elements, it is not or, it is and. It has been my experience as an advocate in front of a Board of Adjustments for a variance, and as a Hearing Officer, the variance decisions will improve significantly under a Hearing Officer. And I think that is better justice.

Commissioner Darton said I would like to see the proposed statute amended per some of things we discussed this evening. Craig said it could be cleaned up a little bit before we actually vote on approving this. If there is no other discussion, my motion would be to put this off until the statute can be amended slightly to address a couple of our concerns.

Chairman Swenson said Craig, I have made notes on what you stated that could be cleaned up. We can get these to you. Is that appropriate and does it sound good to you?

Craig Hall said it would be very helpful. We can turn this around very quickly. If I can get your notes and I did mark-up my copy. If I can get your stuff by Friday, I can get it done by Monday, Tuesday or Wednesday of next week.

Chairman Swenson said I will send mine to Mayor Peterson tomorrow. If anyone else wants to send notes to Craig, you can send them to me or drop off at Town Hall.

Commissioner Darton said I will email my notes and, if you would like, a red line of the proposed statute highlighting a couple of areas of concern.

Commissioner Robbins said Danny, are you saying we should go ahead and approve a motion based on the proposed changes.

Chairman Swenson said let's ask Mayor Peterson.

Commissioner Robbins said the Planning Commission cannot approve an ordinance.

Craig Hall said yes. They merely make a recommendation to Town Council.

Commissioner Robbins said all we are doing by continuing it is a big nothing. If we get the recommendations from Craig that we discussed in this meeting, we could go ahead and approve it so it can be sent to Council. I am not sure what another meeting will do.

Chairman Swenson said if that is appropriate to Mayor Peterson and Craig then it will go directly with these changes if we do not have to review them.

Craig Hall said if you make a favorable recommendation with 3 modifications, we can get you the changes on Wednesday or so. Town Council must hold a Public Hearing on this. So, if I write something that is contrary to your recommendation, just get back to me so I can fix it and then go from there. It would expedite the process.

Commissioner Darton made a motion to recommend Ordinance 2020-02, Revise Chapter 3 – Board of Adjustments – Land Use Ordinance 2008-04 subject to the revisions as discussed in this meeting. Section 3.4 be amended to provide an objective standard for misconduct for the removal of the Hearing Officer; Section 3.8.1.1 be modified to clarify that the written appeal that needs to be filed within 30 days is a notice of appeal; and Section 3.13 be consolidated with Section 3.6 on rules and procedures. 2nd by Commissioner Robbins.

Chairman Swenson said there were 2 other discussions. Let's make sure they are okay. One was Section 3.5 the spirit. Are we going to leave this?

Commissioner Darton said if that is what is coming out of the State ordinance then we should live with it.

Chairman Swenson said what about Section 3.3.1.1 where we talked about quasi-judicial.

Commissioner Darton said after the explanation, I am okay with it.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: BRAD ROBBINS	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: KEN HADLEY	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARK ROSENTHAL	<u> x </u>	<u> </u>	<u> </u>	<u> </u>

9. Discussion Items: None

10. Staff Reports: None

11. Roll Call at Close of Electronic Meeting

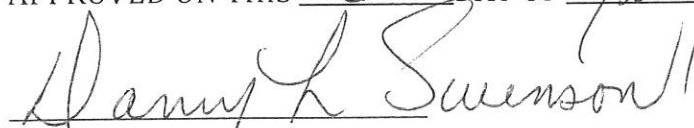
ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: BRAD ROBBINS	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: KEN HADLEY	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARK ROSENTHAL	<u> x </u>	<u> </u>	<u> </u>	<u> </u>

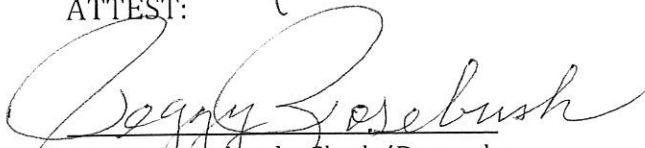
11. Adjournment:

Meeting as adjourned at 7:46 PM.

APPROVED ON THIS 6th DAY OF July, 2018


Danny Swenson, Chair

ATTEST:


Peggy Rosebush, Clerk/Recorder