

1 By: Bryce J. Ward, Mayor  
2 Referred to Animal  
3 Control Commission  
4 And Planning Commission: 01/16/2020  
5 Introduced: 10/08/2020  
6 Advanced: 10/08/2020  
7 Referred to a Special Committee  
8 Of the Whole: 10/22/2020  
9 Advanced: 10/22/2020  
10 Referred to Committee  
11 Of the Whole: 11/19/2020  
12 Defeated: 01/14/2021  
13

14 FAIRBANKS NORTH STAR BOROUGH

15  
16 ORDINANCE NO. 2020 – 02  
17

18 AN ORDINANCE AMENDING FAIRBANKS NORTH STAR BOROUGH CODE OF  
19 ORDINANCES TITLES 4, 15, 17, 18, AND 22 REGARDING QUASI-JUDICIAL APPEALS TO  
20 ADD A NEW BOARD OF APPEALS AND NEW APPEALS OFFICER SECTION AND  
21 AMENDING FNSBC TITLE 8 REGARDING THE APPEAL PROCESS FOR PROPERTY TAX  
22 EXEMPTIONS  
23

24 WHEREAS, The Fairbanks North Star Borough (Borough) tasks various  
25 boards and commissions with providing input to the administration and/or the Assembly,  
26 and some boards and commissions have additional quasi-judicial functions, including  
27 hearing appeals from decisions of the administration and other bodies; and  
28

29 WHEREAS, Boards and commissions are generally comprised of volunteer  
30 members of the public who are recommended by the administration and confirmed by  
31 the Assembly; and  
32

33 WHEREAS, Quasi-judicial hearings and procedures require significant  
34 training of board or commission members prior to such proceedings occurring, and  
35 require knowledge of Borough code and how to apply law to facts; and  
36

37 WHEREAS, Staff currently appears as a party in all quasi-judicial matters  
38 and, instead of providing advice and guidance to board and commission members,  
39 advocates for or against an application brought by a member of the public; and

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40 WHEREAS, There are many matters in which staff could make  
41 recommendations and then assist a board or commission rather than appearing as a party  
42 before the decision-making body; and

43  
44 WHEREAS, Citizen boards should be available as a first level appeal, rather  
45 than going directly to superior court, when feasible; and

46  
47 WHEREAS, There are benefits to using an appeals officer rather than having  
48 the assembly sit as a board of adjustment, such as allowing assembly members to talk  
49 to their constituents and pursue legislative changes without concerns of ex-parte contacts  
50 or other due process considerations; and

51  
52 WHEREAS, Minimizing staff's role as a party in quasi-judicial matters not  
53 involving an appeal, and providing for an experienced board of appeals and/or appeals  
54 officer review in matters that do involve an appeal, will allow the Department of Law to  
55 more fully provide substantive and procedural advice; and

56  
57 WHEREAS, Code currently provides a taxpayer who disagrees with the  
58 assessor's determination regarding the tax exempt status of property may appeal directly  
59 to superior court, but may only appeal to the board of equalization "as provided by law"  
60 which is currently limited to senior citizen and disabled veteran exemptions; and

61  
62 WHEREAS, It is desirable that all exemption determinations receive an  
63 administrative appeal hearing by a body prior to court review; and

64  
65 WHEREAS, The Assembly may delegate its authority to sit as a board of  
66 equalization to one or more boards appointed by it.

67  
68 NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks  
69 North Star Borough:

70  
71 Section 1. This ordinance is of a general and permanent nature and shall  
72 be codified.

73  
74 Section 2. The name of FNSBC Title 4, Boards and Commissions, will be  
75 amended as follows:  
76 Boards, [AND] Commissions, and Appeal Officers

77  
78 Section 3. FNSBC 4.04.150, Procedure, is hereby amended as follows:  
79 A. Notwithstanding any language to the contrary, all boards and commissions shall  
80 follow, as a minimum, the procedural rules set forth in this section. A board or commission  
81 may adopt other rules but those rules may not conflict with this section. In all matters of

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82 procedure not covered by this or other code sections or rules adopted by the board or  
83 commission, Robert's Rules of Order, as revised, shall be applicable and shall govern.

84 1. Boards and commissions conducting quasi-judicial hearings shall adopt  
85 rules permitting telephonic testimony by a party or witness upon request for good cause  
86 and in the absence of substantial prejudice to opposing parties. If telephonic participation  
87 is approved, then the party requesting it shall be responsible for arranging the telephone  
88 call and for payment of associated telephone charges. Adopted rules may limit the  
89 number of individuals testifying telephonically due to technological or other valid  
90 considerations; however, if an individual's telephonic participation is denied because of  
91 these limits, the rules shall permit other reasonably available alternatives such as setting  
92 an additional or alternate date for the testimony.

93 2. Boards and commissions conducting quasi-judicial hearings shall also adopt  
94 rules permitting parties to submit their testimony by affidavit subject to the opposing  
95 parties' right of cross-examination that the chair determines to be reasonably necessary  
96 to explore any matters which tend to contradict, modify or explain the testimony.

97 3. Boards and commissions conducting quasi-judicial hearings shall establish  
98 rules providing for a determination concerning an individual's status as a party sufficiently  
99 in advance of the hearing to allow the person to timely request participation by telephonic  
100 or submit testimony by other allowable means. If an individual qualifies as an interested  
101 person, the individual may provide testimony but the chair may otherwise limit  
102 participation at the hearing unless the person possesses a significant property interest  
103 that is not adequately represented by existing parties.

104 4. Formal rules of evidence do not apply to quasi-judicial hearings; however,  
105 the chair may exclude irrelevant, immaterial or unduly repetitious evidence.

106 B. All de novo quasi-judicial hearings by a board or commission involving an appeal  
107 from an administrative determination shall be conducted according to the following  
108 procedures:

109 1. Copies of all procedural rules and any written [STAFF] report must be  
110 available at least five working days prior to the hearing and at the hearing. At least five  
111 working days prior to the hearing, the parties shall exchange copies of all documents  
112 intended to be submitted to the board or commission. [STAFF SHALL ALSO ENSURE THAT  
113 T]The relevant public files [ARE] shall be made available for inspection and copying by  
114 the parties.

115 2. At the beginning of the hearing, the chair shall give a brief introduction  
116 regarding the matter and inquire as to whether any member needs to make any  
117 disclosures required by the code of ethics or disclose any ex parte communications  
118 regarding the matter at issue. All parties must at this time express their objections, if any,  
119 to a member participating in the hearing.

120 3. Testimony must be taken under oath or affirmation. A group oath or  
121 affirmation, including all parties, may be given prior to taking any testimony. Relevant  
122 testimony and evidence may be submitted at the hearing. To the extent time limits are

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123 imposed, those time limits shall not include time spent responding to questions and shall  
124 be evenly applied to all parties.

125 4. All parties shall, unless their participation is limited by the chair as  
126 authorized in this chapter, have the right to present evidence including testimony and  
127 exhibits and the right of cross-examination of witnesses to the extent the chair determines  
128 to be reasonably necessary to explore any matters which tend to contradict, modify, or  
129 explain testimony given on direct. The party bearing the burden of proof shall have the  
130 right to first provide testimony and present all relevant witnesses and evidence and shall  
131 have the right to rebuttal.

132 5. If a party seeks to introduce a document not previously copied and  
133 exchanged with the other party and the other party objects, the document shall be  
134 admitted only if the board finds a good faith reason for its failure to be included in the  
135 documentary exchange. A "good faith reason" includes, but is not limited to, the portion  
136 of an animal behavior log for the days occurring after the required documentary  
137 exchange. If the late admission creates any prejudice to the opposing party, the chair  
138 shall provide the opposing party additional time or take other allowable measures to  
139 address any resulting prejudice.

140 C. All de novo quasi-judicial hearings by a board or commission not involving an  
141 appeal from an administrative determination shall be conducted according to the  
142 following procedures:

143 1. Copies of all procedural rules and any written staff report must be available  
144 at least five working days prior to the hearing and at the hearing. Staff shall also ensure  
145 that the relevant public files are available for inspection and copying by the parties. If  
146 additional documents or information is submitted to staff after the report is written, those  
147 documents and information shall become part of the public file. If documents or  
148 information is added to the public file after the staff report is written, staff shall notify the  
149 parties who have previously inspected the file as soon as reasonably practicable and  
150 provide a copy to the parties if requested. Documents or information added to the file in  
151 compliance with this section may be provided to the board or commission.

152 2. At the beginning of the hearing, the chair shall give a brief introduction  
153 regarding the matter and inquire as to whether any member needs to make any  
154 disclosures required by the code of ethics or disclose any ex parte communications  
155 regarding the matter at issue. All parties must at this time express their objections, if any,  
156 to a member participating in the hearing.

157 3. Testimony must be taken under oath or affirmation. A group oath or  
158 affirmation, including all parties and staff, may be given prior to taking any testimony.  
159 Relevant testimony and evidence may be submitted at the hearing. To the extent time  
160 limits are imposed, those time limits shall not include time spent responding to questions  
161 and shall be evenly applied to staff and the applicant. Time limits for interested persons  
162 shall be set by the chair.

163 4. Staff Report. Staff may provide a report on any technical or other issues  
164 within their expertise and may make recommendations to the board or commission.

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165 Questions of staff by the decision-making body and by the applicant, if present, should  
166 be asked at this point.

167 5. Applicant. The applicant or the applicant’s representative, if present, may  
168 present testimony and evidence to support the application. To the extent the applicant  
169 wishes to present expert witnesses, they should testify at this point. Questions of the  
170 applicant by the decision-making body [OR STAFF] should be asked at this point. The  
171 applicant shall be provided a minimum of 10 minutes which may be extended by the chair  
172 dependent upon the complexity of the issue. In addition, if the staff report  
173 [OPPOSES]recommends denial of the application in whole or in part, the applicant’s time  
174 shall be extended if necessary to ensure the applicant receives time equivalent to that  
175 provided to staff.

176 6. All parties shall, unless their participation is limited by the chair as  
177 authorized in this chapter, have the right to present evidence including testimony and  
178 exhibits and the right of cross-examination of witnesses to the extent the chair determines  
179 to be reasonably necessary to explore any matters which tend to contradict, modify, or  
180 explain testimony given on direct.

181 7. Rebuttal. The applicant shall be provided a minimum of five additional  
182 minutes to respond to any testimony presented by interested persons. This time may be  
183 extended by the chair in consideration of lengthy or complex testimony. In addition, to  
184 the extent the decision-making body decides, after testimony, to ask any further  
185 questions, the applicant shall be given a reasonable time to respond.

186 D. All legislative hearings by a board or commission shall be conducted according to  
187 the following procedures:

188 1. Sponsor Report. If present, the sponsor(s) of the proposed legislation or  
189 the sponsor’s designee(s) shall first be afforded an opportunity to provide a report on the  
190 proposed legislation. The sponsor may choose to present before or after the staff report.  
191 If time limits are applied, the sponsor and staff shall receive equivalent time. Questions  
192 of the sponsor by the decision-making body concerning the proposed legislation should  
193 be asked at this point so that the members of the public wishing to comment can be  
194 reasonably informed.

195 2. Staff Report. Staff may then provide a report on any technical or other  
196 issues within their expertise. Questions of staff by the sponsor(s) or the decision-making  
197 body concerning the proposed legislation should be asked at this point so that the  
198 members of the public wishing to comment can be reasonably informed.

199 3. Public Comment. Members of the public may comment on legislative issues.  
200 Time limits may be placed on individual comments. If time limits are placed, they should  
201 be applied in an equal manner to all individuals providing public comment. Comments  
202 may be limited to the hearing subject.

203 4. Sponsor Response. The sponsor(s) or designee(s) shall be afforded a  
204 reasonable opportunity to respond to any questions, issues or concerns raised during the  
205 staff report or public comment.

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206 E. If a hearing involves both a legislative issue and a quasi-judicial matter, the quasi-  
207 judicial procedures shall apply except that if the matter is scheduled for a public hearing,  
208 the public may comment on the legislative issue. Time limits may be placed on individual  
209 comments (excluding applicant and staff presentation). If time limits are placed, they  
210 should be applied in an equal manner to all individuals providing public comment.  
211 Comments should be limited to those relevant to the hearing subject.

212 F. Definitions.

213 1. "Applicant" means any person or entity whose specific legal rights are being  
214 adjudicated in the quasi-judicial hearing.

215 2. "Staff" means borough employees who as part of their job responsibilities  
216 are tasked with providing the board or commission with technical or other relevant  
217 information or those individuals from whom the board or staff has specifically sought,  
218 after notice to the applicant, their input or advice.

219 3. "Sponsor" means the mayor, assembly member, chairperson of committee  
220 draft, or a member of the public whose authorized application created the proposed  
221 legislation. If the authorized application involves multiple owners or multiple properties,  
222 "sponsor" only includes one owner representative for each property.

223 4. "Party" means the applicant[,]; any appellant(s); and, [STAFF]an  
224 administrative decisionmaker (e.g., borough assessor, planning director). It also includes  
225 "interested persons" or "persons aggrieved" to the extent their participation is expressly  
226 permitted by borough code in a quasi-judicial matter. It does not include members of the  
227 public testifying under public comment.

228  
229 Section 4. Subsection D of FNSBC 4.16.040, Responsibilities, is hereby  
230 deleted as follows:

231 [D. CONDUCT ANIMAL BITE HEARINGS AS A QUASI-JUDICIAL BODY AS SET FORTH  
232 IN THIS CHAPTER.]

233  
234 Section 5. FNSBC 4.16.050, Hearings and appeals to the animal control  
235 commission, is hereby repealed as follows:

236 [AN OWNER AGGRIEVED BY THE DECISION OF THE ANIMAL CONTROL OFFICER MAY  
237 APPEAL TO THE ANIMAL CONTROL COMMISSION. SUCH REQUEST FOR APPEAL MUST  
238 BE FILED WITHIN 10 DAYS OF THE DATE OF THE DECISION OF THE ANIMAL CONTROL  
239 OFFICER. THE ANIMAL CONTROL COMMISSION MAY AFFIRM, REVERSE, OR MODIFY  
240 THE DECISION OF THE ANIMAL CONTROL OFFICER. THE ANIMAL  
241 CONTROL COMMISSION SHALL HAVE THE POWER TO EUTHANIZE THE ANIMAL.  
242 THE ANIMAL CONTROL COMMISSION SHALL SET A HEARING DATE TO BE HELD WITHIN  
243 20 DAYS OF THE RECEIPT OF THE REQUEST FOR APPEAL BY THE OWNER.]

244  
245 Section 6. FNSBC 4.16.060, Hearing procedure, is hereby repealed as  
246 follows:

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247 [A. A QUORUM SHALL CONSIST OF THREE MEMBERS OF THE ANIMAL CONTROL  
248 COMMISSION. IF ONLY THREE MEMBERS OF THE COMMISSION ARE PRESENT, IT WILL  
249 TAKE A UNANIMOUS VOTE IN ORDER TO EUTHANIZE AN ANIMAL. IF MORE THAN THREE  
250 MEMBERS OF THE COMMISSION ARE PRESENT, THEN A MAJORITY OF THOSE PRESENT  
251 MUST VOTE IN FAVOR OF EUTHANASIA.

252 B. THE ANIMAL CONTROL COMMISSION SHALL REVIEW THE WRITTEN DECISION  
253 OF THE ANIMAL CONTROL OFFICER, HEAR STATEMENTS FROM THE VICTIM AND  
254 REPRESENTATIVE OF ANIMAL CONTROL, AND HEAR STATEMENTS FROM THE OWNER  
255 OF THE ANIMAL, AND REVIEW ANY PERTINENT MATERIALS. ADDITIONAL WITNESSES  
256 WHO OBSERVED THE EVENT SHALL ALSO BE HEARD, AND THE OWNER MAY PRESENT  
257 WITNESSES TO TESTIFY TO THE GENERAL CHARACTER OR Demeanor OF THE  
258 ANIMAL, SUBJECT TO THE DISCRETION OF THE ANIMAL CONTROL COMMISSION TO  
259 LIMIT CUMULATIVE, REDUNDANT OR IRRELEVANT TESTIMONY. THE COMMISSION,  
260 THE ANIMAL CONTROL REPRESENTATIVE AND THE OWNER SHALL HAVE THE  
261 OPPORTUNITY TO QUESTION WITNESSES.

262 C. AN OWNER AGGRIEVED BY THE DECISION OF THE ANIMAL CONTROL  
263 COMMISSION MAY APPEAL TO THE SUPERIOR COURT WITHIN 30 DAYS. NOTICE OF  
264 INTENT TO APPEAL SHALL BE GIVEN TO THE ANIMAL CONTROL OFFICER WITHIN 72  
265 HOURS OF THE DECISION OF THE ANIMAL CONTROL COMMISSION. IF THE ANIMAL  
266 WHICH IS THE SUBJECT OF THE APPEAL IS IMPOUNDED, THE ANIMAL CONTROL  
267 OFFICER SHALL REQUIRE ADVANCE PAYMENT FOR ONE MONTH OF ROOM AND BOARD  
268 EXPENSE IF THE OWNER PROVIDES A NOTICE OF INTENT TO APPEAL.]

269  
270 Section 7. Chapter 4.24 FNSBC, Board of Adjustment, is hereby repealed.

271  
272 Section 8. Chapter 4.26 FNSBC, Board of Appeals, is hereby added as  
273 follows:

274 Sections:

275 4.26.010 Established.

276 4.26.020 Qualifications.

277 4.26.030 Responsibilities.

278  
279 4.26.010 Established.

280 There is established a board of appeals, which shall have three members and two  
281 alternates appointed by the mayor and confirmed by the assembly. Alternates will serve  
282 as designated by the chair if a regular member is unavailable. Notwithstanding anything  
283 in FNSBC Title 4 to the contrary, the mayor shall appoint the chair and vice-chair. The  
284 termination provisions in FNSBC 4.04.180 shall not apply to this board.

285  
286 4.26.020 Qualifications.

287 In addition to the qualifications in this title, the chair shall have previous experience  
288 adjudicating disputes and the demonstrated ability to apply law to facts or be admitted

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289 to the Alaska bar. All members should have adjudicatory experience or experience serving  
290 on a board or commission. A member of the board may hold no other appointed or  
291 elected office with the borough.

- 292  
293 4.26.030 Responsibilities.  
294 The board of appeals shall hear and decide the following matters:  
295 A. Appeals from administrative decisions of the planning director or designee  
296 pursuant to FNSBC Title 18, including grandfather rights and amnesty decisions, zoning  
297 permit determinations, and revocations of conditional use permits.  
298 B. Appeals arising under Chapter 15.04 FNSBC, floodplain management.  
299 C. Appeals of dangerous animal determinations and decisions of the animal control  
300 manager as provided in FNSBC Title 22.  
301 D. Appeals from paratransit eligibility determinations.  
302 E. Appeals from the Assessor's determinations on property tax exemptions and  
303 unable to comply determinations.

304  
305 Section 9. FNSBC 4.80.040(A)(3), Powers and duties, is hereby repealed  
306 as follows: *[Note: The Clerk shall renumber accordingly.]*

307 [3. THE COMMISSION SHALL ACT AS THE PLATTING BOARD APPEALS BODY  
308 AND SHALL HEAR AND DECIDE APPEALS FROM THE DECISIONS OF THE PLATTING  
309 BOARD.]

310  
311 Section 10. Chapter 4.88 FNSBC, Public Transportation Advisory  
312 Commission, is hereby repealed as follows:

- 313 [SECTIONS:  
314 4.88.010 ESTABLISHED.  
315 4.88.020 TERMS OF OFFICE.  
316 4.88.030 ORGANIZATION.  
317 4.88.040 DUTIES.

318  
319 4.88.010 ESTABLISHED.  
320 WITHIN THE OFFICE OF THE BOROUGH MAYOR THERE IS ESTABLISHED A PUBLIC  
321 TRANSPORTATION ADVISORY COMMISSION CONSISTING OF SEVEN MEMBERS TO BE  
322 APPOINTED BY THE BOROUGH MAYOR AND CONFIRMED BY THE ASSEMBLY. MEMBERS  
323 SHALL BE APPOINTED WITH DUE REGARD TO THEIR INTEREST IN PUBLIC  
324 TRANSPORTATION AND SHALL AS NEARLY AS POSSIBLE BE REPRESENTATIVE OF ALL  
325 ELEMENTS OF THE COMMUNITY.

326  
327 4.88.020 TERMS OF OFFICE.  
328 MEMBERS OF THE PUBLIC TRANSPORTATION ADVISORY COMMISSION SHALL SERVE  
329 FOR A TERM OF THREE YEARS OR UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED;  
330 PROVIDED, THAT THE TERMS OF THE INITIAL COMMISSION MEMBERS SHALL BE

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331 STAGGERED SO THAT THREE MEMBERS WILL BE APPOINTED IN EACH OF TWO YEARS  
332 AND FOUR THE THIRD YEAR.

333  
334 4.88.030 ORGANIZATION.

335 THE COMMISSION SHALL ANNUALLY ELECT A CHAIRMAN AND VICE CHAIRMAN AND  
336 SHALL ADOPT RULES FOR THE CONDUCT OF ITS MEETINGS. ROBERT'S RULES OF  
337 ORDER SHALL APPLY UNLESS DIFFERENT RULES ARE ADOPTED BY THE COMMISSION.  
338 MINUTES OF ALL MEETINGS OF THE COMMISSION SHALL BE KEPT AND FILED IN THE  
339 OFFICE OF THE BOROUGH MAYOR WITH COPIES BEING FURNISHED TO THE ASSEMBLY.

340  
341 4.88.040 DUTIES.

342 THE COMMISSION SHALL:

343 A. ACT AS LIAISON WITH THE COMMUNITY FOR THE PURPOSES OF GAUGING  
344 ATTITUDES AND NEEDS CONCERNING PUBLIC TRANSPORTATION AND MAKING  
345 RECOMMENDATIONS;

346 B. MAINTAIN A CONTINUOUS REVIEW OF THE PUBLIC TRANSPORTATION SYSTEM  
347 OF THE BOROUGH AND ALL ITS ASPECTS INCLUDING RATE STRUCTURES, ROUTE  
348 EXTENSIONS AND CHANGES, AND MAKE RECOMMENDATIONS TO THE BOROUGH  
349 MAYOR AND THE TRANSPORTATION DIRECTOR CONCERNING PRESENT AND FUTURE  
350 NEEDS;

351 C. ASSIST IN THE PREPARATION OF THE ANNUAL BUDGET OF THE  
352 TRANSPORTATION DIVISION AND THE CAPITAL IMPROVEMENTS PROGRAM;

353 D. HEAR APPEALS OF DENIALS OF PARATRANSIT ELIGIBILITY.]

354  
355 Section 11. Chapter 4.116 FNSBC, Appeals Officers, is hereby added as  
356 follows:

357 Sections:

358 4.116.010 Appeals Officers.

359 4.116.020 Procedures.

360  
361 4.116.010 Appeals Officers.

362 Appeals officers shall be assigned by the borough clerk from a list approved by the  
363 assembly and have jurisdiction over the following matters:

364 A. Appeals of planning commission determinations on conditional use permits,  
365 variances, and other matters as set forth in Title 18.

366 B. Appeals of platting board decisions.

367  
368 4.116.020 Procedures.

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

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372 1. The notice of appeal must be filed with the clerk’s office on a form  
373 prescribed by the borough clerk and must contain detailed and specific allegations of  
374 error.

375 2. The appellant shall pay the applicable non-refundable appeal fee. In  
376 addition, the appellant shall file a cost bond of \$200.00. Following completion of the  
377 record pursuant to subsection D, the appellant shall pay the actual cost of the record.  
378 However, should the decision of the lower body be reversed in whole or in part, the cost  
379 bond shall be refunded in full.

380 3. The borough clerk shall deny an untimely notice of appeal or a notice of  
381 appeal which does not conform with the requirements of this subsection. No further  
382 proceedings shall be made on a defective notice of appeal unless the defect is corrected  
383 within the period provided for an appeal.

384 4. The borough clerk shall mail the notice of appeal to any party that  
385 participated in the proceeding before the lower body.

386 B. An appellee brief may be submitted by:

387 1. The party in whose favor, in whole or in part, the lower administrative  
388 body’s decision was rendered;

389 2. Any borough agency;

390 3. Any person who participated below and would be aggrieved if the decision  
391 of the lower administrative body were reversed.

392 C. Appellees who wish to file a brief and be notified by the borough clerk of the date  
393 the record is available and of the date the appellant’s brief is filed must file a notice of  
394 intent to file a brief with the clerk’s office on a form prescribed by the borough clerk,  
395 within 20 days after the mailing of the notice of appeal.

396 D. Preparation of Record.

397 1. Upon timely perfection of an appeal, the borough clerk shall prepare an  
398 appeal record. The record shall contain:

399 a. A copy of the written decision of the administrative body, including  
400 its findings and conclusions.

401 b. A verbatim transcript of any proceedings before the administrative  
402 body from which the appeal has been taken prepared in accordance with subsection  
403 (D)(2) of this section;

404 c. Copies of all documentary evidence, memoranda and exhibits,  
405 correspondence and other written material submitted to the administrative body prior to  
406 the decision from which the appeal is taken;

407 2. The borough clerk shall provide the appellant a copy of the audio of the  
408 proceedings before the lower body. The appellant shall arrange for the preparation of  
409 the transcript by a certified court reporter and shall pay the cost of such preparation. The  
410 appellant shall file this transcript with the clerk’s office. If the appellant fails to file the  
411 transcript within 30 days of the filing of the notice of appeal, the appeal shall be  
412 automatically denied.

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413           3. Upon completion of the record, the borough clerk shall notify the appellant  
414 by certified mail of the cost of its preparation. If the appellant fails to pay the costs within  
415 seven days of receiving the notice, the appeal shall be automatically denied. Upon timely  
416 payment of costs, the borough clerk shall, by certified mail or other means agreed to by  
417 the parties, serve a copy of the record on the appellant and notify the appellees that the  
418 record is available. Upon request, the borough clerk shall provide a copy of the record to  
419 an appellee in accordance with the fee schedule.

420 E. Written Argument.

421           1. Brief of the Appellant. The appellant may file a written brief of points and  
422 authorities in support of those allegations of error specified in the notice of appeal with  
423 the clerk's office no later than 15 days after mailing of the appeal record. The borough  
424 clerk shall notify by certified mail or other means agreed to by the parties, those appellees  
425 who have filed a notice of intent to file a brief that the appellant's brief is available for  
426 pickup. Upon request, the borough clerk shall provide a copy of the appellant's brief to  
427 appellees.

428           2. Brief of Appellee. An appellee who has filed a notice of intent to file a brief  
429 shall prepare and submit to the clerk's office a written response to the notice of appeal  
430 and any brief in support thereof no later than 30 days after notification of filing of the  
431 appellant's brief. The borough clerk shall notify the appellant by certified mail or other  
432 means agreed to by the parties that appellee briefs have been filed.

433           3. Reply Brief. An appellant may file a written reply brief to the appellee briefs  
434 no later than 10 days after mailing of notice that the appellee briefs have been filed.

435           4. Form of Briefs. All briefs shall be type-written on eight and one-half by 11-  
436 inch pages. The text of the brief shall be double-spaced other than quotations from the  
437 record, case law, or other applicable law or exhibits which cannot be retyped on eight  
438 and one-half by 11-inch pages. The brief of the appellant is limited to 25 pages not  
439 including exhibits. The brief of appellee is limited to 25 pages not including exhibits. The  
440 reply brief is limited to 10 pages not including exhibits. Exhibits must be from the record  
441 and not be new evidence. The clerk's office shall not accept a brief unless it is in the form  
442 prescribed by this subsection.

443           5. Untimely Briefs. If a brief is not filed within the time prescribed by this  
444 section, the borough clerk shall notify the appeals officer that the brief was filed late. The  
445 appeals officer shall determine whether to accept a late brief and whether to allow  
446 additional time for any qualified opposing party to file its brief.

447 F. Appeal Packet. Following the time set for the receipt of written argument, the  
448 borough clerk shall prepare and distribute to the appeals officer an appeal packet  
449 containing only the notice of appeal, the appeal record, and any briefs filed in accordance  
450 with subsection (E) of this section. Appeal packets shall be made available to the public  
451 in accordance with the fee schedule.

452 G. Scope of Administrative Review.

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453 1. The appeals officer shall not hear arguments nor take additional testimony  
454 or other evidence. An appeal shall be heard solely on the basis of the record established  
455 before the lower administrative body, the notice of appeal, and the parties' briefs.

456 2. The appeals officer may exercise their independent judgment on legal  
457 issues raised by the appellant. Legal issues as used in this subsection means those  
458 matters that relate to the interpretation or construction of ordinances or other provisions  
459 of law.

460 3. The appeals officer shall defer to the judgment of the lower administrative  
461 body regarding disputed issues or findings of fact. Findings of fact adopted expressly or  
462 by necessary implication by the lower administrative body may be considered as true if  
463 they are supported in the record by substantial evidence. Substantial evidence for the  
464 purpose of this subsection means such relevant evidence as a reasonable mind might  
465 accept as adequate to support a conclusion. If the record affords a substantial basis of  
466 fact from which the fact in issue may be reasonably inferred, it shall be considered that  
467 the fact is supported by substantial evidence.

468 4. New Evidence – Changed Circumstances. Appeals alleging new evidence or  
469 changed circumstances shall not be heard by the appeals officer but shall be remanded  
470 forthwith to the lower administrative body. New evidence or changed circumstances  
471 includes only items that did not exist and therefore could not be obtained prior to the  
472 original hearing.

473 H. Decision.

474 1. The appeals officer may affirm or reverse the decision of the lower  
475 administrative body in whole or in part. They shall decide an appeal on the basis of the  
476 record on appeal and the briefs of the parties to the appeal, in accordance with the  
477 standards of subsection (I) of this section. A decision reversing or modifying the decision  
478 appealed from shall be in a form which finally disposes of the case on appeal except  
479 where the case is remanded in accordance with subsection (I) of this section.

480 2. Every decision to affirm or reverse the decision of the lower administrative  
481 body shall be based upon findings and conclusions adopted by the appeals officer. Such  
482 findings must be reasonably specific so as to provide the community, and where  
483 appropriate, reviewing authorities, a clear and precise understanding of the reason for  
484 the decision.

485 I. Remedies.

486 1. Where the appeals officer reverses or modifies a decision of the lower  
487 administrative body in whole or in part, their decision shall finally dispose of the matter  
488 on appeal, except that the case shall be remanded to the lower body where they  
489 determine either:

490 a. That there is insufficient evidence in the record on an issue material  
491 to the decision of the case; or

492 b. That there has been a substantial procedural error which requires  
493 further public hearing.

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494 2. A decision remanding a case shall describe any issue upon which further  
495 evidence should be taken and shall set forth any further directions the appeals officer  
496 deems appropriate for the guidance of the lower administrative body.

497 3. The lower administrative body shall act on the case upon remand in  
498 accordance with the decision of the appeals officer in the minimum time allowed by the  
499 circumstances.

500 J. Special Rules of Procedure Applicable to Appeals Before the Appeals Officer.

501 1. Ex Parte Contacts Prohibited. The appeals officer shall be impartial in all  
502 appeal matters, both in fact and in appearance. No appeals officer shall receive or  
503 otherwise engage in ex parte contacts with the appellant, other parties adversely affected  
504 by the appeal, or members of the public concerning the appeal or issues specifically  
505 presented in the notice of appeal either before the appeal hearing or during any period  
506 of time the matter is subject to reconsideration.

507 2. Decisions of the appeals officer may be brought up for reconsideration or  
508 rehearing only if:

509 a. There was substantial procedural error in the original proceeding; or

510 b. The appeals officer acted without jurisdiction in the original  
511 proceeding; or

512 c. The original decision was based upon fraud or misrepresentation.  
513 The appellant or appellee may seek reconsideration or a rehearing by filing a request with  
514 the clerk's office, together with materials supporting one or more of the grounds stated  
515 above, within 15 days of the mailing of the original decision. The appeals officer may  
516 schedule a rehearing only if it finds the allegations to be correct. A rehearing shall be  
517 conducted in the same manner as original proceedings.

518 K. Judicial Review. Either the appellant or appellee may appeal the decision of the  
519 appeals officer to the superior court. Appeals shall be made to the superior court in  
520 accordance with the rules of appellate procedure.

521  
522 Section 12. FNSBC 15.04.080, Appeals, is hereby amended as follows:  
523 The [COMMISSION] board of appeals shall consider and decide appeals where it is alleged  
524 there is error in any order, requirement, condition, decision or determination made by  
525 the director regarding approval or denial of a floodplain permit or certificate of  
526 compliance.

527 A. The appellant shall file an appeal with the [COMMISSION] clerk's office within [10  
528 CALENDAR] 15 days after mailing of the director's decision. The appellant shall include  
529 their name or names, their interest in the matter, their address, and which order,  
530 requirement, condition, decision or determination made is being appealed.

531 B. The [COMMISSION] board of appeals may reverse or affirm, [WHOLLY] in whole  
532 or in part, or modify the order, requirement, condition, decision or determination under  
533 appeal, so long as such action is in conformity with this chapter. The [COMMISSION]  
534 board of appeals shall make its decision in writing, setting forth its findings of fact,  
535 reasons for its decisions and corrective actions to be taken, if necessary.

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536 [C. APPEALS FROM COMMISSION DECISIONS ARE MADE TO THE ASSEMBLY USING  
537 THE APPEAL PROCESS AS REQUIRED IN FNSBC 4.24.030(C) THROUGH (L).]  
538 [D.]C. Either the appellant or appellee may appeal the [ASSEMBLY'S] board's decision to  
539 superior court. Appeals may be made to the superior court in accordance with the rules  
540 of appellate procedure.

541  
542 Section 13. Subsection T of FNSBC 8.04.060, Real property exempted from  
543 taxation, is hereby added as follows:  
544 T. An applicant for an exemption may appeal the assessor's determination to the  
545 board of appeals.

546  
547 Section 14. FNSBC 8.16.010, Appeal, is hereby amended as follows:

548 A. Right to Appeal.  
549 1. Valuation. A person whose name appears on the assessment roll or the  
550 agent or assigns of that person may appeal to the board of equalization for relief from an  
551 alleged error in valuation not adjusted by the assessor to the appellant's satisfaction.

552 a. Appeal Deadline. Unless there is a determination that the taxpayer  
553 was unable to comply, the appellant contesting a property valuation not adjusted to the  
554 appellant's satisfaction shall, no later than 30 days after the date of mailing notice of  
555 assessment, submit to the assessor a written appeal specifying grounds in the form that  
556 the board of equalization may require.

557 b. Unable to Comply Determination. A person who missed the 30-day  
558 valuation appeal deadline may request a deadline extension from the board of  
559 equalization by demonstrating inability to comply with the deadline. The extension  
560 request affidavit and the written valuation appeal must be filed with the assessor no later  
561 than 30 days from the date of the close of the applicable appeal period of that tax year.

562 i. If the extension request is granted for a valuation appeal, the  
563 valuation appeal will be set for hearing and the appellant and the property owner will be  
564 given notice of the hearing.

565 ii. If the extension request is denied, the borough clerk[S  
566 OFFICE] shall notify the appellant and the property owner of the board's decision.

567 2. Farm Use. An applicant for a farm use assessment who believes that the  
568 valuation or classification assigned to the land that is the subject of the application is  
569 erroneous may appeal to the board of equalization.

570 a. Appeal Deadline. Unless there is a determination that the taxpayer  
571 was unable to comply, the applicant contesting a farm use valuation and/or classification  
572 shall, no later than 30 days after the date of mailing notice of the assessment and/or  
573 classification, submit to the assessor a written appeal specifying grounds in the form that  
574 the board of equalization may require.

575 b. Unable to Comply Determination. A person who missed the 30-day  
576 farm use valuation appeal deadline may request a deadline extension from the board of  
577 equalization by demonstrating inability to comply with the deadline. The extension

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578 request affidavit and the written valuation appeal must be filed with the assessor no later  
579 than 30 days from the date of the close of the applicable appeal period of that tax year.

580 i. If the extension request is granted for a farm use valuation  
581 appeal, the valuation appeal will be set for hearing and the appellant and the property  
582 owner will be given notice of the hearing.

583 ii. If the extension request is denied, the borough clerk[’S  
584 OFFICE] shall notify the appellant and the property owner of the board’s decision.

585 3. [SENIOR CITIZEN OR DISABLED VETERAN] Exemptions. An applicant  
586 aggrieved by any determination of the assessor regarding a [SENIOR CITIZEN OR  
587 DISABLED VETERAN] property tax exemption may appeal to the board of  
588 [EQUALIZATION]appeals.

589 a. Appeal Deadline. Unless there is a determination that the taxpayer  
590 was unable to comply, an applicant contesting a determination of the assessor regarding  
591 a [SENIOR CITIZEN OR DISABLED VETERAN PROPERTY] tax exemption shall, no later  
592 than 10 days after the date of mailing of the assessor’s decision, submit to the assessor  
593 a written appeal specifying grounds in the form that the board of  
594 [EQUALIZATION]appeals may require.

595 b. Unable to Comply Determination. A person who missed the [SENIOR  
596 CITIZEN OR DISABLED VETERAN] exemption application deadline may request a deadline  
597 extension from the assessor by demonstrating inability to comply with the deadline. The  
598 extension request affidavit and the exemption application must be filed with the assessor  
599 prior to May 1st of the year for which the exemption is sought.

600 i. If the extension request is granted for the exemption  
601 application deadline, the assessor shall accept the application as if timely filed.

602 ii. If the extension request is denied for the exemption  
603 application deadline, the applicant may appeal the decision to the [ASSEMBLY]board of  
604 appeals by filing a notice of appeal with the clerk’s office within 10 working days of the  
605 date of the assessor’s decision.

606 [4. RESIDENTIAL HOMEOWNER EXEMPTION UNABLE TO COMPLY  
607 DETERMINATION. A PERSON WHO MISSED THE RESIDENTIAL HOMEOWNER  
608 EXEMPTION APPLICATION DEADLINE AS PROVIDED BY FNSBC 8.04.060(I) MAY  
609 REQUEST A DEADLINE EXTENSION FROM THE ASSESSOR BY DEMONSTRATING  
610 INABILITY TO COMPLY WITH THE DEADLINE. THE EXTENSION REQUEST AFFIDAVIT  
611 AND THE EXEMPTION APPLICATION MUST BE FILED WITH THE ASSESSOR PRIOR TO  
612 MAY 1ST OF THE YEAR FOR WHICH THE EXEMPTION IS SOUGHT.

613 I. IF THE EXTENSION REQUEST IS GRANTED FOR THE EXEMPTION  
614 APPLICATION DEADLINE, THE ASSESSOR SHALL ACCEPT THE APPLICATION AS IF  
615 TIMELY FILED.

616 II. IF THE EXTENSION REQUEST IS DENIED FOR THE EXEMPTION  
617 APPLICATION DEADLINE, THE APPLICANT MAY APPEAL THE DECISION TO THE BOARD  
618 OF EQUALIZATION BY FILING A NOTICE OF APPEAL WITH THE ASSESSOR WITHIN 10  
619 WORKING DAYS OF THE DATE OF THE ASSESSOR’S DECISION. IF THE BOARD OF

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620 EQUALIZATION GRANTS THE EXTENSION REQUEST, THE ASSESSOR SHALL ACCEPT  
621 THE EXEMPTION APPLICATION AS IF TIMELY FILED.]

622 B. Unable to Comply Determinations. For purposes of this chapter, “unable to comply”  
623 or “inability to comply” means that the failure to timely appeal was based upon a serious  
624 medical or other similar serious condition or event beyond the taxpayer’s control. A failure  
625 to pick up or read mail, or to make arrangements for an appropriate and responsible  
626 person to pick up or read mail, or a failure to timely provide a current address to the  
627 office of the borough assessor, will not be deemed to result in an inability to comply and  
628 the appeal will not be accepted for that tax year.

629 1. All assertions of inability to comply must be filed by an affidavit and  
630 supporting documentation, if any, setting forth the reasons why the applicant or appellant  
631 was unable to file by the deadline.

632 2. The assessor shall supply to the appropriate decision maker all relevant  
633 information and documents including the affidavit and supporting documents submitted  
634 by the applicant or appellant and any documents specifically requested by the decision  
635 maker. The decision maker shall consider the extension request only on the submitted  
636 documents and shall not consider evidence regarding property valuation or exemption.

637 3. The authority provided in this chapter to grant extensions may not be  
638 exercised so as to permit acceptance of an application or appeal other than for the current  
639 year.

640 C. Notice of Hearing. The assessor for a board of equalization hearing or the clerk for  
641 a hearing before the [ASSEMBLY] board of appeals shall notify an appellant and the  
642 property owner by mail of the time and place of hearing. The notices shall be mailed not  
643 later than 10 calendar days before the date of the hearing. Exemption appeals shall follow  
644 the procedures provided in FNSBC 4.04.150(B). (De novo hearings involving an appeal  
645 from an administrative determination.)

646 D. Summary of Assessment Data. The assessor shall prepare for use by the board of  
647 equalization a summary of assessment data relating to each valuation assessment that is  
648 appealed. Upon request of the appellant, the assessor shall provide the appellant with  
649 the assessment data that will be presented to the board of equalization relating to each  
650 valuation assessment that is appealed.

651 E. Appeals by City. A city in the borough may appeal an assessment to the borough  
652 board of equalization in the same manner as a taxpayer. Within five days after receipt of  
653 the appeal, the assessor shall notify the person whose property assessment is being  
654 appealed by the city.

655  
656 Section 15. FNSBC 8.16.040, Claims based on the tax exempt status of  
657 property, is hereby amended as follows:

658 A taxpayer who claims that property is not taxable under law may appeal a determination  
659 of the assessor that property is taxable directly to the superior court as provided by rules  
660 of court applicable to appeals from the decisions of administrative agencies, or the

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661 taxpayer may first appeal to the board of appeals [BOARD OF EQUALIZATION AS  
662 PROVIDED BY LAW].

663  
664 Section 16. Subsection H of FNSBC 17.16.030, Action on quick plat  
665 application, is hereby amended as follows:

666 H. A party or interested person who appeared at the quick plat hearing may appeal  
667 the decision by submitting written notice of appeal and paying the appropriate fee within  
668 10 working days of the hearing. Appeal of hearing officer decisions will be heard de novo  
669 by the [PLATTING BOARD UNDER PROCEDURES ADOPTED AND ESTABLISHED BY THE  
670 PLATTING BOARD] board of appeals.

671  
672 Section 17. Subsection E of FNSBC 17.28.040 is hereby deleted as follows:  
673 [E. ALL DECISIONS OF THE PLATTING BOARD UNDER THIS CHAPTER ARE FINAL  
674 UNLESS APPEALED TO THE PLANNING COMMISSION WITHIN SEVEN CALENDAR DAYS.  
675 ANY APPEAL IS SUBJECT TO CHAPTER 17.68 FNSBC.]

676  
677 Section 18. Chapter 17.68 FNSBC, Appeals, is hereby amended as follows:

678 Sections:  
679 17.68.010 Appeals from platting board[ TO PLANNING COMMISSION] decisions.  
680 [17.68.020 NOTICE OF APPEAL.  
681 17.68.030 DECISION ON APPEAL.  
682 17.68.040 APPEAL FROM PLANNING COMMISSION.]

683  
684 17.68.010 Appeals from platting board [TO PLANNING COMMISSION] decisions.  
685 Except for a final plat and action on a vacation application, any party or interested person  
686 who participated in the hearing before the platting board may appeal a decision of the  
687 platting board to [THE PLANNING COMMISSION] an appeals officer by [SUBMITTING]  
688 filing a written notice of appeal with the [PLATTING OFFICER] clerk's office within  
689 [SEVEN] 15 days of the [DATE] mailing of the notification of [THE] decision. Members of  
690 the public may appeal the platting board's application of this title's requirements  
691 concerning the dedication or realignment of trails pursuant to FNSBC 17.56.040.

692  
693 [17.68.020 NOTICE OF APPEAL.  
694 A. A NOTICE OF APPEAL SUBMITTED PURSUANT TO THIS TITLE MUST BE IN  
695 WRITING AND CONTAIN THE FOLLOWING INFORMATION:  
696 1. NAMES AND ADDRESSES OF THE APPELLANT(S);  
697 2. PLATTING SERIAL CASE FILE NUMBER OR OTHER IDENTIFICATION OF THE  
698 MATTER FROM WHICH THE APPEAL IS TAKEN;  
699 3. DATE AND IDENTITY OF THE SPECIFIC ACTION OR DECISION FROM WHICH THE  
700 APPEAL IS TAKEN;  
701 4. SPECIFIC GROUNDS OR REASONS FOR THE APPEAL, WITH REFERENCE TO ALL  
702 FNSBC TITLE 17 PROVISIONS UPON WHICH THE APPELLANT RELIES. APPEALS ARE

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703 LIMITED TO ALLEGATIONS OF ERROR ARISING FROM THE PLATTING BOARD'S  
704 INTERPRETATION, APPLICATION OR FAILURE TO APPLY THE REQUIREMENTS OF THIS  
705 TITLE AND UNLESS BASED ON CHANGED CIRCUMSTANCES OR NEW EVIDENCE WHICH  
706 WITH DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED FOR PRESENTATION TO  
707 THE PLATTING BOARD, MUST BE BASED ON FACTS OR ARGUMENTS RAISED BELOW.

708 B. A NOTICE OF APPEAL SHALL BE ACCOMPANIED BY THE APPROPRIATE FEE FOR  
709 APPEALS FROM THE PLATTING BOARD.

710 C. THIS FEE IS REFUNDABLE TO A SUCCESSFUL APPELLANT.

711 D. AN APPEAL MAY BE ACCEPTED BY THE PLANNING COMMISSION ONLY IF IT  
712 COMPLIES WITH THE REQUIREMENTS OF THIS CHAPTER.

713 E. AFTER ACCEPTANCE OF AN APPEAL, NOTICE OF THE APPEAL MUST BE SENT TO  
714 ALL PARTIES AND "INTERESTED PERSONS" WHO PARTICIPATED IN THE HEARING  
715 BEFORE THE PLATTING BOARD NOTIFYING THEM OF THE RIGHT TO REQUEST  
716 PARTICIPATION IN THE APPEAL ON OR BEFORE THE DEADLINE ESTABLISHED BY THE  
717 CHAIR OR BY THE RULES OF THE COMMISSION.

718

719 17.68.030 DECISION ON APPEAL.

720 THE DECISION OF THE PLANNING COMMISSION ON AN APPEAL UNDER THIS CHAPTER  
721 SHALL BE AS A RESOLUTION EXPRESSING SPECIFIC FINDINGS OF FACT AND REASONS  
722 WHY THE ACTION WAS TAKEN, INCLUDING REFERENCE SPECIFICALLY TO THE RECORD  
723 UPON WHICH ANY DISPUTED QUESTIONS OF FACT HAVE BEEN RESOLVED AND  
724 PROVISIONS OF CODE OR STATUTE WHICH SUPPORT SUCH FINDINGS.

725

726 17.68.040 APPEAL FROM PLANNING COMMISSION.

727 APPEALS FROM THE PLANNING COMMISSION WITH RESPECT TO THIS TITLE SHALL BE  
728 MADE TO THE SUPERIOR COURT.]

729

730 Section 19. Subsection I of FNSBC 18.92.110, SLA-Special landscape area,  
731 is hereby amended as follows:

732 I. Appeals. An applicant, owner or developer may appeal a decision of the  
733 administrative hearing officer to the [PLANNING COMMISSION] board of appeals by filing  
734 a notice of appeal with the [DEPARTMENT OF COMMUNITY PLANNING] clerk's office  
735 within 15 days of the date of mailing of the decision. The appeal shall be heard de novo  
736 by the [PLANNING COMMISSION] board. The appeal shall be accompanied by a copy of  
737 the submitted landscape design. The [COMMISSION'S] board's decision may be appealed  
738 to the superior court in accordance with the rules of appellate procedure.

739

740 Section 20. FNSBC 18.104.050, Procedures for conditional uses, is hereby  
741 amended as follows:

742 A. Generally. The development and execution of this title is based upon the division  
743 of the borough into districts. It is recognized, however, that there are conditional uses  
744 which, because of their unique character and special and unusual impact upon the use

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745 of adjacent property, cannot be properly classified in any particular district or districts  
746 without consideration, in each case, of the impact of those uses upon adjacent property  
747 and upon the public need for the particular use in a particular location. Conditional uses  
748 are those operated by a public agency or public utility or uses traditionally associated  
749 with the public interest, or uses entirely private in nature but of such a character that  
750 their operation may give rise to unique problems with respect to their impact upon  
751 adjacent property or public facilities.

752 B. Application for a Conditional Use. An applicant for a conditional use shall complete  
753 and submit the approved application form in accordance with the procedures established  
754 herein. The applicant shall be the owner of the property described on the application, the  
755 contract purchaser of said property, the holder of an option to purchase said property, or  
756 such persons that possess a substantial proprietary interest in the property being  
757 considered. The written consent of the owner, or an authorized representative having  
758 power of attorney, shall accompany all applications. The written consent of a holder of a  
759 security interest in the property does not need to be obtained. The application shall also  
760 include the following information:

- 761 1. The legal and common description of the property to be considered for a  
762 conditional use;
- 763 2. The conditional use requested and the reasons for requesting it;
- 764 3. The property's present zoning classification;
- 765 4. A site plan showing the subject property and its dimensions;
- 766 5. The use, location, size and height of all existing and proposed buildings and  
767 structures on the subject property;
- 768 6. Where applicable, the location of all existing and proposed curb cuts,  
769 driveways, off-street parking spaces and loading areas, traffic circulation patterns, street  
770 and right-of-way width, sidewalks, landscaping, screening, open space areas, signage,  
771 lighting and other related matters.

772 C. Hearing and Decision by the Planning Commission. The planning commission shall  
773 review, hear and decide whether or not to approve a request for a conditional use. The  
774 planning commission shall also consider and adopt findings in each of the following:

- 775 1. Whether or not the proposed conditional use conforms to the intent and  
776 purpose of this title and of other ordinances and state statutes;
- 777 2. Whether or not there are adequate existing sewage capacities,  
778 transportation facilities, energy and water supplies, and other public services to serve the  
779 proposed conditional use;
- 780 3. Whether or not the proposed conditional use will protect the public health,  
781 safety and welfare.

782 The planning commission may approve or deny a conditional use request or may approve  
783 a conditional use request with conditions to ensure the protection of the public health,  
784 safety and welfare. Such conditions may relate to any, or more, of the following: traffic  
785 flow and access requirements, lighting, pedestrian movements, time limits for  
786 commencing or ceasing use.

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787 D. Application to Amend a Conditional Use. An owner of a property for which a  
788 conditional use has been permitted, the contract purchaser of said property, the holder  
789 of an option to purchase said property, or such persons that possess a substantial  
790 proprietary interest in said property may apply for amendment of the conditional use  
791 relating to said property. An application for amendment of a conditional use shall be  
792 processed in the same manner as an application for a conditional use and shall be  
793 governed by the procedures set out in this chapter.

794 E. Application to Amend Conditional Use for a Planned Unit Development. A  
795 conditional use for a planned unit development granted under this or a former title may  
796 be amended as provided for in subsection (D) of this section.

797 F. Revocation of Conditional Use Permit.

798 1. After a mandatory written notification to the permittee and, if feasible, an  
799 opportunity to comply with the terms of the conditional use permit within the time frame  
800 set at the discretion of the code enforcement officer, the planning [COMMISSION]  
801 director may conduct an administrative hearing and revoke a conditional use permit upon  
802 a finding of:

803 a. A material change in the conditional use without an amendment; or  
804 b. Material noncompliance with the conditions prescribed upon issuance  
805 of the conditional use permit; or  
806 c. An error, misstatement, or misrepresentation of a material fact by  
807 the permittee as to the nature of the conditional use to be conducted.

808 2. Written notice setting forth the specific grounds for the proposed revocation  
809 and the time set for hearing before the planning [COMMISSION] director must be mailed  
810 or delivered to the permittee at least 30 days prior to the hearing. Publication of notice  
811 and mailing of notice procedures applicable to the granting of a conditional use shall  
812 apply to a revocation action.

813 G. Revocation Effect. Unless otherwise ordered, the permittee or owner shall have up  
814 to 30 days after the decision of the planning [COMMISSION] director [OR THE  
815 COMPLETION OF ANY APPEAL] to cease the conditional use that has been revoked. The  
816 permittee shall be responsible for any and all remediation of the property subject to the  
817 conditional use permit as may be ordered by the [PLANNING COMMISSION OR ON  
818 APPEAL] director. A decision by the planning director concerning revocation of a permit  
819 may be appealed to the board of appeals by filing a notice of appeal with the clerk's office  
820 within 15 days after the final decision was mailed. Failure to timely cease the conditional  
821 use shall be a violation.

822  
823 Section 21. FNSBC 18.104.060(D), Procedures for variances, is hereby  
824 amended as follows:

825 D. Administrative Approval of Yard Setback Variance.

826 1. Notwithstanding any requirements in this chapter to the contrary, if a yard  
827 setback variance is being requested and the property meets the following requirements,

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828 the variance may be heard by the planning director or designee, as hearing officer, at an  
829 administrative hearing:

830 a. The relevant area of the building for which the setback variance is  
831 requested was built prior to April 25, 1988, or the setback violation existed when the  
832 property was purchased by the current owner prior to July 21, 2010;

833 b. The setback variance request is for 50 percent or less of the yard  
834 requirement;

835 c. The setback variance request meets the state requirements set forth  
836 in AS 29.40; and

837 d. The setback variance will not be injurious to the health, safety or  
838 welfare of the neighborhood.

839 2. Within five working days after the administrative yard setback variance  
840 application deadline, one of the following actions shall be taken by the community  
841 planning department:

842 a. Accept the application for a review and action by the hearing officer;

843 b. Return the application if it is incomplete;

844 c. Schedule the application for a planning commission hearing if it is  
845 determined that a more comprehensive review is needed.

846 3. The hearing officer shall make the final decision within five working days of  
847 the hearing. If, as a result of the hearing, the hearing officer determines that conditions  
848 exist that may adversely affect the public health, safety or welfare, traffic or parking, or  
849 otherwise may necessitate a more comprehensive review by the planning commission,  
850 the hearing officer may forward the application to the planning commission in lieu of a  
851 decision. The requested variance shall be heard before the planning commission without  
852 an additional fee.

853 4. An administrative yard setback variance decision by the planning  
854 director or designee may be appealed by any aggrieved person, as defined in FNSBC  
855 18.104.090(A)(4), to the [PLANNING COMMISSION] board of appeals by filing a notice  
856 of appeal with the [COMMUNITY PLANNING DEPARTMENT] clerk's office within 15 days  
857 after the final decision was mailed. The appeal shall be heard de novo by the [PLANNING  
858 COMMISSION] board of appeals. The [PLANNING COMMISSION] board of appeals'  
859 decision may be appealed by a party to the [BOARD OF ADJUSTMENT] superior court.

860  
861 Section 22. FNSBC 18.104.090, Appeals, is hereby amended as follows:

862 [A. INITIATION OF APPEAL.] Decisions may be appealed to [THE BOARD OF  
863 ADJUSTMENT OR A HEARING OFFICER] an appeals officer by:

864 1. An applicant for a conditional use or variance;

865 2. The permittee or owner of land for which a conditional use has been  
866 revoked;

867 3. Any governmental agency or unit;

868 4. Any person aggrieved by a decision or determination made by the director  
869 of the department of community planning in the enforcement of this title, or by a decision

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Text to be *deleted* is [BRACKETED, CAPITALIZED]

870 of the planning commission concerning a request for conditional use or variance. To be  
871 considered a "person aggrieved," the person must qualify as an interested person and if  
872 a quasi-judicial hearing was held must have participated in the hearing as a party or  
873 interested person. A request for variance from the terms of the land use regulations may  
874 be appealed when literal enforcement would deprive a property owner of rights commonly  
875 enjoyed by other properties in the district.

876  
877 Section 23. FNSBC 18.108.030(C), Affirmative recognition of grandfather  
878 rights, is hereby amended as follows:

879 C. Within 15 days of the hearing the department shall issue an administrative  
880 determination of the grandfather rights. If no hearing is required the administrative  
881 determination shall be issued within 10 working days of the application. Administrative  
882 determinations granting structural-related grandfather rights without a hearing must be  
883 mailed to the applicant and owners of nearby lots or land as set forth in FNSBC  
884 18.104.010(C)(2). Administrative determinations may be appealed within 15 days of the  
885 date the determination was mailed by filing a notice of appeal with the clerk's office. The  
886 appeal shall be heard de novo by the [PLANNING COMMISSION]board of appeals. The  
887 [PLANNING COMMISSION]board of appeals shall uphold or reverse the determination  
888 and adopt specific findings of fact after considering the oral and written statements of  
889 the applicant, interested persons, and the department of community planning. This  
890 decision is appealable to the [BOARD OF ADJUSTMENT]superior court.

891  
892 Section 24. FNSBC 18.116.040(C), Affirmative recognition of amnesty  
893 relief, is hereby amended as follows:

894 C. Within 15 days of the hearing, the department shall issue an administrative  
895 determination regarding the affirmative recognition of amnesty relief. If no hearing is  
896 required, the administrative determination shall be issued within 10 working days of the  
897 application. The applicant or any aggrieved person, as defined by FNSBC  
898 18.104.090(A)(4), may appeal to the [PLANNING COMMISSION]board of appeals by filing  
899 a notice of appeal with the [COMMUNITY PLANNING DEPARTMENT] clerk's office within  
900 15 days after the department's determination was mailed. The appeal shall be heard de  
901 novo by the [PLANNING COMMISSION]board of appeals. The [PLANNING  
902 COMMISSION]board of appeals shall uphold or reverse the determination and adopt  
903 specific findings of fact after considering the oral and written statements of the applicant,  
904 interested persons, and the department of community planning. This decision is  
905 appealable to the [BOARD OF ADJUSTMENT]superior court.

906  
907 Section 25. FNSBC 22.20.010(D), Dangerous animals, is hereby amended  
908 as follows:

909 D. Any owner aggrieved by the determination and decision of animal control may  
910 appeal to the [ANIMAL CONTROL COMMISSION]board of appeals [PURSUANT TO  
911 CHAPTER 4.16 FNSBC].

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912  
913 Section 26. Effective Date.This ordinance shall be effective at 5:00 p.m. on  
914 January 1, 2021.

915  
916 ADOPTED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

917  
918 *[DEFEATED]*

919  
920 \_\_\_\_\_  
921 Mindy O’Neall  
922 Presiding Officer

923 ATTEST:

924  
925  
926 *[DEFEATED]*  
927 \_\_\_\_\_

928 April Trickey, CMC  
929 Borough Clerk

930  
931 Yeses: None  
932 Noes: Tomaszewski, Cooper, Williams, Sanford, Wilson, Lyke, Cash, Lojewski, O’Neall

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Text to be *added* is underlined  
Text to be *deleted* is [BRACKETED, CAPITALIZED]