

TETON COUNTY
BOARD OF COUNTY COMMISSIONERS

RULES FOR CONTESTED CASE
PRACTICE AND PROCEDURE

**Adopted February 4, 2003
Pursuant to the
Administrative Procedures Act
(APA)**

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

Section 1: Authority

These rules of practice and procedure are promulgated by authority of W.S. §16-3-102 (Lexis 2001).

Section 2: Purpose

These rules are intended to set forth clear and comprehensive procedures for the conduct of contested cases pursuant to the Wyoming Administrative Procedure Act W.S. §16-3-101 through 115 (Lexis 2001).

Section 3: Citation

Citation to those rules shall be “Rules for Contested Case Practice and Procedure Before the Teton County Board of County Commissioners.”

Section 4: Applicability

These rules shall apply to the conduct of contested cases before the Teton County Board of County Commissioners; and any joint power board or other governmental entity associated with Teton County that adopts these rules as their own in compliance with the Administrative Procedures Act.

Section 5: Construction

These rules are to be liberally construed to assure the unbiased, fair, expeditious and impartial conduct of contested case proceedings before the Board of County Commissioners. In the absence of rule, the presiding officer may proceed in any manner consistent with the intent of these rules.

Section 6: General Course at Contested Case Proceedings

Unless otherwise provided by law, proceedings before the Board of County Commissioners are governed by the Contested Case Provisions of the Wyoming Administrative Procedure Act and, to the extent their application is not inconsistent with the particular case proceeding, the Wyoming Rules of Civil Procedure may be looked to for guidance.

Section 7: Definitions

As used in these rules:

A) Board

Means the Teton County Board of County Commissioners.

B) Clerk

Means the County Clerk of Teton County.

C) Commission

Means the Teton County Board of County Commissioners.

D) Commissioner

Means a member of the Teton County Board of County Commissioners.

E) Contest

Means the adjudicative proceedings or trial type hearings required in contested cases, in which the petitioner therein shall be known as the Contestant.

F) County

Means Teton County, Wyoming.

G) Contested Case

Means a proceeding in which legal rights, duties or privileges of a party are required by law; to be determined by the Teton County Board of County Commissioners after an opportunity for a hearing.

H) License

Includes the whole or part of any permit, certificate, approval, registration, charter, or similar form of permission required by law.

I) Licensing

Includes the process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

J) Party

Means each person named or admitted as a party; or properly seeking and entitled as of right to be admitted as a party.

K) Party in Interest

Means the person whose legal rights, duties or privileges are required to be determined by the Board at a contest or hearing.

L) Person

Means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character.

M) Presiding Officer

An attorney designated by the Board to preside over the contested case in accordance with Chapter 2, Section 7 of these rules.

N) Registrar of Rules

Means the County Clerk of Teton County.

Section 8: Severability

If any portion of these rules is found to be invalid or unenforceable, the remainder shall remain in effect.

Section 9: Effective Date

The rules shall become effective March 1, 2003.

CHAPTER 2 CONTESTED CASE PROCEEDINGS

Section 1: Filing and Service of Papers

- A.) In all contested cases, the parties shall file all original documents, pleadings and motions with the County Clerk, with true and complete copies of the particular document, pleading or motion, properly served on all other parties. If a presiding officer is appointed by the Board, true and complete copies of the particular document, pleading or motion, shall be served upon the presiding officer.
- B.) If a party is represented, service of a contested case documents, pleadings and motions, shall be made upon that party's attorney.
- C.) Filing, after the initial service of the Petition which is governed by subsection (D) below, may be made either by hand delivery, by mail transmittal to the last known address provided to the County Clerk, upon the Contestant's Petition or the Contestee's Answer, or by facsimile transmission. An original copy shall be filed with the County Clerk within three (3) days of sending a facsimile transmission to the County Clerk. An original copy shall be sent to all parties within three (3) days of sending a facsimile transmission to a party.
- D.) Any such person desiring to institute a hearing, must file a petition, in writing, with the County Clerk setting forth the name and address of parties; and a statement in ordinary and concise language, of the facts upon which the petition is based, including, whenever applicable, particular reference to the statute, regulation, rule, or order upon which the petition is based, and any instruments or documents at issue and involved in the allegations set forth. The Petition shall be served by personal service according to Wyoming Rules of Civil Procedure Rule 4, or by certified mail, return receipt requested. Proof of service must be filed with the County Clerk.
- E.) The Contestee shall be allowed twenty (20) days from the date of service to file with the County Clerk an answer or other pleading.

- F.) When the Answer contains new matters, the Contestant shall have fifteen (15) days from the date of receiving the Answer to file a reply to such new matter, or otherwise plead.
- G.) In the event of the failure of the Contestee to answer or otherwise plead within the twenty (20) day time period, and provided the foregoing rules as to service have been complied with, the Contestee shall be considered in default and the allegations of the petition of the contest taken as true, and the contest will be brought before the Board for consideration and appropriate action.
- H.) Any case may be finally disposed of by stipulation, agreed settlement, consent order or default of the parties, approved by the Board. An appropriate order accordingly shall be entered in the case record.

Section 2: Docketing

The Clerk shall assign a docket number to each contested case. All papers, pleadings, motions and orders filed thereafter shall be signed and contain:

- (i) Conspicuous reference to the assigned docket number
- (ii) A caption setting forth the title of the contested case proceeding and a brief designation describing the document filed, and
- (ii) The name, address, telephone number of the person who prepared the document.

Section 3: Form of Pleadings

The form of pleadings shall be substantially as follows, in which the petitioning or initiating party shall be known as the Contestant and the responding party shall be known as the Contestee:

BEFORE THE BOARD OF COUNTY COMMISSIONERS
STATE OF WYOMING, COUNTY OF TETON

JOHN DOE,) Docket No. _____
)
Contestant,)
)
vs.)
) PETITION
TETON COUNTY PLANNING DEPT.,) (ANSWER, MOTION, ETC.)
)
Contestee.)

Contestant Status:

- 1.
- 2.
- 3.
4. etc.....

(Signature)

Name of Contestant

(Contestee)

(Signature)

Attorney for Contestant (Contestee)

Address

Phone

Section 4: Scheduling

Upon docketing, the Board shall take appropriate action towards ultimate decision, which may include but is not limited to scheduling informal conferences, pretrial hearings, motion hearings, settlement conferences, and the Contested Case Evidentiary Hearing. At a time prior to the Contested Case Evidentiary Hearing, the Board or presiding officer may direct the parties to appear and consider the simplification of issues, the necessity or desirability of amending the pleadings, the possibility of obtaining admissions of fact and of documents, and such other matters as may aid in the disposition of the case. Such conference shall be conducted informally.

Section 5: Continuances and Extensions of Time

- A.) A request for continuance of any scheduled hearing shall be in writing, shall state the reasons therefore and shall be filed and served on all parties. Continuances will be sparingly granted, only upon a substantial showing of good cause, or when necessary to assure fairness and otherwise avoid manifest injustice. Continuances will not ordinarily be granted ex parte. Opposing counsel or the opposing party; if not represented, shall be contacted before a request for continuance is submitted to the Board.
- B.) A request for an extension of time, shall be filed and served on all parties prior to the expiration of the applicable time period. An extension of time will be granted only upon a showing of good cause, or when necessary to avoid manifest injustice.
- C.) The presiding officer or Board may relax the requirement for granting continuances and extensions of time, so long as no party objects.

Section 6: Computation of Time

The computation of any period of time prescribed or allowed by these rules or any applicable statutes shall be in accordance with the provisions of Rule 6(a) and (d) Wyoming Rules of Civil Procedure. (See appendix hereto.)

Section 7: Designation and Authority of Presiding Officer

- A.) A presiding officer may be designated by the Board to preside over the contested case and will provide the Board with findings of fact and conclusions of law. In resolving the contested case, the presiding officer shall have that authority provided by law, including but not limited to regulating the course of the contested case proceeding. The Board may request that the appointed presiding officer provide a recommended decision if the Board so chooses. The Board has three options for conducting the contested case proceeding: 1) hear the case en banc with the chair of the Board conducting the hearing, 2) the Board appoints a presiding officer to conduct the hearing with the Board present en banc to hear the evidence, or 3) the Board appoints a presiding officer to conduct the hearing independently of the Board's presence and the Board makes their final decision based upon the findings of fact, conclusions of law, transcripts and exhibits of the hearing; and a recommended decision if the Board so directs.
- B.) The presiding officer may, at any time a contested case is pending, recuse himself from presiding over the contested case by filing written notice of recusal with the Clerk and serving all parties. From and after the date the written notice of recusal is entered, the presiding officer shall not participate in the resolution of the contested case.
- C.) Upon motion of any party, recusal of the presiding officer shall be for cause as provided in Rule 40.1(b)(2) Wyoming Rules of Civil Procedure. (See appendix hereto.)
- D.) The appointed presiding officer shall be an attorney in good standing with the Wyoming State Bar. Attorneys who do not regularly practice in Teton County shall be favored.

Section 8: Ex Parte Communication

A party or that party's attorney shall not communicate, directly or indirectly, in connection with any issue of fact or law with the presiding officer or Board concerning any pending case, except upon notice and opportunity for all parties to participate, should ex parte communication occur, the presiding officer or Board shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party an opportunity to respond.

Section 9: Discovery

Unless otherwise prohibited by law, discovery shall be available to the parties in accordance with the provisions of Rule 26, 28 through 37 [excepting Rule 37(b)(1) and 37(b)(2)(D)] of the Wyoming Rules of Civil Procedure (see appendix hereto). Discovery requests, answers and deposition notices are not to be sent to the presiding officer or Board.

Section 10: Subpoenas

Any party may request the presiding officer or Board to issue a subpoena so as to compel the attendance of a witness. Request for issuance of a subpoena shall be accompanied by a complete subpoena which should substantially conform to the form attached as an appendix to these rules. Upon receipt of a subpoena request, the presiding officer or Board shall issue the subpoena and return the subpoena to the requesting party for the purpose of service.

Section 11: Expedited Contested Case

- A.) Upon request of the parties, made prior to the date set for an evidentiary hearing, any case may be heard as an expedited case.
- B.) Expedited cases will be decided upon by written argument, evidence and stipulations submitted by parties. Oral arguments may be permitted upon the request of any party.
- C.) The presiding officer or Board, at their discretion, may require an evidentiary hearing in any case in which it appears that facts material to decision in the case cannot be properly determined without an evidentiary hearing.

Section 12: Limited assignment for alternative dispute Resolution

The presiding officer or Board may, or at the request of all the parties shall assign the contested case to a qualified person on limited assignment for the purpose of invoking non-binding alternative dispute resolution methods, including settlement conference or mediation may be conducted in accordance with the procedures prescribed by the person conducting the settlement conference or mediation. Rule 40 Wyoming Rules of Civil Procedure, (see appendix hereto) shall not control alternative dispute resolution proceedings under this section, but may be used for guidance.

Section 13: Attorneys

The filing of a pleading by an attorney constitutes his or her appearance for the party for whom the pleading is filed. The Board or presiding officer must approve of any withdrawal of counsel. Any person appearing before the Board or presiding officer in a representative capacity, shall be precluded from examining or cross-examining any witness, unless such person shall be an attorney licensed to practice law in the State of Wyoming, or a non-resident attorney associated with a Wyoming attorney. This rule shall not be construed to prohibit any person from representing him or herself in any hearing before the County.

CHAPTER 3 EVIDENTIARY HEARING AND DECISION

Section 1: Evidence

- A.) Generally the taking of evidence at the Evidentiary Contested Case Hearing shall be governed by W.S. §16-3-108 (Lexis 2001), and case law there under.
- B.) Evidence may be received in written form, yet if such written evidence would not be admissible under the Wyoming Rules of Evidence, all parties should be afforded a reasonable opportunity to confront and cross-examine the author of the written evidence. Generally, such a reasonable opportunity is afforded by giving all parties a written notice of the intent to introduce and rely upon the written evidence and the notice given a reasonable period of time prior to the scheduled evidentiary hearing.
- C.) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- D.) Effect shall be given to the rules of privilege as recognized by Wyoming Law.
- E.) Administrative notice may be taken of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.

Section 2: Record of Proceedings

- A.) The record must include:
 - (i) All formal and informal notices, pleadings, motions, and intermediate rulings.
 - (ii) Evidence received or considered including matters officially noticed.
 - (iii) Questions and offers of proof, objections and rulings thereon.
 - (iv) Any proposed findings and exceptions thereto.
 - (v) Any findings of fact, conclusions of law, recommended decisions, reports, opinions, or orders by the presiding officer or Board.

- B.) The Evidentiary Hearing proceeding including all testimony shall be reported verbatim stenographically. All other preliminary hearings may be tape recorded at a party's request. Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof.

Section 3: Briefs

If a party desires to submit a written brief, a request shall be made to the presiding officer or Board. If approved, a date shall be set by which such brief is due. Briefs should set forth the factual and legal position of the party and be filed and served on all parties.

Section 4: Telephone Conferences

- A.) At the discretion of the presiding officer or Board, telephone conference calls may be used to conduct any hearing or other proceeding. At the discretion of the presiding officer or Board, parties or their witnesses may be allowed to participate in hearings by telephone, videoconference, or other electronic means, so long as each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding. All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.
- B.) Documentary evidence must be mailed by the proponents to all parties and the presiding officer or Board at least five (5) days before the hearing.
- C.) A failure to appear and grounds for default may be concluded, if any of the following conditions exist for more than ten (10) minutes after scheduled time for hearing: a failure to free the telephone for a hearing, or a failure to be ready to proceed with hearing as scheduled.

Section 5: Order of Procedure

The following order of procedure shall be followed:

- (i) The presiding officer or board chair, if a presiding officer has not been appointed, shall announce that the hearing is open and call by docket number and title the case to be heard. The presiding officer or board chair shall ask if the parties are ready to proceed and will allow parties an opportunity to deal with any preliminary matters;

- (ii) The presiding officer or board chair shall administer the oath to all witnesses who will present testimony. All persons testifying shall stand and be administered the following oath: "Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in this hearing?";
- (iii) The opening statement will be made by the Contestant first, then by the Contestee;
- (iv) Evidence will be presented by the contestant first, then by the Contestee. Contestant may then offer rebuttal evidence. Parties may each exercise the right to cross-examine. Contestants offered exhibits will be marked by letters of the alphabet. Contestees offered exhibits will be marked by numbers;
- (v) The presiding officer or the Board may examine witnesses at the close of either parties' direct or cross examination;
- (vi) No testimony shall be received by the presiding officer or Board unless given under oath/affirmation administered by the presiding officer or board chair;
- (vii) Closing statements will be made by the Contestant first, then by the Contestee, and then the Contestant will have the final response.
- (viii) The presiding officer or Board may limit the time for opening and closing statements;
- (ix) The presiding officer or Board may recess the proceeding as appropriate;
- (x) After all parties have had an opportunity to be heard, the presiding officer or Board may excuse all witnesses and adjourn the hearing;
- (xi) The hearing may be reopened only upon a motion by a party to the proceeding on a showing of good cause.

Section 6: Recommended Decision

In those instances where the Board has requested a recommended decision from an appointed presiding officer, the presiding officer shall file the recommended decision with the County Clerk and serve copies of the recommended decision on the Board and on all parties.

Section 7: Final Decision

- A.) Any final decision entered shall be in writing, filed with the County Clerk and served upon all the parties.
- B.) The final decision shall include findings of fact and conclusions of law on material issues. Final decisions may be in either order or decision letter form. When the Board requests that counsel draft a proposed final order, counsel may forward the original to the Board, concurrently serving copies of the proposed order on all parties along with a notice that any objections to the form of the proposed order must be made within ten (10) days.
- C.) Within ten (10) days of the date of the final decision, any party may file a motion for reconsideration or rehearing for any of the reasons identified in Rule 59(a) Wyoming Rules of Civil Procedure (see appendix hereto). The Board shall issue a written order in response to the motion.
- D.) Clerical mistakes in final decisions or other parts of the record may be corrected by the Board at any time, of its own initiative, or on the motion of any party and upon notice to all parties. During the pendency of judicial review, such mistakes may be corrected only with leave of the court having jurisdiction.

CHAPTER 4 JUDICIAL REVIEW

Section 1: Judicial Review

Unless otherwise provided by law, any party aggrieved or adversely affected by a final decision in a contested case is entitled to judicial review in the appropriate district court pursuant to W.S. §16-3-114 (Lexis 2001) and Rule 12, Wyoming Rules of Appellate Procedure.