

(II) THE CHANGE IS IN THE PUBLIC INTEREST AND PROVIDES A POSITIVE BENEFIT TO THE COMMUNITY; AND

(III) LITERAL ENFORCEMENT OF THE ZONING CLASSIFICATION WOULD DEPRIVE THE OWNER OF ALL REASONABLE ECONOMICALLY VIABLE USE OF THE PROPERTY.

4.06.

(a) (3) A HEARING EXAMINER SHALL RECUSE HIMSELF OR HERSELF FROM PARTICIPATING IN A MATTER IN WHICH THE HEARING EXAMINER MAY HAVE A CONFLICT OF INTEREST OR THE APPEARANCE OF A CONFLICT OF INTEREST.

4.07.

(a) (2) A board of appeals consists of [either] AT LEAST three [or five] members.

(8) A LOCAL LEGISLATIVE BODY MAY NOT SERVE AS A BOARD OF APPEALS.

(9) A MEMBER OF THE BOARD OF APPEALS SHALL RECUSE HIMSELF OR HERSELF FROM PARTICIPATING IN A MATTER IN WHICH THE MEMBER MAY HAVE A CONFLICT OF INTEREST OR AN APPEARANCE OF A CONFLICT OF INTEREST.

(C) (6) IF A RECORDING OR A TRANSCRIPT OF A RECORDING IS NOT PREPARED IN THE NORMAL COURSE OF THE BOARD'S PROCEEDINGS, THE PARTY WHO REQUESTS A COPY OF THE RECORDING OR ITS TRANSCRIPT SHALL PAY THE COST OF PREPARING THE RECORDING OR TRANSCRIPT.

4.08.

(b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN APPEAL TO A CIRCUIT COURT FROM THE DECISION OF A BOARD OF APPEALS OR A HEARING EXAMINER UNDER THIS SECTION SHALL BE DECIDED BY THE CIRCUIT COURT ON THE RECORD TRANSMITTED BY THE BOARD OF APPEALS OR HEARING EXAMINER, AND MAY NOT BE HEARD DE NOVO.

(2) If, after a hearing, the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take the required evidence and report the evidence to the court with the referee's findings of fact and conclusions of law.

[(2)] (3) The referee's evidence, findings, and conclusions shall constitute a part of the proceedings on which the determination of the court shall be made.

5.03.

(a) (1) Before exercising the powers granted in § 5.02 of this subtitle, the planning commission shall [prepare] RECOMMEND regulations TO THE LOCAL LEGISLATIVE BODY governing the subdivision of land within the local jurisdiction, FOR THE HEALTH, SAFETY, WELFARE, AND COMMON INTEREST OF THE CITIZENS OF THE LOCAL JURISDICTION.