

OCT 19 1995
lpm 0-3

ORDINANCE 021-95

ESTABLISHMENT OF COCHISE COUNTY HEARING OFFICER
RULES OF PROCEDURE AND CIVIL PENALTIES FOR ZONING
AND BUILDING CODE VIOLATIONS AND ESTABLISHMENT OF
A HEARING OFFICER FOR APPEALS OF ADMINISTRATIVELY
IMPOSED DEDICATION OR EXACTION REQUIREMENTS IN
ACCORDANCE WITH A.R.S. §11-810, AND ESTABLISHING
POLICIES AND RULES OF PROCEDURE FOR SUCH APPEALS.

WHEREAS, the Cochise County Board of Supervisors has authorized the appointment of a hearing officer and establishment of civil penalties for zoning violations by adoption of Docket R-86-07, Resolution 86-86, by amending §2304 of the Cochise County Zoning Regulations;

WHEREAS, the Cochise County Board of Supervisors is required to establish Rules of Procedure for the Cochise County Hearing Officer to use in the conduct of hearings and imposition of civil penalties for zoning and building code violations;

WHEREAS, the Cochise County Board of Supervisors is authorized to establish civil penalties for zoning and building code violations pursuant to A.R.S. §11-808 in the same manner as other zoning amendments;

WHEREAS, that section calls for the Cochise County Board of Supervisors to establish the amount of civil penalties by a separate resolution;

WHEREAS, the Cochise County Board of Supervisors adopted Resolution 87-48 on June 8, 1987;

WHEREAS, the State of Arizona has recently enacted A.R.S. §11-810, effective July 13, 1995, mandating the adoption of ordinances, rules, and procedures necessary to respond to, and comply with, limitations placed on governments' actions regarding the regulation of real property as articulated by certain United States Supreme Court cases;

WHEREAS, A.R.S. §11-810 requires Cochise County to establish procedures for allowing appeals of Dedication or Exaction requirements, which an administrative agency or official of Cochise County has placed, as a condition of approval, on the use, improvement, or development of real property;

WHEREAS, Ordinance 021-95 meets the requirements of A.R.S. §11-810 by establishing Dedication or Exaction Appeals Rules of Procedure in accordance with the specific mandates set forth in that statute;

WHEREAS, the Planning and Zoning Commission recommended favorable approval of Ordinance 021-95 via Docket R-95-03 pursuant to a public hearing held on October 11, 1995;

WHEREAS, a public hearing has been held by the Board of Supervisors on October 16, 1995, on the above docket;

NOW, THEREFORE, BE IT RESOLVED that the Rules of Procedure, attached hereto as Exhibits A and B and made a part hereof, are adopted pursuant to A.R.S. §11-808, §11-810 and Cochise County Zoning Regulations §2304.

BE IT FURTHER RESOLVED that the Cochise County Board of Supervisors hereby establishes the following amounts of civil penalties for zoning and building code violations:

951026005

951026005
COCHISE COUNTY BOARD OF SUPV
1415 W MELODY LANE BLDG B
BISBEE AZ 85603

Upon a finding of responsibility for a violation of the zoning and/or building code, the penalty shall be set by the hearing officer and shall be not less than Fifty Dollars (\$50.00) nor more than the maximum allowed by the A.R.S. for a Class 2 Misdemeanor.

The hearing officer shall establish a fair and reasonable time for the correction of the violations. The hearing officer shall establish as part of the Order that, should the corrections not be made within the time frame prescribed, the fine shall automatically increase to the maximum allowed by the A.R.S. for a Class 2 Misdemeanor and that an accruing penalty of up to Fifty Dollars (\$50.00) per day shall be imposed as of the date set for compliance with the Order and continuing until such time as the zoning or building code violation is abated, corrected or removed.


BE IT FURTHER RESOLVED, that Resolution 87-48, which was previously adopted, is hereby rescinded.

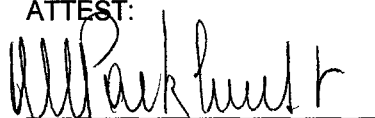
BE IT FURTHER RESOLVED, that the Hearing Officer for Dedications and Exactions is hereby established, and the hearing officer appointed by the Cochise County Board of Supervisors pursuant to Cochise County Zoning Regulation §2304 is hereby authorized to act as a Dedications and Exactions Hearing Officer.

BE IT FURTHER RESOLVED, that the Rules of Procedure for appeals of administratively imposed dedication or exaction requirements and Cochise County's Policy and Notice Statements on Appeals of Dedication and Exaction Requirements, which are attached to this Ordinance as Exhibits B and C and incorporated herein by this reference, are hereby adopted.

BE IT FURTHER RESOLVED, that if any provision of this Ordinance, or the application thereof to any person or circumstances is invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given meaning without the invalid provision.

APPROVED AND ADOPTED THIS 16th day of October, 1995.


Leslie E. Thompson, Chairman
Cochise County Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

APPROVED AS TO FORM:

Deputy County Attorney

951026005



FEE # 951026005
OFFICIAL RECORDS
COCHISE COUNTY
DATE 10/19/95 HOUR 1

REQUEST OF
COCHISE COUNTY BOARD OF SUPV
CHRISTINE RHODES-RECORDER
FEE : PAGES : 20

EXHIBIT "A"

**COCHISE COUNTY HEARING OFFICER
RULES OF PROCEDURE ON
ZONING AND BUILDING CODE VIOLATIONS**

951026005

TABLE OF CONTENTS

RULE 1	SCOPE.....	1
RULE 2	DEFINITIONS.....	1
RULE 3	COMMENCEMENT OF ACTION.....	1
RULE 4	AMENDING THE COMPLAINT.....	2
RULE 4.1	VOLUNTARY DISMISSAL.....	2
RULE 5	NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE..	2
RULE 6	REPRESENTATION BY COUNTY.....	3
RULE 7	DISCOVERY.....	3
RULE 8	CONTINUANCE.....	3
RULE 9	QUESTIONING OF WITNESSES.....	3
RULE 10	RULES OF EVIDENCE.....	3
RULE 10.1	SUBPOENAS.....	4
RULE 11	WITNESSES.....	4
RULE 12	ORDER OF PROCEEDINGS.....	4
RULE 13	RECORD.....	4
RULE 14	DEFAULT BY COUNTY.....	4
RULE 15	FINDING OF RESPONSIBILITY.....	5
RULE 15.1	FAILURE TO COMPLY WITH ORDER.....	5
RULE 16	DEFAULT.....	5
RULE 17	NOTICE OF RIGHT TO APPEAL.....	5
RULE 18	SETTING ASIDE DEFAULT JUDGMENT.....	5
RULE 19	APPELLATE REVIEW.....	6
RULE 20	RECORD ON APPEAL.....	6
RULE 21	TRANSMISSION OF RECORD.....	6
RULE 22	APPELLATE MEMORANDA.....	7
RULE 23	NOTICE OF REVIEW.....	7
RULE 24	DISPOSITION OF THE BOARD OF SUPERVISORS.....	7
RULE 25	APPEAL TO THE SUPERIOR COURT.....	7

**COCHISE COUNTY HEARING OFFICER RULES OF PROCEDURE
ON ZONING AND BUILDING CODE VIOLATIONS**

RULE 1. SCOPE

These rules shall apply in all cases involving the adjudication of County Ordinance violations before the Cochise County Hearing Officer ("hearing officer") for which a civil penalty may be imposed pursuant to A.R.S. Section 11-808(D) and Cochise County Zoning Ordinance, Resolution No. 84-64, Section 2304 as amended, or may be hereafter amended.

RULE 2. DEFINITIONS

- (a) "BOARD" means the Cochise County Board of Supervisors.
- (b) "CHAIRMAN OF THE BOARD OF SUPERVISORS" means the chairman or, in the absence of the chairman, the person acting as chairman.
- (c) "CLERK" means the Clerk of the Cochise County Hearing Officer
- (d) "COMPLAINT" means Zoning Enforcement Complaint
- (e) "COUNSEL" means an attorney licensed to practice law in the State of Arizona.
- (f) "COUNTY" means Cochise County
- (g) "DESIGNATED REPRESENTATIVE" means a person over eighteen (18) years of age, other than an attorney, authorized in writing by the defendant to represent the defendant in proceedings before the hearing officer. The written authorization shall be in a form sufficient to satisfy the hearing officer that the person has in fact been authorized to act on defendant's behalf and the defendant understands and agrees to be bound by actions taken by the designated representative in proceedings before the hearing officer.
- (h) "PARTIES" means the defendant and the County
- (i) "ZONING INSPECTOR" means Cochise County Planning Director, a zoning inspector, deputy zoning inspector, or other representative of the Cochise Planning and Zoning Department designated by the Cochise County Planning Director.

RULE 3. COMMENCEMENT OF ACTION

- (a) Every action or proceeding brought before the hearing officer for a violation of a Cochise County Zoning Regulation shall be commenced by the filing of an Enforcement Complaint by the Zoning Inspector.

(b) The hearing officer shall schedule a date and time for the hearing at least thirty (30) days from the date of receipt of the Complaint from the Zoning Inspector. In special circumstances, the Zoning Inspector may request an expedited hearing date provided all personal service requirements have been met.

(c) The Zoning Inspector shall personally serve notice on the defendant at least five (5) days prior to the hearing.

(d) If the Zoning Inspector is unable to personally serve the notice, the notice may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure which provide for mailing a copy of the summons and of the complaint, by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment of receipt of summons and complaint, and a return envelope, postage prepaid, addressed to the sender. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service shall be made by publication in accordance with the requirements of this subpart. In the event that the Zoning Inspector is unable to serve the notice, the hearing officer shall re-schedule the hearing for a date and time sufficient to allow an alternative form of service.

RULE 4. AMENDING THE COMPLAINT

(a) The hearing officer may permit a Complaint to be amended at any time before judgment if no additional or different violation is charged and if substantial rights of the defendant are not thereby prejudiced.

(b) The Complaint may be amended to conform to the evidence adduced at the hearing if no additional or different violation is charged thereby and if substantial rights are not thereby prejudiced.

(c) All amendments to a Complaint relate back to the date the Complaint was issued.

RULE 4.1 VOLUNTARY DISMISSAL

The County may request, in writing, that the hearing officer dismiss a Complaint. All such requests shall be filed prior to the date of hearing. Any dismissal granted under this Rule shall be without prejudice.

RULE 5. Deleted

RULE 5. NOTICE OF COUNSEL OR OTHER DESIGNATED REPRESENTATIVE

The Zoning Inspector shall provide the defendant as part of the prior notice of hearing date, time, and place, written notice of his right to be represented by any

other designated representative.

RULE 6. REPRESENTATION BY COUNTY

The county attorney may present evidence on behalf of the Zoning Inspector.

RULE 7. DISCOVERY

At least one week prior to the hearing, both parties shall produce for inspection by the opposing party any prepared exhibits and written or recorded statements of any witness which may be offered at the hearing. Failure to comply with this Rule may result, at the hearing officer's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

RULE 8. CONTINUANCE

(a) The hearing officer may, upon any motion of any party or on his own motion, continue the hearing for a period not exceeding thirty (30) days, if it appears that the interests of justice so require.

(b) Absent extraordinary circumstances, no hearing shall be continued by the hearing officer without notice to both parties.

(c) The hearing officer shall notify both parties in writing of the new hearing date.

RULE 9. QUESTIONING OF WITNESSES

(a) All testimony shall be given under oath or affirmation.

(b) The hearing officer may, on his own motion, call and examine witnesses, including the defendant.

(c) No person may be examined at a hearing except by the hearing officer, the defendant, the defendant's attorney or a representative designated by the defendant, the zoning inspector, or the county attorney.

RULE 10. RULES OF EVIDENCE

The Arizona Rules of Evidence shall not apply before the hearing officer. Any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this Rule is to be construed as abrogating any statutory provision relating to privileged communications.

RULE 10.1 SUBPOENAS

(a) Either party may request the hearing officer or Clerk to issue subpoenas for the attendance of witnesses and/or production of documents pursuant to A.R.S. §12-2212. The subpoena shall state the title of the action and command each person to whom it is directed to give testimony at the place and time listed.

(b) A subpoena may be served by the sheriff, his deputies, or by any other person who is not a party and is not less than eighteen (18) years of age. At the time of service, witness fees of one (1) day plus mileage shall be paid to the witness.

RULE 11. WITNESSES

All witnesses for the County's case-in-chief, including the defendant, shall be required to testify prior to the defendant's presentation. A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.

RULE 12. ORDER OF PROCEEDINGS

The order of proceedings shall be as follows:

- (a) Testimony of County's witnesses
- (b) Testimony of defense witnesses
- (c) Testimony of County's rebuttal witnesses, if any.
- (d) Testimony of defense rebuttal witnesses, if any.
- (e) Argument of the parties or their counsel or designated representative, if permitted by the hearing officer.
- (f) Ruling by the hearing officer. The ruling shall include written findings, conclusions, and the opinion of the hearing officer.

RULE 13. RECORD

A record of the proceedings shall be made by audiotape. In addition, a record of the proceedings may be made by a court reporter, if provided by the defendant at the defendant's expense.

RULE 14. DEFAULT BY COUNTY

If no witness for the County, excluding the defendant, appears at the time set for the hearing, the hearing officer shall dismiss the Complaint unless the hearing officer, for good cause shown, continues the hearing to another date.

RULE 15. FINDING OF RESPONSIBILITY

If the defendant, after hearing, is found responsible for the zoning violation, the hearing officer shall enter judgment for the County and impose a civil sanction established by the Board of Supervisors, such sanction to be within the range authorized by the Board of Supervisors as may be appropriate.

RULE 15.1 FAILURE TO COMPLY WITH ORDER

If the defendant fails to comply with the order entered by the hearing officer and the defendant has failed to file an appeal of said order, then the County may file a legal proceeding with the Superior Court setting forth the facts relating to the defendant's non-compliance and request the Superior Court to enter an Order to Show Cause. At any hearing on an Order to Show Cause, the only issue before the Court is compliance with the order entered previously.

RULE 16. DEFAULT

(a) If the defendant fails to appear at the hearing as provided by these rules, the allegations of the Complaint shall be deemed admitted, and the hearing officer shall enter judgment for the County, and impose a civil sanction and report such judgment to the zoning inspector and the defendant.

(b) If it appears from the face of the Complaint that the defendant was in the active military service, no default judgment may be entered. In such case, the hearing officer may notify the defendant's commanding officer, if known, of the defendant's failure to appear.

RULE 17. NOTICE OF RIGHT TO APPEAL

Immediately following judgment and imposition of civil sanction after hearing, the hearing officer shall advise the defendant of his/her right to a review of the decision by the Board of Supervisors. He/she shall be informed that a right to review the decisions exists, the applicable time limit, and the location and manner of filing the request for review, and shall refer the defendant to these rules governing the review process by the Board of Supervisors.

RULE 18. SETTING ASIDE DEFAULT JUDGMENT

(a) For good cause shown, and upon terms the hearing officer deems just, the hearing officer may set aside a default judgment entered under Rule 16. A motion to set aside the judgment shall be made in writing within thirty (30) days after entry of judgment.

(b) At any time the hearing officer shall set aside a default judgment entered upon failure to appear if it appears to the hearing officer that the named defendant was not served a copy of the Complaint, or for any other reason where necessary to prevent manifest injustice.

RULE 19. APPELLATE REVIEW

A party dissatisfied with a final Order or Judgment of the hearing officer, including the Zoning Inspector, may request a review by the Board of Supervisors.

(a) The party requesting review shall file a written Notice of Request for Review with the Clerk of the Hearing Officer (or Hearing Officer if there is no Clerk) within ten (10) days after entry of the final Order of Judgment.

(b) The notice shall identify the Order or Judgment appealed from. It shall be signed by the appellant, his attorney, or his designated representative, and shall contain the names, addresses and telephone numbers of all parties and their attorneys or his designated representative.

(c) The original, plus one (1) copy of the Notice of Request for Review, shall be filed with the Clerk or Hearing Officer. The Hearing Officer shall serve the copy on the other party, their attorney or designated representative.

(d) If any of the parties files an appeal, opposing parties can submit a cross appeal within 10 days delineating any additional issues to be considered under the appeal.

RULE 20. RECORD ON APPEAL

The review shall be limited to the record of the proceedings before the hearing officer, and no new evidence may be introduced. The record of proceedings shall include all pleadings and orders in the hearing officer's file, all evidence admitted at the hearing, and the audiotape required by Rule 13.

If the Board of Supervisors determines that a transcript of the audiotape is necessary, a transcript shall be prepared at the appellant's expense. A trial de novo (new trial) is not permitted.

RULE 21. TRANSMISSION OF RECORD

(a) Upon receipt of the Notice of Request for Review, the hearing officer shall, within twenty (20) days, prepare and transmit the record to the Clerk of the Board of Supervisors.

(b) The parties may stipulate that the review may be on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing, filed with the hearing officer within ten (10) days after the Notice of Request for Review is filed.

(c) Upon transmission of the record, the hearing officer shall send notice by mail to all parties that the record has been transmitted and stating that the appellate memoranda are due within ten (10) working days.

RULE 22. APPELLATE MEMORANDA

Either party may file a written memorandum as to why the Board should affirm, modify, or reverse the final Order or Judgment being reviewed. The memorandum may not raise new facts or issues not before the hearing officer.

(a) Each party shall file the original, plus three (3) copies with the Clerk of the Board of Supervisors.

(b) No memorandum filed shall exceed five (5) pages.

RULE 23. NOTICE OF REVIEW

Upon receipt of the record from the hearing officer, the Clerk of the Board of Supervisors shall set a date for the review and mail the parties a written notice of the time and place of the review. The notice shall be mailed not less than five (5) days prior to the Board of Supervisors meeting at which the matter will be heard.

RULE 24. DISPOSITION OF THE BOARD OF SUPERVISORS

The defendant and Zoning Inspector, or their designated representatives will have an opportunity to present oral arguments to the Board of Supervisors. Each party will be given not more than ten (10) minutes to present their oral arguments.

After consideration of an appeal, the Board of Supervisors may increase, decrease, or modify any sanction imposed by the hearing officer and may:

(a) Affirm the action of the hearing officer;

(b) Affirm in part and reverse in part and, if necessary, remand for further proceedings; or

(c) Reverse the action of the hearing officer and, if necessary, remand for further proceedings;

Written notice of the formal action by the Board of Supervisors shall be delivered or mailed by certified mail to all parties within ten (10) days of their decision. All decisions shall be final.

RULE 25. APPEAL TO THE SUPERIOR COURT

Judicial review of the final decision of the Board of Supervisors shall be pursuant to Arizona Revised Statutes, Title 12, Chapter 7, Article 6.

EXHIBIT "B"

**COCHISE COUNTY HEARING OFFICER
RULES OF PROCEDURE FOR
DEDICATION AND EXACTION APPEALS**

951026005

TABLE OF CONTENTS

RULE 1. SCOPE..... 1
RULE 2. DEFINITIONS.....1
RULE 3. COMMENCEMENT OF APPEAL.....2
RULE 4. REPRESENTATION AT THE APPEAL HEARING.....2
RULE 5. PROCEDURAL RULES.....2
RULE 6. OATH.....2
RULE 7. QUESTIONING OF WITNESSES.....2
RULE 8. ESSENTIAL NEXUS AND ROUGH PROPORTIONALITY.....3
RULE 9. WITNESSES... ..3
RULE 10. ORDER OF PROCEEDINGS.....3
RULE 11. DECISION BY THE HEARING OFFICER; TIME PERIOD FOR APPEAL...3

**COCHISE COUNTY HEARING OFFICER RULES OF PROCEDURE
FOR DEDICATION AND EXACTIONS APPEALS**

RULE 1. SCOPE

These Rules shall apply in all cases involving the decision of appeals of dedication or exaction requirements before the Hearing Officer for Exaction Appeals ("Hearing Officer"), as established pursuant to A.R.S. §11-810, and designated by the Board of Supervisors of Cochise County.

RULE 2. DEFINITIONS

"Appeal" means an appeal by a property owner of a dedication or exaction requirement imposed by an administrative agency or official of Cochise County as a condition on granting approval for the use, improvement, or development of the owner's real property in Cochise County, Arizona. A dedication or exaction required in a legislative act of the Board of Supervisors that does not give discretion to a County administrative agency or official to determine the nature or extent of the dedication or exaction is not subject to appeal under these procedures.

The definitions of "Counsel" and "County" have been set forth in the Cochise County Hearing Officer Rules of Procedures on Zoning and Building Code Violations (Exhibit "A").

"Dedication" means the conveyance of a fee simple or easement interest in private real property to the County for public use.

"Decision Letter" means the written and dated document prepared by the Hearing Officer which include the Hearing Officer's findings of fact and conclusions of law, and articulates the Hearing Officer's decision to affirm, modify, or delete the County's dedication or exaction requirement.

"Designated Staff Representative" means the County official designated to represent the position of the County at an Appeal hearing with regard to the subject matter of the Appeal.

"Determination Letter" means the written and dated document, sent by the County via first class mail to the property owner or personally obtained from the County by the property owner or owner's representative, which document officially informs the property owner of the County's final determination regarding the imposition of a dedication or exaction requirement as a condition on granting approval of the use, improvement, or development of the property owner's real property.

"Exaction" means a requirement

- a. to construct a public improvement or facility.
- b. to pay money in lieu of construction of a public improvement or facility.

"Other Designated Representative" means a person over eighteen years of age, other than an attorney, authorized in writing by the property owner to represent the property owner in proceedings before the Hearing Officer. The written authorization shall be in a form sufficient to satisfy the Hearing Officer that the person has in fact been authorized to act on the property owner's behalf and that the property owner understands and agrees to be bound by actions taken by the Other Designated Representative in proceedings before the Hearing Officer.

"Parties" means the property owner and the County.

RULE 3. COMMENCEMENT OF APPEAL

Every Appeal brought before the Hearing Officer shall be in writing and filed with or mailed to the Hearing Officer within thirty (30) days after receipt by the property owner of the Determination Letter. The appeal shall state with particularity the dedication or exaction requirement that is being appealed. No fee shall be charged for filing the Appeal. After receipt of the Appeal, the Hearing Officer shall schedule an Appeal hearing within thirty (30) days after receipt. The Parties shall be given at least ten (10) days prior written notice of the date and time of the Appeal hearing unless the Party not provided such notice agrees to a shorter notice period.

RULE 4. REPRESENTATION AT THE APPEAL HEARING

The property owner shall have the right to be represented by Counsel or by an Other Designated Representative at the Appeal hearing. In addition to the County's Designated Staff Representative, the County shall have the right to be represented by Counsel at the Appeal hearing. The Parties waive the right to be represented by Counsel, or Other Designated Representative in the case of a property owner, at the Appeal hearing unless actual written notice of such representation is provided to the Hearing Officer and to the other Party at least five (5) working days prior to the Appeal hearing.

RULE 5. PROCEDURAL RULES

Unless otherwise stated herein, the rules of procedure for zoning and building code violations, attached hereto and incorporated by reference are applicable. These include but are not limited to the Rules on Discovery, Continuance, Evidence and Record of Proceeding.

RULE 6. OATH

All testimony at the Appeal hearing shall be given under oath or affirmation.

RULE 7. QUESTIONING OF WITNESSES

On the Hearing Officer's own motion, the Hearing Officer may call and examine witnesses, including the property owner. No witness may be examined at an Appeal

hearing except by the Hearing Officer, the property owner, the property owner's Counsel or Other Designated Representative, the Designated Staff Representative, or the County's Counsel.

RULE 8. ESSENTIAL NEXUS AND ROUGH PROPORTIONALITY

The County has the burden of establishing an essential nexus between the dedication or exaction and a legitimate governmental interest, and that the dedication or exaction is roughly proportional to the impact of the proposed use, improvement, or development of the real property in question. If the County established such essential nexus and rough proportionality, the Hearing Officer shall affirm the requirement of dedication or exaction in question. If the County fails to establish an essential nexus and rough proportionality, the Hearing Officer shall modify or delete the requirement of the dedication or exaction. If more than a single parcel is involved, the burden of establishing an essential nexus and rough proportionality applies to the entire property that is subject to the approval.

RULE 9. WITNESSES

All witnesses for the property owner's case-in-chief, other than the Designated Staff Representative, shall be required to testify prior to the Designated Staff Representative being required to testify or to produce any evidence. A witness not called to testify in the property owner's case-in-chief may be called in rebuttal to testify to an issue raised by the County.

RULE 10. ORDER OF PROCEEDINGS

The order of proceedings at an Appeal hearing shall be as follows:

- a. Testimony of the property owner's witnesses.
- b. Testimony of the County's witnesses.
- c. Testimony of the property owner's rebuttal witnesses, if any.
- d. Testimony of the County's surrebuttal witnesses, if any.
- e. Argument of the Parties or their Counsel or Other Designated Representative, if permitted by the Hearing Officer.
- f. Decision by the Hearing Officer.

RULE 11. DECISION BY THE HEARING OFFICER; TIME PERIOD FOR APPEAL

If the Hearing Officer decides the Appeal in the presence of the Parties immediately after the conclusion of the Appeal hearing, such decision shall also be provided to the Parties in the form of a Decision Letter as soon as practicable after the Appeal hearing. In such cases, an aggrieved property owner's thirty (30) day time period for Appealing the Hearing Officer's decision to Superior Court pursuant to A.R.S. 11-810(G), shall begin on the first working day after the date of the Appeal hearing. If the Hearing Officer delays decision of the Appeal by taking the matter under advisement, the Hearing Officer shall issue a Decision Letter to the Parties within five (5) working days after the Appeal hearing. In such cases, an aggrieved

property owner's time period for Appealing the Hearing Officer's decision to Superior Court shall begin on the first working day after the date of the Decision Letter.

EXHIBIT "C"

**COCHISE COUNTY'S POLICY AND NOTICE
STATEMENT ON APPEALS OF DEDICATION AND
EXACTION REQUIREMENTS**

951026005

RIGHTS OF PROPERTY OWNER

In addition to other rights granted to you by the United States and Arizona Constitution, federal and state law and Cochise County's own ordinances or regulations, you are hereby notified of your right to appeal any dedication or exaction which is required of you by an administrative agency or official of Cochise County as a condition of granting approval of your request to use, improve or develop your property. A dedication or exaction required in an legislative act of the Cochise County Board of Supervisors that does not give discretion to a County administrative agency or official to determine the nature or extent of the dedication or exaction is not subject to appeal under these procedures.

DEFINITIONS

"Dedication" means the conveyance of a fee simple or easement interest in private real property to Cochise County for public use.

"Exaction" means a requirement (a) to construct a public improvement or facility; or (b) to pay money in lieu of construction of a public improvement or facility.

APPEAL PROCEDURE

If you wish to appeal, the following procedures will apply to your appeal:

- * The appeal must be in writing and filed with or mailed to the Hearing Officer for Exaction Appeals within 30 days after the administrative agency or official has made the determination requiring the dedication or exaction. The address of the hearing officer is as follows:

Hearing Officer for Exaction Appeals
Cochise County Planning Department
1415 West Melody Lane, Building B
Bisbee, Arizona 85603

- * No fee will be charged for filing
- * Your hearing will be scheduled before the hearing officer within 30 days of receipt by the Planning Director of your request. The County will bear the burden of proving that the dedications or exactions to be imposed on your property bear an essential nexus between the requirement and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the use, improvement or development proposed by you.
- * Ten days notice will be given to you of the date, time and place of the hearing unless you indicate to the hearing officer in your request that less notice is acceptable to you.
- * The hearing officer must render a decision within 5 working days after the appeal is heard.

951026005

- * The hearing officer can affirm the dedication or exaction, modify it or delete the requirement.
- * If you are dissatisfied with the decision of the hearing officer, you may file a complaint for a trial de novo (new trial) with the Superior Court within 30 days of the hearing officer decision.

QUESTIONS

If you have any questions about this appeal process, you may contact the Cochise County Planning Director at (520)-432-9450.

951026005

Board of Supervisors

Leslie E. Thompson
Chairman,
District 3

Tony Saracino
District 1

Mike Palmer
District 2



Jody N. Klein
County Administrator

Nadine Parkhurst
Clerk

CERTIFICATION

I, Nadine M. Parkhurst, hereby certifies that I am the duly appointed, qualified, and Clerk of the Cochise County Board of Supervisors, Bisbee, Arizona; that as such, I have in my possession the original of Ordinance 20-95 adopted by the Cochise County Board of Supervisors on October 16, 1995 and published in the Douglas Daily Dispatch on Wednesday, October 25, 1995 and that the attached is the original copy of Ordinance 021-95.

Dated this 30th day of October, 1995

A handwritten signature in black ink, appearing to read "N. Parkhurst", written over a horizontal line.

Nadine M. Parkhurst
Clerk of the Board
Board of Supervisors

