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(A)

SUBDIVISION AND DEVELOPMENT APPEAL BOARD RULES, 2011

Arrangement of Rules

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MINISTRY OF THE ENVIRONMENT

S.I. No. 3 of 2011

**PLANNING AND SUBDIVISION ACT, 2010
(No. 4 of 2010)**

SUBDIVISION AND DEVELOPMENT APPEAL BOARD RULES, 2011

The Minister, in exercise of the powers conferred by section 65(5) of the Planning and Subdivision Act, 2010, makes the following Rules —

PART I

PRELIMINARY

1. Citation.

These Rules may be cited as the Subdivision and Development Appeal Board Rules, 2011.

2. Interpretation.

In these Rules —

“Act” means the Planning and Subdivision Act, 2010¹;

“Board” means the Subdivision and Development Appeal Board established under section 11 of the Act;

“Chairman” means the Chairman of the Board;

“Committee” means the Town Planning Committee appointed under section 5(1) of the Act;

“Department” means the Department of Physical Planning established under section 6(1) of the Act;

“Director” means the Director of Physical Planning appointed under section 7(1) of the Act;

“Minister” means the Minister responsible for the Environment;

¹No. 4 of 2010

PART II

DUTIES, FUNCTIONS AND POWERS OF THE BOARD

3. Constitution and procedures of Board.

The provisions governing the composition, functions and procedures of the Board are contained in the *First Schedule*.

4. Duties and functions of Board.

- (1) The Board shall perform the duties and functions required to be performed by the Board under the Act and may exercise any power conferred on it under the Act or any other Act.
- (2) A member shall not accept or hold any office or employment inconsistent with such duties under this Act, unless otherwise authorized by statute.

PART III

REQUIREMENTS FOR APPEALS

5. Notice of appeal.

- (1) An appeal shall be made within twenty-one days after the making of a decision by the Committee in accordance with section 65(1) of the Act and shall be —
 - (a) in writing;
 - (b) signed by the appellant or the agent acting on behalf of the appellant; and
 - (c) in the form set out in the *Second Schedule*.
- (2) Service of the notice of appeal on the Board may be effected on the Department —
 - (a) by personal service; or
 - (b) by registered mail;
- (3) A notice of appeal shall be accompanied by a written undertaking by the appellant, agreeing to pay the costs of advertising the notice of hearing for the appeal.
- (4) Failure by the appellant, to file a written undertaking in accordance with paragraph (3) shall not preclude the Board from —
 - (a) setting the appeal down for hearing;
 - (b) advertising the notice of hearing;

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- (c) thereafter, recovering the cost of such advertisement from the appellant.
 - (5) When more than one notice of appeal is filed with the Board arising out of the same decision or affecting the same matter, the Board may require the several appellants to file a joint undertaking agreeing to pay the cost of advertising a notice of hearing.
 - (6) The Director shall be a party to every appeal.

6. Appeal Record.

- (1) The Department shall, not later than seven days prior to the date of hearing —
 - (a) forward to the Board two copies of the appeal record and one copy of the relevant Land Use Plan and Zoning By-laws;
 - (b) deliver to the appellant and any other party a copy of the appeal record.
- (2) An appeal record shall consist of —
 - (a) a table of contents;
 - (b) the application;
 - (c) the decision under appeal;
 - (d) a copy of the advertisements for any public hearing held relating to the application;
 - (e) a copy of the minutes of any public hearing relating to the application;
 - (f) a copy of the minutes of any council meeting at which the application was discussed; and
 - (g) a copy of any report, letter, submission, recommendation or other matter relating to the subject of the appeal which was submitted to and considered by the Committee.

PART IV

HEARING OF APPEAL

7. Preliminary hearing.

- (1) Where it is considered necessary to do so, any party to the proceedings, may request to appear before the Board for a preliminary hearing to consider —

- (a) an application for an order dismissing the appeal and the grounds for such an order;
 - (b) simplifying the issues regarding the appeal;
 - (c) the participation by other interested persons;
 - (d) a request for access to information in the custody or control of any party; or
 - (e) any other matter which may aid in the disposition of the appeal.
- (2) The member of the Board who presides at a preliminary hearing shall not necessarily be required to hear the appeal.
 - (3) Unless otherwise ordered by the Board, it shall not be necessary to give notice of a preliminary hearing to the public.

8. Notice of hearing.

- (1) The Board shall serve a copy of a notice of hearing to the parties and such other persons as the Board may determine, within three months of the filing of the appeal unless agreed to by all parties and not later than fourteen days before the date of the hearing.
- (2) Service of a notice of hearing of appeal to the parties and such other persons as the Board may determine, may be effected by —
 - (a) personal service;
 - (b) registered mail; or
 - (c) such other manner as the Board may determine.
- (3) Where the Board determines service other than in paragraph (2), such other service shall be verifiable.
- (4) A notice of hearing shall include —
 - (a) the date, location and time of the hearing;
 - (b) the address of the subject property;
 - (c) the name(s) of the owner(s) of the subject property;
 - (d) the nature of the application subject to the appeal;
 - (e) the grounds of the appeal; and
 - (f) the name(s) of the appellant(s).

9. Publication of notice of hearing.

- (1) The Director shall cause every notice of a hearing to —
 - (a) be given to the public in not fewer than two issues of a daily newspaper published and circulated in The Bahamas at intervals of not less than three days;

- (b) be posted at the offices of the Department for the period commencing on the date of the issuance of the notice until the date of the hearing.
- (2) In addition to the notice given in accordance with paragraph (1), the Director may cause notice to be given on the official website of the Government of The Bahamas for the period commencing on the date of the issuance of the notice until the date of the hearing.

10. Hearing date.

An appeal shall be heard no later than four months after the date of the notice of appeal, unless otherwise agreed by all parties.

11. Adjournment of hearing.

- (1) Subject to paragraph (2), the Board, either upon its own motion, or upon application of any party, may adjourn a hearing.
- (2) Where an adjournment is requested after the notice of hearing has been published in the newspaper or the appellant has been served the notice of hearing, the Board may grant an adjournment of the hearing for any period and on any terms it considers appropriate if the Board is satisfied that there are compelling reasons for —
 - (a) granting the adjournment; or
 - (b) not granting the adjournment if such adjournment would amount to a denial of fairness to one or more of the parties to the appeal.

12. Sitting of hearing.

- (1) Subject to paragraph (3), the Board shall sit at such times and places within The Bahamas as the Chairman may designate and shall conduct its proceedings in such manner as it may consider most convenient for the efficient and effectual dispatch of its duties.
- (2) The Chairman may assign one or more members of the Board to a hearing of the Board and may from time to time vary a hearing and may direct any staff of the Board to attend any of the hearings.
- (3) Where the Board considers it prudent to do so, the hearing of an appeal shall take place on the island to which the application applies.
- (4) All hearings before the Board shall be open to the public.

13. Right to attend hearing.

- (1) Every party to an appeal before the Board shall have a right to attend, be heard and represented at all the hearings.

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- (2) Where a party to an appeal fails in respect of that appeal to be represented within one hour of the time set out in the notice for the hearing, the appeal may be conducted and determined in the absence of the party as the Board considers appropriate in the circumstances.

PART V

POWERS AND DECISIONS OF THE BOARD

14. Powers of Board.

- (1) The Board may conduct its proceedings without procedural formality but must observe natural justice.
- (2) The Board may —
- (a) impose time constraints on parties appearing before the Board where time constraints are in the interest of the resolution of matters before the Board;
 - (b) give directions to the parties with respect to the conduct of the hearing.
- (3) The Board may recommend to the Minister from time to time, to appoint one or more persons having technical or special knowledge of matters or subjects within the jurisdiction of the Board or in respect of any particular matter or subject before the Board to assist the Board, in an advisory or other capacity.

15. Evidence before Board.

The Board is not bound by the rules of evidence and may inform itself on any matter as it considers appropriate.

16. Decisions of Board.

- (1) The Board shall give its decision on an appeal within sixty days after the conclusion of the hearing.
- (2) A decision of the Board shall be in writing and include the reasons for the decision.
- (3) The Board shall provide a copy of the decision to all parties to the appeal.
- (4) The Board shall forward a copy of the decision to the Minister.
- (5) Any order, ruling, decision or document made or issued by the Board in respect of an appeal shall be signed by the chairman and two other members of the Board.

17. Publication of decision.

The Director may publish the decision of the Board in any manner the Director considers appropriate.

18. Appeal to Supreme Court.

Subject to section 66 of the Act, a decision of the Board is final.

FIRST SCHEDULE

(rule 3)

1. Composition of Board.

- (1) The Board shall consist of a Chairman and six other members who shall be appointed by the Governor-General in accordance with section 11 of the Act and who shall possess knowledge and experience in one or more of the following professions —
 - (a) municipal planning;
 - (b) engineering;
 - (c) environmental matters;
 - (d) sustainable development;
 - (e) agriculture;
 - (f) architecture;
 - (g) utilities;
 - (h) accounting or business;
 - (i) law, economics or finance.
- (2) There shall be a vice-chairman who shall be elected by a majority of the members.
- (3) No public officer shall be eligible to hold office as a member of the Board.
- (4) No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of the provisions of these Rules.

2. Term of office.

- (1) A member of the Board shall be appointed for a term not exceeding three years and is eligible on the expiration of his term of appointment for reappointment.
- (2) The Governor-General, on the recommendation of the Minister, may suspend a member of the Board on the ground of misbehaviour or physical or mental incapacity.
- (3) If a member of the Board commences to hold a hearing and the term of office of the member expires before the proceeding is disposed of, the member shall remain a member of the Board for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired.

3. Quorum.

Four members of the Board shall form a quorum (one of whom shall be the Chairman or vice-chairman) for meetings of the Board.

4. Authority of Members.

The Chairman, or other person presiding at a hearing, may administer an oath and by subpoena, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and other evidence.

5. Conflict of Interest.

- (1) Any member who —
 - (a) holds an interest, directly or indirectly, in any share, stock or other security of a local public utility;
 - (b) makes use of any privileged information for personal gain or the gain of others; or
 - (c) accepts any remuneration, fee, gift, gratuity or other benefit which could reasonably be considered to influence his decision in respect of the performance of his functions,is in conflict of interest.
- (2) A member of the Board shall declare any other information to the Board that may result in a conflict of interest.
- (3) Where a member voluntarily holds an interest described in regulation 5(1) (a), he shall vacate his office.
- (4) Where a member holds an interest otherwise than voluntarily, he shall within a reasonable time, divest himself of the interest, and if he fails to do so, his office shall thereupon become vacant.

6. Vacancy or Absence.

- (1) Vacancies in membership of the Board caused by death, resignation, removal or otherwise may be filled by appointment by the Governor-General.
- (2) If any vacancy occurs in the membership of the Board during mid-term of a member, such vacancy shall be filled by a member who shall hold office for the remainder of the period for which the previous member was appointed.
- (3) Where the chairman is absent or unable to act or the office of the chairman is vacant, the vice-chairman has and shall exercise the jurisdiction and powers of the chairman including the power to complete any unfinished matters during the period of absence or vacancy of the chairman.
- (4) A vacancy in the membership or the absence or inability of a member to preside over a hearing, or to continue to preside over a hearing, does not impair the powers of the Board or of the remaining members.

7. Resignation.

The Chairman or any member of the Board may at any time resign his office by instrument in writing addressed to the Minister and from the date of the receipt by the Chairman of such instrument such person shall cease to be a member of the Board.

8. Revocation of appointment.

The Governor-General may at any time by instrument in writing revoke the appointment of any member if such member —

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) is convicted and sentenced to a term of imprisonment;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him under the Act or these Regulations; or
- (d) engages in such activities as are reasonable considered prejudicial to the interest of the Board.

9. Gazetting of membership.

The names of all members of the Board as first constituted and every change thereafter shall be published in the Gazette.

10. Remuneration.

There shall be paid to the members of the Board such remuneration (whether by way of honorarium, salary, fees or allowances), as the Minister may determine.

11. Appointment of officers.

The Board may, subject to the approval of the Minister, appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers as it thinks necessary for the proper performance of its functions under the Act.

12. Signature and seal.

Any document issued by the Board (other than a decision) shall be signed by the Chairman or any other person authorized to act.

13. Protection from liability.

No member of the Board or any of its officers, servants or agents shall be —

- (a) required to give testimony in any civil suit with regard to information obtained in the discharge of official duty;
- (b) personally liable for anything done under the authority of this or any other Act.

SECOND SCHEDULE

(rule 5(1)(c))

NOTICE OF APPEAL

IN THE MATTER OF an appeal under the Planning and Subdivision Act —

Appellant(s): _____)
_____) State names of
_____) person(s) appealing

TAKE NOTICE that the appellant(s) hereby appeal Application Number _____
regarding the property located at (*specify location*) on the Island of (*specify island*) made
the _____ day of _____, 20____, which decision:

_____)
_____) State details
_____) of the decision

AND THAT the grounds of appeal are:

DATED at _____, The Bahamas, this _____ day of _____, 2____.

Signature of Appellant(s), attorney-at-law or Agent

Address of Appellant: _____

Phone: _____

Email address: _____

Undertaking to Pay Costs

The appellant(s) hereby agrees to pay the costs of any advertising of the notice of hearing for the Appeal.

Signature of Appellant(s)

Made this 4th day of January, 2011.

Signed
EARL D. DEVEAUX
Minister responsible for the Environment