

RESOLUTION NO. 213

BE IT RESOLVED BY THE CITY OF BROOKINGS AS FOLLOWS:

Whereas, the City of Brookings finds that it is in the best interest of this City,

The following rules for the conduct of quasi judicial hearings held by the City Council or Planning Commission in accordance with the zoning ordinances of the City of Brookings.

Planning Commission members and Council members will hereinafter be referred to as Panel Members.

Section 1. Nature and Conduct of Hearing.

- A. Interested parties are entitled to an opportunity to be heard, to present and rebut evidence to a tribunal which is impartial, to have the proceedings recorded, and to have a decision based on evidence.
- B. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.
- C. No person shall speak without obtaining permission from the presiding officer at the first opportunity.
- D. No person shall testify without first receiving recognition from the presiding officer and stating his full name and residence address.
- E. No person shall present irrelevant, immaterial or repetitious testimony or evidence.
- F. There shall be no audience demonstrations, such as applause, cheering, display of signs, or other

conduct disruptive of the hearing. Such conduct may be cause for immediate termination of the hearing by the Panel.

- G. The presiding officer and Panel members may question and cross-examine any person who testifies.

Section 2. Challenge for Bias, Prejudgment, or Personal Interest.

- A. Any proponent or opponent of a proposal to be heard by the Panel may challenge the qualification of any Panel member to participate in such hearing and decision. Such challenge must state facts in writing, by affidavit, relied upon by the submitting party relating to a member's bias, prejudgment, personal interest, or other facts from which the party has concluded that the member will not participate and make a decision in an impartial manner.
 - 1. Such written challenge must be delivered by personal service to the Chairman of the Panel and the Panel member whose qualification is challenged not less than 48 hours preceding the time set for public hearing.
 - 2. Such challenge shall be incorporated into the record of the hearing.
- B. No Panel member shall participate in a hearing or a decision on a proposal when he:

1. Is a party to or has a direct personal or pecuniary interest in the proposal;
2. Is related to the proponent or opponent;
3. Is in business with the proponent or opponent; or
4. For any other reason, has determined that he cannot participate in the hearing and decision in an impartial manner.

Section 3. Presiding Officer.

- A. The Chairman of the Panel shall be the presiding officer at all hearings unless the Panel designates one of its members, or any other officer, employee, or person to act as presiding officer. A presiding officer, if not a member of the Panel, shall have no vote on the question in determination of the matter, but shall have authority to:
1. Regulate the course and decorum of the hearing;
 2. Dispose of procedural requests or similar matters;
 3. Rule on offers of proof and relevancy of evidence and testimony; and
 4. Take such other action appropriate for conduct commensurate with the nature of the hearing.
 5. Impose time limits on those appearing before the Panel.

Section 4. Burden of Proof.

- A. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in an area, the greater is the burden upon the proponent.
- B. The following criteria and factors are deemed relevant and material and shall be considered by

the Panel in reaching its decision on a proposal:

1. Conformance with the comprehensive plan and where appropriate, city zoning ordinance;
 2. The public need for the proposal;
 3. How the public need will be best served by changing the permissible use of the property concerned as compared with other available property;
 4. If other areas have been previously designated for a use or development submitted in the proposal, then the necessity for introducing the proposal into an area not previously contemplated and why the property owners there should bear the burden, if any, of introducing that proposal into their area;
 5. Mistake in the original comprehensive plan, if any;
 6. Change in the character of the neighborhood, if any;
 7. Such other factors which relate to the public need for helpful, safe, and aesthetic surroundings and conditions.
- C. Summary of items under burden of proof must be submitted in writing and signed by proponent at the time of the hearing.

Section 5. Order of Procedure.

The presiding officer, in the conduct of the hearing shall:

- A. Commence the Hearing. Announce the nature and purpose of the hearing, and, may summarize the rules for the conduct of the hearing.

- B. Call for Absentions. Inquire of the Panel whether any member thereof wishes to abstain from participation in the hearing. Any member then announcing his abstention shall not participate in discussion of the question, or vote on the question.
1. Any member whose participation has been challenged by allegation of bias, prejudgment, personal interest, or partiality or who has been subject to significant ex parte or pre-hearing contact from proponents or opponents may make a statement in response thereto or in explanation thereof, for the record, of his decision to abstain or not. This statement shall not be subject to cross-examination, except upon consent of that member, but shall be subject to rebuttal by the proponent or opponent, as appropriate.
- C. Objection to Jurisdiction. Inquire of the audience if there are any objections to jurisdiction of the Panel to hear the matter and, if such objections are received, conduct such further inquiry as necessary to determine the question. The presiding officer shall terminate the hearing if his inquiry reveals that the Panel lacks jurisdiction. Any matter thus terminated shall, if the defect can be remedied, be rescheduled by the Panel.
- D. Staff Report. Request the representative of the Planning Department to summarize the nature of the proposal, explain any graphic or pictorial displays, which are a part of the record, summarize the staff

report, summarize the findings and decision of the Planning Commission where applicable and provide such other information as may be requested by the Panel.

E. Proponent's Case.

1. The applicant-proponent shall first be heard, on his own behalf, or by representative.
2. Upon failure of applicant or his representative to appear at the hearing on his proposal, or upon his express waiver of presenting testimony and evidence, the Panel shall consider the written application as presenting the applicant's case.
3. Persons in favor of the proponent's proposal shall next be heard.

F. Cross-examination of Proponents. Allow opponents, upon recognition by the presiding officer, to submit questions to the proponents. Proponents shall be given a reasonable time to respond solely to the questions.

G. Opponent's Case. Opponents shall be heard in the following order:

1. Neighborhood associations, special organizations groups represented by counsel or a spokesman shall be allowed by the presiding officer to first proceed.
2. Persons who received notice of the hearing or who were entitled to receive notice of the hearing are presumed to have an interest in

the proposal and shall next be heard.

3. Persons who did not receive notice and who were not entitled to notice shall be heard.

- H. Cross-examination of Opponents. Allow proponents, upon recognition of the presiding officer, to submit questions to the opponents. Opponents shall be given a reasonable time to respond solely to the questions.
- I. Public Agencies. Allow representatives of any city, state agency, regional authority, or municipal or quasi-municipal corporation existing pursuant to law to next be heard.
- J. Rebuttal Evidence. Allow the proponent to offer rebuttal evidence and testimony, and the opponents to respond to such additional statements. The scope and extent of rebuttal shall be determined by the presiding officer.
- K. Additional rebuttal may be allowed, as appropriate by the presiding officer.
- L. Close of Hearing and Deliberation by Panel. The presiding officer shall conclude the hearing. The Panel shall either make its decision and state its decision, or may continue its deliberation to a subsequent meeting. The subsequent meeting shall be for the purpose of continued deliberation and shall not allow for additional submission of testimony, except upon decision of the Panel, or the presiding officer.
- M. The Presiding officer may alter the order of the hearing consistent with fairness to the parties.

Section 6. Record of Proceedings.

- A. The Clerk of the Panel or a designee of the presiding officer shall be present at each hearing and shall provide that the proceedings be electronically or stenographically recorded.
- B. The presiding officer shall, where practicable, cause to be received all physical and documentary evidence presented which shall be marked to show whether presented on behalf of proponent or opponent. Such exhibits shall be retained by the Panel until after any applicable appeal period has expired at which time the exhibit shall be released upon demand to the person identified thereon.

Section 7. Findings, Conclusion and Order.

The findings, conclusion and order shall be prepared by the prevailing party or an appointee of the Panel and signed by the Panel with any changes the Panel may deem appropriate.

Section 8. Officer as Agent of Panel.

The Panel may designate any officer to perform functions on its behalf with the Board reserving unto itself the right to reverse the officer within an appropriate period, not to exceed 10 days.

Section 9. Substantial Compliance.

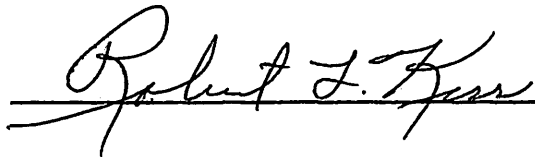
Substantial, not technical compliance with these rules is required.

Section 10. Amendment and Suspension of Rules.

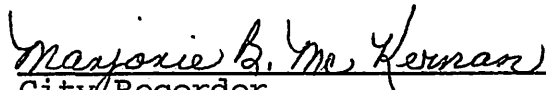
Any rule of procedure not required by law may be amended, suspended or repealed at any time by

majority vote of those Panel members present and
voting.

PASSED by the Council and signed by the Mayor this 19th
day of September, 1978.


MAYOR

ATTEST:


City Recorder