ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com

COURTS

BOARDS

CITY OFFICIALS
ADMINISTRATIVE APPEALS

The situation:

• Citizens originally go before a board to request a variance, special exception, etc.; or

• A city official makes a decision that the board can review
 ADMINISTRATIVE APPEALS

The situation:

- Citizens originally go before a board to request a variance, special exception, etc.; or

- A city official makes a decision that the board can review

Best Example: A Board of Adjustment
CITY OFFICIALS

Who makes the appealable decision?
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official..." LGC 211.010(a)
Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official. . ." LGC 211.010(a)

- City managers
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official. . ." LGC 211.010(a)

- City managers
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official." LGC 211.010(a)

• City managers
Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official. ..." LGC 211.010(a)

- City managers
- Code officials
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official..." LGC 211.010(a)

- City managers
- Code officials
- City staff, employees, attorneys
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official. ..." LGC 211.010(a)

- City managers
- Code officials
- City staff, employees, attorneys
CITY OFFICIALS

Who makes the appealable decision?

"... may appeal to the board of adjustment a decision made by an administrative official. ..." LGC 211.010(a)

- City managers
- Code officials
- City staff, employees, attorneys

ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com

COURTS

BOARDS

CITY OFFICIALS
What type of decision?

“. . . hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter. . .” LGC 211.009(a)(1)
What type of decision?

“... hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter...” LGC 211.009(a)(1)

Chapter 211: Municipal Zoning Authority
What type of decision?

"... hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter..." LGC 211.009(a)(1)

Chapter 211: Municipal Zoning Authority

- Land use, structures, etc.
- Wrongfully denied permit; Wrongfully issued a permit
- Construction of a land use regulation
- Other decision by a city administrator
What type of decision?

“. . . hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter. . .” LGC 211.009(a)(1)

Chapter 211: Municipal Zoning Authority

- Land use, structures, etc.
- Wrongfully denied permit; Wrongfully issued a permit
- Construction of a land use regulation
- Other decision by a city administrator

Chapter 216: Regulation of Signs by Municipalities
(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision [excluding a councilmember when council acts as the BOA]" LGC 211.010(a), (e)
CITY OFFICIALS

Who can appeal to the BOA?

(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

1. a person aggrieved by the decision; or
   - Applicants who are denied; nearby landowners

2. any officer, department, board, or bureau of the municipality affected by the decision [excluding a councilmember when council acts as the BOA]" LGC 211.010(a), (e)
Who can appeal to the BOA?

(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

   (1) a person aggrieved by the decision; or

       • Applicants who are denied; nearby landowners

   (2) any officer, department, board, or bureau of the municipality affected by the decision [excluding a councilmember when council acts as the BOA]" LGC 211.010(a), (e)

       • Cities
(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

1. a person aggrieved by the decision; or
   - Applicants who are denied; nearby landowners

2. any officer, department, board, or bureau of the municipality affected by the decision [excluding a councilmember when council acts as the BOA] LGC 211.010(a), (e)
   - Cities

Note: Taxpayers who are not aggrieved can only appeal from a BOA decision LGC 211.011(a)(2)
CITY OFFICIALS

Best practices
CITY OFFICIALS

Best practices

"... the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed." LGC 211.010(b)
CITY OFFICIALS

Best practices

“... the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.” LGC 211.010(b)

- Provide a written decision with clear dates detailing approval, denial, or decision
Best practices

“... the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.” LGC 211.010(b)

- Provide a written decision with clear dates detailing approval, denial, or decision
- Reproduce the language in the ordinance being enforced in your explanation of the decision
CITY OFFICIALS

Best practices

“... the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.” LGC 211.010(b)

- Provide a written decision with clear dates detailing approval, denial, or decision
- Reproduce the language in the ordinance being enforced in your explanation of the decision
- Work with your city attorney
CITY OFFICIALS

Best practices

“...the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.” LGC 211.010(b)

- Provide a written decision with clear dates detailing approval, denial, or decision
- Reproduce the language in the ordinance being enforced in your explanation of the decision
- Work with your city attorney
- Provide copies of all letters, emails, documentation, etc. to the board
CITY OFFICIALS

Best practices

“. . . the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.” LGC 211.010(b)

- Provide a written decision with clear dates detailing approval, denial, or decision
- Reproduce the language in the ordinance being enforced in your explanation of the decision
- Work with your city attorney
- Provide copies of all letters, emails, documentation, etc. to the board
- Best Practice: create a form that all administrative officials can use

Bickerstaff
Heath Delgado Acosta LLP
CITY OFFICIALS

Best practices

"... the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed." LGC 211.010(b)

• Provide a written decision with clear dates detailing approval, denial, or decision

• Reproduce the language in the ordinance being enforced in your explanation of the decision

• Work with your city attorney

• Provide copies of all letters, emails, documentation, etc. to the board

• Best Practice: create a form that all administrative officials can use

This is the one opportunity to create a record!
CITY OFFICIALS

Worst practices
CITY OFFICIALS

Worst practices

- Not to worry. I have a permit.

I can do what I want.

Ron
ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com
What type of board hears appeals?
What type of board hears appeals?

Board of adjustment
LGC 211
What type of board hears appeals?

Board of adjustment
LGC 211

- In Type A general law cities, may be the city council. LGC 211.008(g)
What type of board hears appeals?

Board of adjustment
LGC 211

- In Type A general law cities, may be the city council. LGC 211.008(g)
What type of board hears appeals?

Board of adjustment
LGC 211

- In Type A general law cities, may be the city council. LGC 211.008(g)

Building code boards of review; other city created boards
ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-9021
kgrinnan@bickerstaff.com

COURTS

BOARDS

CITY OFFICIALS
BOARDS

What role does the board play?
What role does the board play?

The board of adjustment acts as an appellate court.
What role does the board play?

The board of adjustment acts as an appellate court.

Parties must file an appeal "within a reasonable time as determined by the rules of the board." LGC 211.010(b)
BOARDS

What role does the board play?

The board of adjustment acts as an appellate court.

Parties must file an appeal "within a **reasonable time** as determined by the rules of the board." LGC 211.010(b)

- Check ordinance: *Sea Mist v. BOA South Padre*, 2010 WL 2891580
BOARDS

What role does the board play?

The board of adjustment acts as an appellate court.

Parties must file an appeal "within a reasonable time as determined by the rules of the board." LGC 211.010(b)

- Check ordinance: *Sea Mist v. BOA South Padre*, 2010 WL 2891580

The board must hold a hearing within a "reasonable time" and give public notice. LGC 211.101(d)
What role does the board play?

The board of adjustment acts as an appellate court.

Parties must file an appeal "within a reasonable time as determined by the rules of the board." LGC 211.010(b)

- Check ordinance: *Sea Mist v. BOA South Padre*, 2010 WL 2891580

The board must hold a hearing within a "reasonable time" and give public notice. LGC 211.101(d)

The appeal stays the underlying proceedings. LGC 211.101(c)
What role does the board play?

The board of adjustment acts as an appellate court.

Parties must file an appeal "within a reasonable time as determined by the rules of the board." LGC 211.010(b)

- Check ordinance: Sea Mist v. BOA South Padre, 2010 WL 2891580

The board must hold a hearing within a "reasonable time" and give public notice. LGC 211.101(d)

The appeal stays the underlying proceedings. LGC 211.101(c)

- Ch. 54 or 211.112
BOARDS

What role does the board play?
What role does the board play?

"In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official." LGC 211.009(b)
What role does the board play?

"In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official’s order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official." LGC 211.009(b)

If the appellant presents new information the official asked for but was not provided, remand the case to the official.
ADMINISTRATIVE APPEALS OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com

COURTS

BOARDS

CITY OFFICIALS
Best practices

A petition challenging the BOA decision "must be presented within 10 days after the date the decision is filed in the board's office." LGC 211.011(b)
BOARDS

Best practices

A petition challenging the BOA decision "must be presented within 10 days after the date the decision is filed in the board's office." LGC 211.011(b)

- *Davis v. ZBA of City of La Porte*, 865 S.W.2d 941 (Tex. 1993) (jurisdictional)
Best practices

A petition challenging the BOA decision "must be presented within 10 days after the date the decision is filed in the board's office." LGC 211.011(b)

- *Davis v. ZBA of City of La Porte*, 865 S.W.2d 941 (Tex. 1993) (jurisdictional)
- *Reynolds v. Haws*, 741 S.W.2d 582 (Tex. App. – Fort Worth 1987, writ denied)
BOARDS

Best practices

A petition challenging the BOA decision "must be presented within 10 days after the date the decision is filed in the board's office." LGC 211.011(b)

- *Davis v. ZBA of City of La Porte*, 865 S.W.2d 941 (Tex. 1993) (jurisdictional)

- *Reynolds v. Haws*, 741 S.W.2d 582 (Tex. App. – Fort Worth 1987, writ denied)

BOARDS

Best practices

A petition challenging the BOA decision "must be presented within 10 days after the date the decision is filed in the board's office."
LGC 211.011(b)

- *Davis v. ZBA of City of La Porte*, 865 S.W.2d 941 (Tex. 1993) (jurisdictional)
- *Reynolds v. Haws*, 741 S.W.2d 582 (Tex. App. – Fort Worth 1987, writ denied)

Avoid confusion about when the citizen has waived their right to appeal
BOARDS

Best practices
Best practices

The board should have a signed and filed decision before the minutes are approved:
Best practices

The board should have a signed and filed decision before the minutes are approved:

• Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official's decision
BOARDS

Best practices

The board should have a signed and filed decision before the minutes are approved:

- Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official's decision
- Have the chairman sign the order the same day
BOARDS

Best practices

The board should have a signed and filed decision before the minutes are approved:

- Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official’s decision
- Have the chairman sign the order the same day
- Physically file the order immediately in a designated file in the board’s office
BOARDS

Best practices

The board should have a signed and filed decision before the minutes are approved:

• Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official’s decision
• Have the chairman sign the order the same day
• Physically file the order immediately in a designated file in the board’s office
• Inform the appellant in writing, CMRRR
Best practices

The board should have a signed and filed decision before the minutes are approved:

- Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official's decision
- Have the chairman sign the order the same day
- Physically file the order immediately in a designated file in the board's office
- Inform the appellant in writing, CMRRR
- Allow the official who made the decision in executive session?
Best practices

The board should have a signed and filed decision before the minutes are approved:

- Have an order ready the day of the hearing with blanks for affirming, reversing, or modifying the official's decision
- Have the chairman sign the order the same day
- Physically file the order immediately in a designated file in the board's office
- Inform the appellant in writing, CMRRR
- Allow the official who made the decision in executive session?

Be prepared: If a writ is granted, "[t]he board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal." LGC 211.011(d)
ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com
COURTS

Writ of Certiorari
COURTS

Writ of Certiorari
COURTS

Writ of Certiorari

- The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. LGC 211.011(f)
Writ of Certiorari

- The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. LGC 211.011(f)
- The court can hear evidence and take testimony if necessary, but largely relies on the board’s certified return. LGC 211.011(e)
COURTS

Writ of Certiorari

• The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. LGC 211.011(f)

• The court can hear evidence and take testimony if necessary, but largely relies on the board’s certified return. LGC 211.011(e)

• Jurisdiction of the court in a 211 appeal
Other types of boards
Other types of boards

• General law v. Home rule
Other types of boards

- General law v. Home rule
- Dangerous buildings, historic use, etc.
Other types of boards

- General law v. Home rule
- Dangerous buildings, historic use, etc.
- Best practices apply
Kimberly Grinnan Kelley  
Associate  
(512) 472-8021  
kgrinnan@bickerstaff.com
ADMINISTRATIVE APPEALS
OF DECISIONS BY CODE OFFICIALS

Kimberly Grinnan Kelley
Bickerstaff Heath Delgado Acosta LLP
(512) 472-8021
kgrinnan@bickerstaff.com