

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
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5 Legislative Document

No. 471

6
7 H.P. 388

House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the
9 Committee on Energy and Natural Resources, and ordered printed pursuant to
Joint Rule 14.

10 EDWIN H. PERT, Clerk

Presented by Representative Soule of Westport.

Cosponsor: Representative Masterton of Cape Elizabeth.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Create a Land Use Hearing
18 Examiner.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 30 MRSA c. 239-A is enacted to read:

23 CHAPTER 239-A

24 LAND USE VIOLATION HEARING EXAMINER

25 §4965. Purpose; findings

26 The Legislature finds that the violation of land
27 use ordinances and statutes administered and enforced
28 by municipalities defeats the purposes of state
29 enabling statutes. Municipal officials charged with
30 enforcement of these laws often find that property
31 owners refuse to comply voluntarily with official

1 requests to cease violations. The Legislature recog-
2 nizes that the legal system presently available to
3 municipal officials seeking to prosecute violations
4 is cumbersome and costly and often does not process a
5 violation quickly enough to have a sufficient deter-
6 rent effect against future violations. Therefore,
7 the Legislature finds that to enable code enforcement
8 at the local level to be more effective, an inex-
9 pensive, informal, simple and speedy intermediate
10 hearing process is needed as an alternative to
11 prosecuting a violation in District Court or Superior
12 Court. The Legislature also finds that such an
13 intermediate hearing process would serve to relieve
14 the burdensome caseload with which the courts pres-
15 ently are faced, freeing the court to deal with more
16 serious matters.

17 §4965-A. Creation of land use violation hearing
18 examiners

19 1. Position established. There is created the
20 position of land use violation hearing examiner.

21 2. Appointment; term. The Governor shall
22 appoint hearing examiners who shall serve for 3-year
23 terms, unless removed sooner by the Governor for
24 cause, after notice and hearing. Only attorneys
25 experienced in land use law may be considered for
26 appointment as a hearing examiner. The Governor
27 shall select examiners from among those attorneys who
28 submit their names for consideration. The Governor
29 shall appoint at least one hearing examiner for each
30 court district and shall appoint at least 2 hearing
31 examiners who are willing to travel to any court dis-
32 trict to hear a case. An examiner need not be a res-
33 ident of the court district in which he is hearing a
34 case. A list of hearing examiners and their ad-
35 resses shall be filed by the Governor with both the
36 clerks of the Superior Court and the clerk of each
37 municipality and plantation. The list shall indicate
38 which examiners are available in a particular dis-
39 trict and which are available to travel to any dis-
40 trict.

41 3. Oath. Hearing examiners shall swear an oath
42 before a dedimus justice prior to assuming the duties
43 of office.

1 4. Conflict of interest. No land use hearing
2 examiner may have a voice in judging and determining
3 or be attorney or counselor in or out of court in any
4 civil action or matter which depends on or relates to
5 any complaint made before him in his capacity as
6 hearing examiner. Any process or proceeding com-
7 menced by him in violation of this subsection is
8 void, and he is liable to the party injured in dam-
9 ages. No land use hearing examiner may hear a com-
10 plaint involving a land use ordinance, statute or
11 regulation which he had any part in drafting.

12 §4965-B. Bringing a claim

13 1. Jurisdiction. The land use ordinances, regu-
14 lations and statutes which fall within the jurisdic-
15 tion of the hearing examiner are those which are ad-
16 ministered and enforced primarily at the local level
17 and shall include: Title 12, chapter 424 and local
18 shoreland zoning ordinances, including those which
19 were state imposed; Title 22, section 42; local land
20 use ordinances enacted pursuant to section 1917;
21 local building codes adopted pursuant to section
22 2151; chapter 215, subchapters I and X; section
23 4359; section 4956 and any local subdivision ordi-
24 nance or regulation adopted pursuant thereto; local
25 zoning ordinances adopted pursuant to section 4962;
26 and the state plumbing code.

27 2. Alternative remedy; removal of case. The
28 procedures of this chapter shall be alternatives and
29 not exclusive. A municipality, plantation or person
30 prosecuting a violation may use existing procedures
31 and remedies available by statute or at common law.
32 Every action begun under this chapter shall be
33 decided under this chapter and may not be removed to
34 Superior Court.

35 3. Standing. A municipal or plantation official
36 acting on behalf of the municipality or plantation or
37 a person, corporation or other legal entity with
38 standing may file a complaint with a hearing exam-
39 iner.

40 4. Location of hearing. A land use violation
41 complaint brought before a hearing examiner under
42 this chapter shall be heard by an examiner at a hear-

1 ing held in a public building in the municipality or
2 plantation in which the alleged violation occurred.

3 5. Complaint; form. The person filing a com-
4 plaint with the hearing examiner shall prepare his
5 own typed or hand-printed form which shall contain
6 all of the following information:

7 A. The plaintiff's name and address;

8 B. The defendant's name and address;

9 C. The statute, regulations or ordinance being
10 violated. If it is an ordinance, he shall attach
11 a copy attested by a municipal clerk; if it is
12 subdivision regulations, he shall attach a copy
13 attested by a clerk of the board which adopted
14 them; if it is the state plumbing code, he shall
15 attach a copy attested by the authorized agent of
16 the Department of Human Services;

17 D. The name and address of the person bringing
18 the complaint on behalf of the municipality or
19 plantation, if applicable;

20 E. The date of the offense;

21 F. The location of the offense;

22 G. A brief statement of the violation forming
23 the basis of the complaint;

24 H. The signature of the person filing the com-
25 plaint;

26 I. The date the complaint was filed; and

27 J. The signature and seal of the notary public
28 before whom the complaint was sworn before being
29 filed, when the complaint is being presented and
30 filed by a person who is not an attorney.

31 6. Hearing date; notice. On receiving a com-
32 plaint, the hearing examiner shall set a date for a
33 hearing, not more than 30 days from the receipt of
34 the complaint. Within 7 days of receipt of the com-
35 plaint, the examiner shall notify, in writing, both

1 the plaintiff and the defendant and shall send the
2 defendant a copy of the plaintiff's complaint.
3 Notices to the plaintiff and defendant shall be by
4 certified mail, return receipt requested.

5 7. Continuances. Complaints brought before the
6 land use hearing examiner may only be continued once,
7 unless a case of extreme necessity and undue hardship
8 is shown by the person requesting the continuance.
9 The hearing examiner has sole discretion to determine
10 whether extreme necessity and undue hardship exist.

11 §4965-C. Conducting the hearing

12 1. Representation by an attorney. Any party to
13 an action before a hearing examiner need not be
14 represented by an attorney during the hearing.

15 2. Prehearing procedures. Within 14 days after
16 receiving notice of the hearing, the parties shall
17 exchange and file with the examiner lists of wit-
18 nesses and their addresses, copies of documents
19 intended for use at the hearing and outlines of the
20 testimony which will be given at the hearing. Each
21 party shall supplement these filings with additional
22 lists of witnesses, documents and outlines at the
23 time this becomes known to the party, up until the
24 time of the hearing. No witness or document may be
25 introduced at the hearing, unless a prehearing filing
26 and exchange has been made, except for good cause
27 shown.

28 3. Evidence. At the hearing, the Maine Rules of
29 Evidence shall not be strictly applied, but the exam-
30 iner shall observe the rules of privilege recognized
31 by law. Evidence shall be admitted if it is the kind
32 of evidence upon which reasonable persons are accus-
33 tomed to rely in the conduct of serious affairs. The
34 examiner may exclude irrelevant or unduly repetitious
35 evidence.

36 Unless otherwise limited by the examiner to prevent
37 repetition or unreasonable delay in the proceedings,
38 every party shall have the right to present evidence
39 and arguments on all issues, to call and examine wit-
40 nesses and to make oral cross-examination of any
41 person present and testifying. All witnesses shall
42 be sworn.

1 The examiner may not consider any evidence submitted
2 outside of the official hearing without the consent
3 of both parties. The examiner may enter the property
4 involved in the alleged violation, if the examiner
5 finds that an on-site inspection is necessary before
6 rendering a decision. Before the examiner visits the
7 scene of the violation, he shall notify both parties
8 to provide them an opportunity to accompany him.

9 4. Subpoenas; depositions; oaths. In the dis-
10 charge of the duties imposed by this chapter, the
11 hearing examiner shall have power to administer oaths
12 and affirmations, take depositions, certify to offi-
13 cial acts and issue subpoenas to compel the attend-
14 ance of witnesses and the production of books,
15 papers, correspondence, memoranda and other records
16 deemed necessary as evidence in connection with a
17 case being heard by the examiner, when the interests
18 of any party require. Oaths and affirmations re-
19 quired by reason of duties performed pursuant to this
20 chapter may be administered by any of such persons as
21 may be designated for the purpose by the hearing
22 examiner. Depositions may be taken for any of the
23 following causes:

24 A. When the deponent resides out of, or is ab-
25 sent from, the State;

26 B. When the deponent is bound to sea or is about
27 to go out of the State; or

28 C. When the deponent is so aged, infirm or sick
29 as to be unable to attend at the place of hear-
30 ing.

31 The depositions shall be taken by written interroga-
32 tories to be compiled by the hearing examiner, and
33 the adverse party shall be afforded an opportunity to
34 refute that testimony before the examiner issues a
35 decision. The deponent shall be sworn and the depo-
36 sition shall be signed and sworn to by the deponent
37 before admissible as testimony at a hearing before
38 the examiner.

39 Subpoenas shall be issued as provided in the Maine
40 Rules of Civil Procedure, Rule 45. If without ade-
41 quate excuse a witness fails to appear or give evi-

1 dence or if any person fails to produce documents, he
2 may be punished by the court as for contempt and be
3 subjected to the consequences, penalties and remedies
4 provided in the Maine Rules of Civil Procedure, Rules
5 37 and 45.

6 5. Record. The examiner shall tape record the
7 hearing. At the election and expense of one or more
8 of the parties, a transcript of the proceedings and
9 the evidence shall be prepared. The expense shall be
10 paid as the examiner directs.

11 §4965-D. Judgment

12 1. Costs. If the plaintiff prevails, the exam-
13 iner shall award costs in addition to the judgment,
14 exclusive of any attorney fees.

15 2. Failure to appear. If either party fails to
16 appear for the hearing, the examiner may render judg-
17 ment for the other party, including a dismissal. The
18 examiner may continue the case if the failure to
19 appear is for good reason.

20 3. Decision; relief granted. The hearing exam-
21 iner shall render a decision within 30 days of the
22 conclusion of the hearing. The examiner shall pro-
23 vide both parties with a copy of the decision, either
24 personally or by certified mail, return receipt
25 requested. The decision shall contain:

26 A. The name of the prevailing party;

27 B. The name of the losing party;

28 C. The amount of judgment and costs awarded plus
29 any other relief granted;

30 D. A statement of the specific findings of fact
31 and conclusions of law supporting the examiner's
32 decision;

33 E. The date of the decision;

34 F. The time within which an appeal must be
35 filed; and

1 G. The signature of the examiner.

2 The examiner may grant any relief, both legal and
3 equitable, which he finds appropriate within the
4 limits of the law under which the violation is being
5 prosecuted and within the limits of the enforcement
6 or penalty provision of the statute, ordinance or
7 regulation which authorized the prosecution.

8 4. Filing with clerk. The examiner shall file
9 any judgment with the clerk of the Superior Court of
10 the division in which the municipality is located.
11 The judgment shall be retained by the clerk for 3
12 years and then may be destroyed.

13 5. Retention of evidence. The hearing examiner
14 shall retain any evidence submitted during the hear-
15 ing until the appeal period has expired, at which
16 time the evidence shall be returned to the appropri-
17 ate party. If an appeal is filed, the examiner shall
18 forward the evidence to the Superior Court hearing
19 the appeal, upon receiving notification from the
20 party bringing the appeal.

21 6. Appeal. Any decision of the hearing examiner
22 is final within 10 days of the date the decision was
23 received by both parties, unless an aggrieved party
24 has filed an appeal with the Superior Court within
25 that time period.

26 7. Contempt. Unless appealed within the time
27 period stated in subsection 6, a decision of the
28 hearing examiner is binding on the parties to the ac-
29 tion. Failure to comply with the decision consti-
30 tutes contempt. The Superior Court may enforce a
31 final order of the hearing examiner against a person
32 in contempt. If the court finds that a party is in
33 contempt, it may order that party to pay the prose-
34 cuting party the costs of enforcing the order of the
35 examiner, including attorneys' fees.

36 §4965-E. Expenses

37 1. The hearing examiner shall be reasonably com-
38 pensated at a rate not to exceed \$40 per hour, plus
39 necessary expenses. Travel expenses shall be calcu-
40 lated at the current state reimbursement rate.

