

the sponsor.

Mollie Gieseman, representing the Municipal Association, asked if the "good cause" provision on page 5, line 10, should be kept. Following discussion it was decided that Section 27-129(k) (1) (A) should be revised to read:

(A) If, for good cause, it is shown [why (for good cause) it] that evidence was not presented in the record; or

Hamer Campbell, representing the SMBIA, expressed concern about the recessing of cases and that a time limit should be provided so that a case would not be unduly prolonged. Mr. Romine indicated that most recesses were the result of the applicant not being fully prepared to present their case. If additional evidence is received, opposing parties are always allowed the opportunity for written rebuttal and may request on additional hearing (which will be granted).

BACKGROUND INFORMATION/FISCAL IMPACT

(Includes reason for proposal, as well as any unique statutory requirements)

In ZMA A-9836, after recess, the Zoning Hearing Examiner received evidence not referred to in the reasons for recess pursuant to Section 27-129. Without determining the merits of any argument and to ensure all evidence was given a chance to be fairly considered and not excluded on a technicality by virtue of the current wording of Section 27-129(j) (1), the District Council remanded the case to the Zoning Hearing Examiner for consideration of new evidence in accordance with Section 27-129(k).

The current language of 27-129(j) & (k) would appear to permit any new evidence after a case was taken under advisement, but limit such during a specific recess. This would require the Zoning Hearing Examiner to take a case under advisement, then reopen the case for new evidence instead of just receiving the evidence during any recess.

The proposed amendments to Section 27-129(j) (1) eliminate what can be considered a technical limitation on the Zoning Hearing Examiner's receiving new unanticipated evidence after a case has been specifically recessed.

The proposed amendments to Section 27-129(d) reword the standard for acceptance of evidence after a case is taken under advisement or remanded in accordance with generally accepted legal criteria for introduction of evidence. Subsection (C) merely continues what the Courts require of agencies in such instances. That is, if evidence is accepted after a hearing, the opposing parties are to be given an opportunity to rebut. Subsection (D) in essence continues the "good cause" standard in reverse. If it is found the evidence is cumulative or unduly prejudicial or delaying, the introduction can be denied. The burden of coming forward with affirmative reasons (for denial) is shifted from the moving party to the opposing party.

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