

**TAYLORSVILLE CITY COUNCIL
AGENDA ITEM SUMMARY**

MEETING DATE: March 2, 2016

AGENDA ITEM: Ordinance #16-01 Amending sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code concerning the Board of Adjustment.

PRESENTER: Mark McGrath

SUMMARY: This item is a continuation of the discussion from the January 20, 2016 City Council meeting. As you will recall, the City Council continued the item to give staff an opportunity to better explain and justify our recommendation as well as survey other communities to see how many had replaced the Board of Adjustment with a hearings officer, and for those that had changed, to assess their experiences with the change.

Several years ago State Code was modified offering more flexibility in how variances can be addressed by local governments. Previously, State Code required that local governments that have enacted zoning laws to also appoint a Board of Adjustment made up of five citizens of the community to hear *appeals*, *variances* and *special exceptions* to the provisions of the zoning ordinance. Instead of referring to a *Board of Adjustment* and the associated membership requirements, State Code now uses the term *Appeal Authority*. The function of the Appeal Authority is the same as the Board of Adjustment, however State Code now stipulates that communities can make a decision as to whether to have an appeal authority made up of a citizen board (such as a board of adjustment) or other option such as hearings officer with no citizenship requirement.

The current appeal authority in Taylorsville is the "Board of Adjustment", which is comprised of five (5) regular members and two (2) alternate members; all of which are citizens within the City.

As stated at the January 20th meeting, staff and the Taylorsville Planning Commission recommends that Taylorsville take advantage of the flexibility now offered in State Code and change the City's appeal authority from a Board of Adjustment to a "Hearing Officer" who is trained and experienced in legal matters related to land use decisions. The proposed changes appoint our "Administrative Law Judge" as the Hearing Officer. These changes would simplify the process for appeals and help ensure an efficient and fair process for all who wish to appeal the provisions of the City's Land Development Code.

Staff's recommendation to switch to an appeal authority consisting of an independent legal professional is based on the following rationale:

1. **More legally sound decisions.** The staff's primary concern is to ensure that decisions regarding variances are legally sound. In the past there have been a number of variance decisions (statewide as well as locally) that have been based on the personal opinions of the board members rather than the strict decision making criteria established in State Code. This is troubling for numerous reasons, primarily because it could put the City in a position of being accused of enforcing our laws arbitrarily and thereby jeopardizing all land use and development decisions. Equally troubling is that when a member of an Appeal Authority substitutes his or her own judgement about a zoning regulation, it is taking legislative authority away from the City Council. For example, if a land owner applied for a variance from a setback requirement of the city and a member of the Appeal Authority makes a statement such as "what's the big deal if the building is only a couple feet closer to the property line" and grants the variance, the appeal authority is taking legislative authority and essentially altering the zoning code. If it is no "big deal" to move the building a couple feet closer to the property line, the City's code should be amended by the City Council so that all property owners are subject to the same requirements and are treated equally under the law.
2. **Extended periods of time between meetings.** The Board of Adjustment meets very infrequently. In fact, our last Board of Adjustment meeting was August 30, 2011. In the last ten years we have only had seven Board of Adjustment meetings. This creates a number of potential problems including focus, training, and membership.
3. **Training.** As stated previously, the Board of Adjustment serves a quasi-judicial function. As a result, knowledge and training is of the utmost importance. Having a legal professional in the position of the appeal authority will greatly reduce the amount of City resources required for training and education.
4. **Membership.** An unfortunate reality is that most people find that serving on the Board of Adjustment is not very enjoyable. Typically it doesn't offer the same type of personal satisfaction that, for instance, a position of the Planning Commission offers. As a result it has historically been very difficult to keep a full board.
5. **Independent, neutral, and unbiased decisions.** Telling your friends and neighbors "no" can be a very uncomfortable situation. Staff feels that an independent legal professional who is neutral and unbiased will be able to more effectively make decisions solely based on findings of fact and that public clamor and political pressures will be minimized.

Other Cities:

Staff conducted a survey of other the other communities in Salt Lake County to see how many have chosen to switch from a board of adjustment to a hearing officer (please see attached table). We also asked about their decision making criteria and for those who have switched, what their

experiences have been. Of the 12 cities that responded, 6 have switched to a hearing officer (Salt Lake City, Holladay, Murray, Midvale, Draper, and Herriman) while six have remained with a board of adjustment (West Valley, Cottonwood Heights, West Jordan, Sandy, South Jordan, and Bluffdale). Below are a summary of comments from the Cities that have decided to switch to a hearing officer:

Salt Lake City: *"Our experience has been very good. We believe that we are seeing better, more legally sound decisions being made by the hearing officer. In the past, the SLC BOA had performed admirably, but for some reason interest in serving on the BOA was waning and the decisions were becoming more wieldy. I don't believe any one in our office has thought that the BOA was better than having a hearing officer"*

Holladay: *"We found too many of the 5 elements (the 5 criteria required by State law to grant a variance) required to be presented by the applicant were being blurred by the boards personal options and interpretations. Overall, I think both the staff and the city council have preferred the change."*

Murray: *"We have had good experiences with the hearings officers because they appear to be more impartial, and more subjective to the relevant laws and compliance issues."*

Midvale: *"Because we don't have a lot of variance and appeal applications being submitted, there were times we go months without meetings (one year we didn't have any). It was always concerning whether we still had a Board to meet when we would receive an application because there would be so much time between meetings. We now have a hearing officer on a two year contract and know we will be ready to address an application when it is received regardless of how much time has passed since the last application."*

Draper: *"It's worked out great for us. I used to run most of the variances through the BOA and I found that because they were volunteers, it was really hard for them to say no to people when they really should... I think our experience has been very positive."*

Herriman: *"The change has been very positive for our City. Having a land use attorney fill the role of the Appeals Authority just made sense. It has worked very well for Herriman City"*.

The attached Ordinance #16-01 is a comprehensive update of various sections of the City Code as recommended by the Taylorsville Planning Commission. The update includes a number of adjustments to the existing regulations by replacing "board of adjustment" with "hearing officer". Amendments also outline the specific duties and responsibilities of the

hearing officer; which are in-line with the current duties and responsibilities of the board of adjustment.

All of the proposed changes are outlined in "Exhibit A" with the traditional strikethrough and underline format.

PLANNING COMMISSION RECOMMENDATION: The Planning Commission made a unanimous recommendation to approve the proposed amendments on July 14, 2015.

STAFF RECOMMENDATION: City staff recommends approval of the text amendments related to the Board of Adjustment/Hearing Officer.

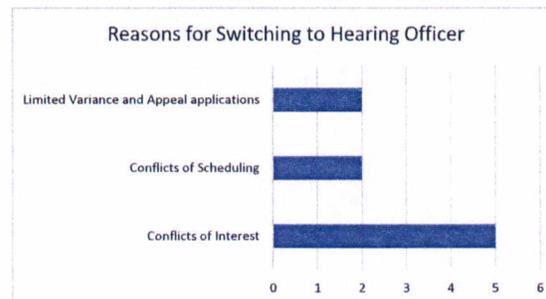
RECOMMENDED MOTION: I move that we approve Ordinance Number 16-01 amending various sections of the Taylorsville City Code related to the Board of Adjustment.

Board of Adjustment .vs. Hearings Officer - Salt Lake County

City	Status	Reason
Salt Lake	Hearing Officer(s) - 3	<p>Salt Lake City switched to a Hearing Officer. In fact, we now have 3 hearing officers in order to avoid conflicts of interest and scheduling problems. (I believe all three of our hearing officers are attorneys.) Our experience has been very good. We believe that we are seeing better, more legally sound decisions being made by the hearing officer. In the past, the SLC BOA had performed admirably, but for some reason interest in serving on the BOA was waning and the decisions were becoming more wily. I don't believe any one in our office has one thought that the BOA was better than having a hearing officer. When we started, we only had one officer and occasionally we had a hard time scheduling a meeting to due schedule conflicts (of everyone involved) and the apparently the legal system is a small world in Utah, so sometimes we had a case that had some type of personal (or professional) connections with our hearing officer. So now have 3 officers and we schedule them as needed (none of them are considered as alternates; we simply rotate them as needed). BTW – The role of a hearing officer is demanding and warrants payment. We pay \$100 per hour which includes preparation, research, meeting(s), and summation of decision (which the hearing officer writes). - Micheal Maloy</p>
South Salt Lake	No Response	
Holladay	Hearing Officer	<p>We have switched to a Administrative Hearings Officer as of 2012. We found to too many of the 5 part elements required to be presented by the applicant were being blurred by the boards personal options and interpretations. Overall, I think both the staff and the city council have preferred the change. - Jonathan Teerlink</p>
Murray	Hearing Officer(s) - 3	<p>Murray City has changed from a Board of Adjustment to hearings officers about 2 years ago. We have had three hearings officers so they alternate going to meetings. One or two of the hearings officers were attorneys. We have had good experiences with the hearings officers because they appear to be more impartial, and more subjective to the relevant laws and compliance issues. The Board of Adjustment members appeared to me to be more biased toward the applicant and finding ways to grant a variance in most cases. - Ray Christensen</p>
West Valley	Board of Adjustment	<p>To answer your question, West Valley City still uses a Board of Adjustment. We have thought about an administrative law judge (ALJ), but have decided against it for the present time. The primary reason is that an ALJ will typically use the letter of the law to determine cases. Using the letter of the law approach may not work in all situations. There are situations where granting a variance is the right thing to do and where it makes total sense, even when an applicant may not technically meet all 5 of the variance criteria in the true sense of the letter of the law. What we have tried to do with our Board is to train, train, and train again as it relates to the functions of the Board, and their ability to void certain sections of City ordinance. We make sure we have a good record and ensure that our Board specifically addresses each of the criteria when making a motion to approve or disapprove a variance application. The Board will specifically outline why or why the applicant does not meets the burden of proof for their particular item. - Steve Lehman</p>
Cottonwood Heights	Board of Adjustment	<p>We still use a Board of Adjustment. We have discussed implementing a hearing officer, but have not gone that direction yet. That said, I believe there are pros and cons to each method, and in my opinion that is largely dependent on the individuals filling those roles. - Mike Johnson</p>

Midvale	Hearing Officer	Midvale switched to a hearing officer in 2012. It includes the benefits we felt a hearing officer would bring to the table. In utilizing a hearing officer these past few years, we have experienced the benefits noted, and then some. Because we don't have a lot of variance and appeal applications being submitted, there were times we go months without meetings (one year we didn't have any). It was always concerning whether we still had a Board to meet when we would receive an application because there would be so much time between meetings. We now have a hearing officer on a two year contract and know we will be ready to address an application when it is received regardless of how much time has passed since the last application. - Leslie Burns
West Jordan	Board of Adjustment	No provided reason
Sandy	Board of Adjustment	No provided reason
South Jordan	Board of Adjustment	No provided reason
Riverton	No Response	
Draper	Hearing Officer	We made the switch to a Variance and Hearings officer some years ago. I don't remember exactly when. It's worked out great for us. I used to run most of the variances through the BOA and I found that because they were volunteers, it was really hard for them to say no to people when they really should. The Hearings officer doesn't have that problem. We have a lot less variance requests now too because people see that their chances for a variance are not that great. We maybe have one a year if that. So I think our experience has been very positive. Hope that helps. Let me know if you have any other questions. - Dan Boles
Herriman	Hearing Officer	The City does not have a Board of Adjustment. We have an Appeals Authority. That body was previously made up by the City Council. A few years ago the City decided to use an individual to fill that role. We contract with David Church. He is now the Appeals Authority. The change has been very positive for our City. Having a land use attorney fill the role of the Appeals Authority just made sense. It has worked very well for Herriman City. - Heather Upshaw
Bluffdale	Board of Adjustment	We have a BOA in Bluffdale. When I was in Draper and Morgan County, we switched to a hearing officer. If you want by the book, get a hearing officer. If you want community perspectives on justice and what should or shouldn't happen, keep the BOA. I see the pros and cons with both. Mark can call me for more details and political observations if he wants. - Grant Crowell

By the Numbers	
Total Jurisdictions	14
Board of Adjustment	6
Hearing Officer	6
No Response	2



Data Table	
Conflicts of Interest	5
Conflicts of Scheduling	2
Limited Variance and Appeal applicat	2

Part 7 Appeal Authority and Variances

10-9a-701 Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

- (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
 - (a) requests for variances from the terms of the land use ordinances;
 - (b) appeals from decisions applying the land use ordinances; and
 - (c) appeals from a fee charged in accordance with Section 10-9a-510.
- (2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
- (3) An appeal authority:
 - (a) shall:
 - (i) act in a quasi-judicial manner; and
 - (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
 - (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- (4) By ordinance, a municipality may:
 - (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
 - (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
 - (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
 - (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
 - (e) provide that specified types of land use decisions may be appealed directly to the district court.
- (5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
 - (a) notify each of its members of any meeting or hearing of the board, body, or panel;
 - (b) provide each of its members with the same information and access to municipal resources as any other member;
 - (c) convene only if a quorum of its members is present; and
 - (d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

10-9a-702 Variances.

- (1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

- (2)
 - (a) The appeal authority may grant a variance only if:
 - (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
 - (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - (v) the spirit of the land use ordinance is observed and substantial justice done.
 - (b)
 - (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:
 - (A) is located on or associated with the property for which the variance is sought; and
 - (B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - (ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
 - (c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:
 - (i) relate to the hardship complained of; and
 - (ii) deprive the property of privileges granted to other properties in the same zone.
- (3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (4) Variances run with the land.
- (5) The appeal authority may not grant a use variance.
- (6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 - (a) mitigate any harmful affects of the variance; or
 - (b) serve the purpose of the standard or requirement that is waived or modified.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-703 Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions.

- (1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.
- (2)
 - (a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality

to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

- (b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:
 - (i) one expert designated by the municipality;
 - (ii) one expert designated by the applicant; and
 - (iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.
- (c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.
- (d) The applicant shall pay:
 - (i) 1/2 of the cost of the panel; and
 - (ii) the municipality's published appeal fee.

Amended by Chapter 326, 2008 General Session

10-9a-704 Time to appeal.

- (1) The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.
- (2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.

Amended by Chapter 240, 2006 General Session

10-9a-705 Burden of proof.

The appellant has the burden of proving that the land use authority erred.

Enacted by Chapter 254, 2005 General Session

10-9a-706 Due process.

- (1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.
- (2) Each appeal authority shall respect the due process rights of each of the participants.

Enacted by Chapter 254, 2005 General Session

10-9a-707 Standard of review for appeals.

- (1) A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.
- (2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.
- (3) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.
- (4) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

Enacted by Chapter 254, 2005 General Session

10-9a-708 Final decision.

- (1) A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, or as otherwise provided by ordinance.
- (2) A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 10-9a-801(2)(a) or a final action under Subsection 10-9a-801(4).

Amended by Chapter 240, 2006 General Session

TAYLORSVILLE, UTAH
ORDINANCE NO. 16-01

AN ORDINANCE OF THE CITY OF TAYLORSVILLE TO AMEND SECTIONS 2.20.060;
3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050;
13.34.010; 13.36.150; AND 18.08.060 OF THE TAYLORSVILLE CITY CODE RELATED
TO THE BOARD OF ADJUSTMENT/HEARING OFFICER.

The City Council of Taylorsville ordains as follows:

WHEREAS, on June 10, 2015 a notice of public hearing regarding a proposed amendment to sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer was posted in the Salt Lake Tribune and Deseret News; and

WHEREAS, on July 2, 2105 a notice of public hearing regarding the proposed text amendment was posted in 3 different places within the City of Taylorsville boundaries; and

WHEREAS, on July 14, 2015 the Taylorsville Planning Commission properly noticed and held a public hearing regarding amending the text of sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer; and

WHEREAS, on July 14, 2015 the Taylorsville Planning Commission voted 6-0 to forward a positive recommendation to amend sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer; and

WHEREAS, the Taylorsville City Council met in a regular session on March 2, 2016 to conduct and consider, among other things, a public hearing regarding the proposed text amendment; and

WHEREAS, after careful consideration and review, the City Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of Taylorsville to amend sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer.

NOW, THEREFORE, BE IT ORDAINED by the Taylorsville City Council that the amendments made in the attached exhibit "A" are hereby adopted and are designated by interlineating the words to be deleted and underlining the words to be added.

This Ordinance, assigned Ordinance No. 16-01, shall take effect as soon as it shall be published or posted as required by law, deposited, and recorded in the office of the City Recorder, and accepted as required herein.

PASSED AND APPROVED this _____ day of _____, 2016.

TAYLORSVILLE CITY COUNCIL

By: _____
Ernest Burgess, Chair

VOTING:

Daniel Armstrong	Yea ___ Nay ___
Dama Barbour	Yea ___ Nay ___
Ernest Burgess	Yea ___ Nay ___
Bradley W. Christopherson	Yea ___ Nay ___
Kristie S. Overson	Yea ___ Nay ___

PRESENTED to Mayor of Taylorsville for his approval this _____ day of _____, 2016.

APPROVED this _____ day of _____, 2016.

By: _____
Lawrence Johnson, Mayor

ATTEST:

Cheryl Peacock Cottle, Recorder

DEPOSITED in the Recorder's office this _____ day of _____, 2016.

POSTED this _____ day of _____, 2016.

Exhibit A

- 2.20.060 Department of Community Development and Duties of Appointed Officers**
 - B. Boards and Commissions

- 3.16.010 Hearing Officer Application Fees**

- 13.02.200 Nonconforming Uses and Noncomplying Structures; Substitution, Extension, Discontinuance, etc.**
 - C. Appeal

- 13.03.010 Purpose**

- 13.03.020 Community Development Director**
 - A. Reviews and Decisions
 - B. General Plan
 - C. Administrative Staff Assistance and Technical Advice
 - D. Development Code Enforcement
 - E. Delegate Responsibility
 - F. Administrative Conditional Uses

- 13.03.040 Appeal Authorities**
 - A. Hearing Officer
 - B. City Council
 - C. Administrative Officer

- 13.04.110 Boundary Interpretation**

- 13.11.070 Residential Facility for Elderly Persons or for Persons with a Disability**
 - G. Accommodation

- 13.15.050 Exceptions**
 - A. Previously Platted Plots

- 13.34.010 Appeals**
 - J. Effective Date Of Appeal Authority Decision

- 13.36.150 "N" Definitions**
NONCONFORMING LOT

- 18.08.060 Powers of the Hearing Officer**

2.20.060: DEPARTMENT OF COMMUNITY DEVELOPMENT AND DUTIES OF APPOINTED OFFICERS:

B. Boards And Commissions: The following boards and commissions are hereby established for the city. Their organization, duties and powers are outlined elsewhere within the city's ordinances. These boards and commissions shall, where appropriate, coordinate with the city administration through the director of community development and the mayor:

1. Planning commission; and
2. ~~Board of adjustment~~Hearing Officer.

3.16.010: ~~BOARD OF ADJUSTMENT~~HEARING OFFICER APPLICATION FEES:

The fees for application to the ~~board of adjustment~~Hearing Officer shall be as follows:

Commercial uses	\$300 .00
Residential uses	150 .00

(Ord. 96-37, 9-11-1996)

13.02.200: NONCONFORMING USES AND NONCOMPLYING STRUCTURES; SUBSTITUTION, EXTENSION, DISCONTINUANCE, ETC.:

C. Appeal: Any person adversely affected by a decision of the planning commission regarding nonconforming uses or noncomplying structures may, within ten (10) days of the decision, appeal the decision to the ~~board of adjustment~~Hearing Officer by alleging that there is error in any order, requirement, decision, or determination made by the planning commission. (Ord. 12-15, 7-11-2012)

13.03.010: PURPOSE:

This chapter sets forth the purpose, duties, organization, and powers of city boards, commissions, and other bodies charged in making decisions and recommendations under this development code. (Ord. 12-15, 7-11-2012)

13.03.020: COMMUNITY DEVELOPMENT DIRECTOR:

The community development director, hereinafter referred to as the "director", in addition to duties elsewhere in this development code, is charged with the responsibility of interpretation and enforcement of this development code. Interpretation of this development code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this development code, the delegation of processing procedures and requirements, and enforcement of development code provisions. The specific duties of the director shall include the following:

A. Reviews And Decisions: The director shall be authorized to undertake reviews, recommendations and decisions as described in this development code. The director shall

be governed by the standards and procedures as set forth in this development code for the specific review, determination, or appeal which has been delegated to him.

- B. General Plan: The director shall assist the planning commission and city council in the development and implementation of the general plan for the physical and economic growth of the city and shall prepare population and growth studies in support of the general plan.
- C. Administrative Staff Assistance And Technical Advice: The director shall provide staff, including secretarial assistance, to the planning commission and ~~board of adjustment~~Hearing Officer. Staff assistance shall include attendance at regularly scheduled meetings and the preparation and publication of agendas. The director shall act as technical advisor to the mayor, city council, other city departments upon request, and other committees and commissions as the mayor may designate.
- D. Development Code Enforcement: The director is hereby designated and authorized as the officer charged with the enforcement of this development code. He shall enforce all the provisions of this development code, including court action when necessary, and his failure to do so shall not legalize any violation of such provisions. The police department is also hereby designated and authorized with enforcement of any nuisance provision of this development code.
- E. Delegate Responsibility: The director may designate representatives to execute the responsibilities in this development code.
- F. Administrative Conditional Uses: The director shall be authorized to review and decide administrative conditional uses. (Ord. 12-15, 7-11-2012)

13.03.040: APPEAL AUTHORITIES:

A. ~~Board Of Adjustment~~Hearing Officer:

- 1. **Purpose:** In order to provide for just and fair treatment in the administration of local land use ordinances and to ensure that substantial justice is done, a ~~board of adjustment~~Hearing Officer has been ~~created~~appointed to exercise the powers and duties provided hereafter. The Administrative Law Judge will act as the Hearing Officer as per 18.02.035.
- 2. **Created and Appointment:**
 - a. The Hearing Officer shall be appointed or removed by the Mayor with the advice and consent of the City Council.
 - b. Pursuant to Utah Code 10-9a-701 the City hereby establishes an appeal authority consisting of a Hearing Officer to:
 - i. Hear and decide requests for variances from the terms of the land use ordinance;

- ii. Hear and decide appeals from decisions applying the land use ordinance;
 - iii. Hear and decide appeals from a fee charged in accordance with State Code Section 10-9a-510;
 - iv. Hear and decide other matters as established by the City Council; and
 - v. Hear and decide appeals from decisions regarding administrative conditional uses.
- c. Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

~~3. **Creation And Membership:** The board of adjustment shall consist of five (5) regular members and two (2) alternate members.~~

- ~~a. The mayor shall appoint the members and alternate members with the advice and consent of the city council for a term of five (5) years.~~
- ~~b. All members and alternate members of the board of adjustment shall be residents of the city. Any member or alternate member of the board of adjustment relocating their primary residence outside the limits of the city shall resign their appointment within thirty (30) days prior to their relocation, if possible.~~
- ~~c. Members of the board of adjustment may be removed for cause by the mayor upon written charge and after a public hearing (if a public hearing is requested by the member being removed). Any vacancy occurring on the board of adjustment shall be promptly filled by the mayor, with the advice and consent of the city council for the unexpired term of the member whose office is vacant.~~

4.3. Organization and Procedures:

- ~~a. Organize and elect a chairman.~~
- ~~b. Adopt rules that comply with all applicable state statutes and city ordinances. Such rules shall establish procedures for alternate members to serve in the absence of members of the board of adjustment and shall provide that no more than two (2) alternate members may sit at any meeting of the board of adjustment.~~
- ~~c. Meet at the call of the chair and at any other times that the board of adjustment determines.~~
- ~~d. Have the chair, or in the absence of the chair, the acting chair may administer oaths and compel the attendance of witnesses.~~

~~e. Conduct its meeting in compliance with the requirements of state statutes and city ordinances concerning the keeping of minutes, recording of votes, and absences.~~

~~f. Hear a request for a variance or appeal. Three (3) members constitute a quorum of the board of adjustment and a concurring vote of three (3) members is necessary to grant a variance or to overturn a decision on an appeal.~~

~~g. Make decisions on scheduled agenda items. Decisions of the board of adjustment become effective at the meeting in which the decision is made unless a different time is designated in the board's rules or at the time the decision is made.~~

~~h. Each member of the board of adjustment shall receive a stipend for each meeting.~~

a. All hearings of the Hearing Officer shall be open to the public.

b. The Hearing Officer shall keep minutes of its proceedings, and

c. The Hearing Officer may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.

d. The Hearing Officer shall file its records in the office of the City Recorder.

e. All records in the office of the City Recorder are public records.

~~e.f.~~ Decisions of the Hearing Officer become effective at the time the decision is filed with the City Recorder, unless a different time is designated by the Hearing Officer.

~~5. Powers And Duties: The board of adjustment shall hear and decide:~~

~~a. Requests for variances from the terms of the land use ordinance.~~

~~b. Appeals from decisions where it is alleged that there is an error in the order, requirement, decision, or determination made by an administrative official or director in the enforcement or interpretation of this development code. Appeals may not be used to waive or modify the terms or requirements of the development code. No authority has been granted to the board of adjustment to make determinations regarding the existence, expansion, or modification of nonconforming structures or nonconforming uses.~~

~~c. Other matters as established by the city council.~~

B. City Council: All appeals from decisions regarding nonadministrative conditional uses shall be heard by the city council.

C. Administrative Law Judge: All appeals from decisions regarding administrative conditional uses shall be heard by the administrative law judge.

D.C. Administrative Officer: The director is designated as an appeal authority for the purpose of reviewing and deciding matters as established by the city council. (Ord. 12-15, 7-11-2012)

13.04.110: BOUNDARY INTERPRETATION:

Where physical or cultural features existing on the ground are different than shown on the zoning map or in other circumstances not covered by subsection 13.04.100A of this chapter, the director shall interpret the district boundaries. Any appeal of boundary interpretation shall be made to the ~~board of adjustment~~Hearing Officer. (Ord. 12-15, 7-11-2012)

13.11.070: RESIDENTIAL FACILITY FOR ELDERLY PERSONS OR FOR PERSONS WITH A DISABILITY:

G. Accommodation:

1. Accommodation Required: None of the requirements of this section shall be interpreted to limit any accommodation which is reasonable and necessary to allow the establishment or occupancy of a residential facility for persons with a disability.
2. Application: Any person or entity wanting an accommodation shall make application to the planning commission and shall articulate in writing the nature of the requested accommodation and the basis for the request.
3. Appeal: If an accommodation request is denied, the decision may be appealed to the ~~board of adjustment~~Hearing Officer in the manner provided for appeals of administrative decisions set forth in this title.
4. Prohibited Accommodations: The requested accommodation must relate to the use of the property so that it may be enjoyed as other similarly situated properties. An example would include a reduction in setback requirements for the installation of handicapped accessibility improvements. An accommodation cannot be granted to waive a zoning requirement, general setback reduction requests not related to the occupants, increase the profitability of the facility, or increase the maximum number of unrelated occupants above eight (8) plus two (2) additional persons acting as house parents or guardians.

13.15.050: EXCEPTIONS:

- A. Previously Platted Lots: If a lot which contains or is adjacent to thirty percent (30%) or greater slopes was platted, approved, and recorded prior to the adoption of sensitive area (or similar) regulations either in Salt Lake County or the city and such lot does not comply with the city's current sensitive area overlay zone, a property owner may request a special exception from the director to allow construction on the property at reduced or no setback from the thirty percent (30%) or greater slope. If it is determined that this exception applies, the lot will not be required to proceed through sensitive area overlay zone review though special requirements to protect the health,

safety, and welfare of the lot owner and residents of the city will be imposed before the issuance of a building permit. A property owner may request this exception only if the lot complies with the following:

1. Qualifications: Property which qualifies for the exception is limited to the following:
 - a. Subdivision lots approved and recorded prior to the enactment of sensitive overlay (or similar) regulations which were applicable to the property, or subdivision lots approved and recorded under different regulations than currently apply to the property; and
 - b. The lot contains or is adjacent to thirty percent (30%) or greater slope and cannot be built upon in compliance with the setbacks required by the sensitive area overlay zone in effect at the time the request is made; and
 - c. The lot does not have the amount of usable land area required by the sensitive area overlay zone in effect at the time the request is made; and
 - d. The slope is stable and suitable for construction as determined by the city engineer; and
 - e. Measures can be imposed which mitigate or eliminate hazards created by construction near the slope; and
 - f. The development shall comply with all other requirements of the code including driveway slopes and cuts and fills unless the ~~board of adjustment~~Hearing Officer approves a variance.

13.34.010: APPEALS:

- J. Effective Date Of Appeal Authority Decision: A decision of an appeal authority takes effect:
 1. ~~Board Of Adjustment~~Hearing Officer: At the meeting in which the decision is made.
 2. Other Appeal Authorities: On the date when the appeal authority issues a written decision or approval of the minutes of the meeting at which the decision was made, if applicable, whichever occurs first. (Ord. 12-15, 7-11-2012)

13.36.150: "N" DEFINITIONS:

NONCONFORMING LOT: A lot whose width, area, or other dimension does not conform to the regulations when this code became effective. However, proposed structures for such lots shall meet the required setbacks under this code unless otherwise stipulated by the ~~board of adjustment~~Hearing Officer.

18.08.060: POWERS OF THE HEARING OFFICER:

- A. The hearing officer has the authority to hold hearings, determine if violations of city ordinances exist, order compliance with city ordinances, and enforce compliance as provided in this title on any matter subject to the provisions of this title.
- B. A hearing officer may, for good cause shown by one of the parties or if the hearing examiner independently determines that due process has not been adequately afforded to such party, continue a hearing.
- C. The hearing officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The hearing officer shall develop policies and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.
- D. The hearing officer has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance of that order, which includes the right to authorize the city to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.
- E. The hearing officer has the authority to require a responsible person to post a code enforcement bond to ensure compliance with an administrative code enforcement order.
- ~~F. A hearing officer shall not make determinations as to the existence of a nonconforming structure or use. If a responsible person claims such a right as a defense, the hearing official shall not continue and refer the matter to the board of adjustment for a determination as to the existence of the nonconforming structure or use. The board of adjustment's decision shall be binding on the hearing officer. The responsible person shall bear the costs of the referral to the board of adjustment. (Ord. 08-14, 7-9-2008)~~