

## SECTION 2

### COUNTY PLANNING

#### 2.1 PLANNING COMMISSION

##### 2.1.1 Establishment of Commission – Number of Members – Qualification

There is hereby created a Planning Commission within and for Carbon County, to be known as the Carbon County Planning Commission. Said Commission shall consist of seven voting members, two alternate members, and, at the discretion of the Board of County Commissioners, a non-voting, liaison member from the Board of County Commissioners. The members of the Planning Commission shall be appointed by the Board of the County Commissioners. Each of the seven appointed members and the two alternates shall be a resident of the County and at least four of them shall hold no other public office or position. Members shall be selected without respect of political affiliations and shall serve without compensation, except for reasonable expenses. In the event of the absence of any regular members at any meeting, the alternate member(s) shall serve with full rights and authority at said meeting.

##### 2.1.2 Term of Office

Each member of the Planning Commission shall serve for four years. The term of office for the liaison member shall be as determined by the action of the Board of County Commissioners.

##### 2.1.3 Vacancies – Removal from Office

Vacancies of appointed members occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired term by appointment of the Chairman of the Board of County Commissioners with the consent of the other members. Members of the Planning Commission may be removed by the County Commission for non-performance of duty or misconduct, after public hearing on the matter, if one is requested. Attending fewer than half of all regularly scheduled meetings of the Planning Commission within a year's time shall be considered non-performance of duty.

##### 2.1.4 Organization – Rules of Procedure

The Planning Commission shall elect from its members a chairperson and vice chairperson, whose term shall be for one year. The Commission may create and fill such other offices as it may determine. The Planning Commission shall adopt policies and procedures governing its procedure and shall keep public records of its proceedings.

##### 2.1.5 Duties and Powers

The Board of County Commissioners designates the Planning Commission as the Land Use Authority to hear and act on all land use applications, except as may be otherwise stated in this Development Code. The Planning Commission shall have the power as may be necessary to perform its functions and promote County planning as follows:

- A. To prepare and recommend a master plan and amendments to the master plan to the County legislative body.
- B. To recommend zoning ordinances and maps, and amendments to zoning ordinances and maps to the County legislative body.
- C. To recommend subdivision regulations and amendments to those regulations to the County legislative body.

- D. To act as the land use authority in regard to subdivision and conditional use permit applications, with authority to approve or deny ~~of~~ subdivision and conditional use permit applications.
- E. To determine other land uses not specified in the Development Code. Because not all land uses may be contemplated by this code, any use of land which is not enumerated as a permitted or conditional use in a particular zoning district, and is not contrary to law, may be considered by the Planning Commission to be a permitted non-conditional or conditional use. The Planning Commission shall hear and decide requests from any person or entity adversely affected by an omission of a legal land use in this code. The Planning Commission shall determine whether the use is a permitted or conditional use.

The Planning Commission may not hear or authorize such use unless it meets the minimum requirements needed to promote the public health, safety, morals, convenience, order, prosperity and general welfare of the public.

Upon the Planning Commission making findings of fact, any conditional use shall be approved pursuant to the standards set forth in this Code. Any permitted use shall be referred to the Zoning Administrator and Building Official for application for and issuance of proper permits.

- F. To advise the County legislative body on matters as the County legislative body directs.
- G. To hear or decide any matters that the County legislative body designates.
- H. To exercise any other powers delegated to it by the County legislative body.
- I. To exercise any other powers that are necessary to enable it to perform its functions.

## 2.2 APPEALS, APPEAL AUTHORITIES, AND REQUESTS FOR VARIANCES

2.2.1 Appeals Considered. All land use decisions made or issued by any Land Use Authority designated herein may be appealed to an Administrative Hearing Officer within 30 days of the issuance of a decision of the Land Use Authority. All legislative decisions made or issued by the Legislative Body may be appealed to the 7th District Court within 30 days of the issuance of a decision of the Legislative Body.

2.2.2 Variations. A request for a waiver of or variance to a land use ordinance shall be heard by an Administrative Hearing Officer. Variations and waivers that may be considered include, but are not limited to, the following:

1. Building setbacks from property line
2. Structure height requirements
3. Exploratory or production well locations
4. Parking facilities
5. Landscaping
6. Utility requirements
7. Livestock and animal locations and density

2.2.3 Appointment of Administrative Hearing Officer. The Administrative Hearing Officer shall be appointed by the Board of County Commissioners. The Board of Commissioners may at their discretion appoint more than one Hearing Officer. If more than one Hearing Officer is appointed, the Hearing Officers will alternate hearing cases, and shall substitute for each other when the appointed officer is unavailable. An Administrative Hearing Officer may enlist the assistance of a geologist, structural engineer, or other expert in the geologic sciences in making decisions pertaining to geologic hazards. Any costs associated with technical reports will be at no cost to Carbon County.

2.2.4 Conduct of Appeal Hearings – All hearings before an Administrative Hearing Officer shall be subject to the following rules and guidelines:

- a. Public notice of any appeal hearing shall be given as required for any meeting under the Utah Open and Public Meetings Act. Notice of the appeal hearing shall be given to the parties at issue and to the owner of the underlying property no fewer than 10 days prior to the hearing. Notice shall be deemed effective as of the date notice is mailed. An applicant who fails to appear, or whose agent fails to appear, at a properly noticed meeting may be denied relief on the basis of the applicant's absence at the hearing.
- b. All such hearings shall be recorded and minutes shall be made of said meetings.
- c. The appeal authority shall not be bound to follow rules of evidence.
- d. A written decision shall be issued by the appeal authority after all evidence has been presented. A copy of the decision shall be kept in the records of the Planning Department.
- e. The Administrative Hearing Officer is the final appeal authority for land use decisions and requests for waivers and variances within Carbon County. A decision of an Administrative Hearing Officer may be appealed to the Seventh Judicial District Court of Carbon County within 30 days of the mailing of the written decision of the Administrative Hearing Officer.

2.2.5 Standards on Variances and Waivers

A. A variance or waiver may be granted only if it is reasonably and clearly determined that:

1. Literal enforcement of the requirements and provisions of this title would cause an unreasonable hardship on the owner that is not necessary to carry out the general purpose of this title;
2. Special, unique, or exceptional circumstances or conditions are attached to the land but do not generally apply to other properties in the same zone;
3. Granting the variance is essential to the beneficial enjoyment of a substantial property right possessed by other property owners in the same zone;
4. The variance will not:
  - a. be contrary to the public interest or welfare;
  - b. substantially affect the County master plan;
  - c. substantially injure or restrict the beneficial use and enjoyment of adjacent or nearby property; or
  - d. permit a use not designated as a permitted or conditional use in the zone in which the land is situated;
5. The requesting person is the owner of the land, authorized agent of the owner, or a holder of a beneficial interest in the land;

6. The spirit and intent of this title are observed and substantial justice is done; and

7. There is no reasonable alternative.

B. The appeal authority may not make a finding that there is an unreasonable hardship unless the alleged hardship:

1. Is located on or closely and reasonably associated with the land for which the variance is sought; and

2. Results from special circumstances which are unique to the land and not from conditions that are general to the neighborhood.

C. The appeal authority may find that special circumstances exist only if the special circumstances:

1. Relate to the alleged hardship; and

2. Deprive the land of privileges granted to other properties in the same zone.

D. The owner shall have the burden of proving that all of the above elements are met.

## 2.3 ZONING ADMINISTRATION

### 2.3.1 Creation of Office

There is hereby created the office of Zoning Administrator. Said Administrator is hereby charged with the administration and enforcement of the zoning regulations of the County and other duties as set forth below.

### 2.3.2 Powers and Duties of the Zoning Administrator

The Zoning Administrator may appoint deputies.

It shall be the duty of the Zoning Administrator or Deputy:

- A. To review all applications for building permits and to approve such permits when all requirements of the zoning regulations have been met.
- B. To respond to requests for information from citizens and officials regarding details of the County's development and zoning requirements.
- C. To enforce the provisions of this Code within the County, to refuse to approve any permit unless the plans of and for the proposed erection, construction, or use fully conform to all zoning regulations in effect within the County, and to enter actions in the courts when necessary.
- D. Upon appeal to the Administrative Hearing Officer on any matters heard and decided by the Land Use Authority designated under this Code, the Zoning Administrator shall forthwith transmit all papers, records, exhibits, and other pertinent data pertaining to the appeal thereto.
- E. To keep the Official Zone Map current, and to issue certificates of zoning compliance when requested.
- F. To act as staff to the Planning Commission and to coordinate its activities with those of the Administrative Hearing Officer and County Commission.
- G. To provide technical assistance to the Administrative Hearing Officer and to coordinate its activities with those of the applicable Land Use Authority.

- H. To review and approve applications for agricultural land divisions and to obtain the signature of the Chair of the Planning Commission for plats describing such divisions upon review for accuracy by the Deputy County Surveyor.
- I. To review and approve temporary use permits and certain conditional use permits, as set forth elsewhere in this Development Code.
- J. To review and approve communication tower/utility, and recreation subdivisions.