

## WORK SESSION – Tuesday, January 31, 2023

**Minutes of the Huntsville Town Council work session held at the Ogden Valley Library Auditorium, 131 South 7400 East at 6:00 p.m.**

The work session was called for the purpose of providing training for the Town Boards from Bill Morris, Town Attorney. The committees also met to discuss an ordinance proposed in 2022 to make amendments to the Appeals board, appeals process and the Planning Commission structure.

**Attending: Beckki Endicott – Clerk, Bill Morris – Attorney, Mayor Sorensen, TC Member Sandy Hunter, TC Member Artie Powell, TC Member Bruce Ahlstrom, PC Member Steve Songer, PC Member Jeff Larsen, PC Member Amanda Hessenhauer, PC Member Liz Poulter, Appeals Board Member Rod Layton, Appeals Board Member John Bowen, Appeals Board Member Brent Ahlstrom**

Mayor Sorensen called the meeting to order. He turned the time over to Attorney Morris to conduct the Open and Public Meeting Training and Workplace Discrimination Training.

The training concluded at 7 p.m.

**Attorney Bill Morris left the meeting at 7:00 p.m.**

Mayor Sorensen asked the Appeals Board Members to stay and help with the discussion on the Planning Commission Ordinance proposed last year. The ordinance was amended near the end of Mayor Truett's term, but never passed in the Planning Commission. The ordinance recommends the adoption of a one-person appeal authority who was not a member of the Town but had legal experience with land use. Mayor Sorensen wanted to get the opinion of the Appeals Authority regarding this change in the ordinance. **(See Attached Ordinance Draft)**

Appeals Authority Member Rod Layton expressed his support of the one-member, non-partial appeals authority. He does not think that members can get totally away from the history and relationship bias because we are such a small town. It is difficult to make decisions between neighbors. Rod Layton believes that a one-member, non-partial person would be a good change for the Appeal Authority.

Appeals Authority Member John Bowen agrees with Rod Layton. He added that the members of the Appeals Authority do not like to disagree with one another because, again, they are neighbors and want to find unity with one another. Additionally, John Bowen expressed that many times there is a likelihood that a case will go to a lawsuit. When this happens, the law is complicated and difficult for the Appeals to make legal decisions. The frequency of appeals is also increasing.

Appeals Authority Member Brent Ahlstrom commented that with an independent person you can gain the proper perspective. Most of the Appeals Authority do not have a legal

background. He is unsure about the independent appeals authority not having the history of certain land use decisions in Town. Mayor Sorensen stated that the land in Huntsville Town has increased in value and people want a return on their investment.

TCM Ahlstrom understands the reasoning to go toward a one-person Appeals but believes there is more protection for property rights and owners with a five-member Appeals Authority. Appeals Member Bowen pointed out that if there were a one-person Appeals, they would receive a recommendation from a five member Town Council or Planning Commission. A representative from the Town in an Appeal would be very helpful and provide representation for the Town. TCM Powell recommended that representation from the Town be put in the ordinance.

PC Member Hessenhauer asked if there was a need for an Appeals Authority. The Appeals Authority is required by the Utah State Code 10-9a-701.

Mayor Sorensen agreed that a five-member board can come up with some creative solutions to resolve land use issues. He recommends not changing anything until the current appeal cases are decided. Mayor Sorensen excused the members of the Appeals Board as the discussion moved onto the Planning Commission.

**Appeals Members John Bowen, Rod Layton and Brent Ahlstrom left the meeting at 7:30 p.m.**

The terms of the PC members were discussed. Mayor Sorensen prefers 2-3 years of service on the PC. He would also prefer that the chair of the PC be appointed by the mayor with advice and consent from the Town Council. There may be vacancies mid-term that are hard to fill without the mayor's power to appoint.

PC Member Sandy Hunter pointed out the current term of a PC member is two years. She is in favor of adding the language for reappointment after the PC member term has expired. She believes the Chair could also be reappointed.

TC Member Powell believes that an alternate is not needed with the electronic meetings. The alternate should never vote unless there is not a quorum. PC Member Jeff Larsen stated there are many times that not everyone is in attendance and cannot meet electronically. There were other points brought up regarding the alternate member. Overall, most thought it was a good idea to have an alternate. They provide valuable input into discussion. If the quorum was all that mattered, why not have a three member PC. It is a good training ground for a new member. The time served for a year helps get them up to speed on the code and the issues. Currently there are five members with one alternate. TC Member Artie Powell recommended just making the PC a 6-member board with a 4-member quorum. TC Member Powell also disagrees with the wording that an alternate be the first considered at an opening.

TCM Bruce Ahlstrom thinks the name of the Appeals Authority should be named the Appeals Authority and Variance Board.

**TCM Bruce Ahlstrom left the meeting at 7:55 p.m.**

PCM Hessenhauer asked about the terms of service. She stated it takes time to learn a job and she questions whether two years is enough time to gain enough experience to be effective. There was additional discussion on the terms of service. The PC will discuss it further in a PC meeting.

There was additional discussion on the Land Use Authority. This person would be someone to sign the Land Use Permits. The role is administrative. TCM Sandy Hunter sees this person as part of the Planning Commission. The Land Use Authority would see the site plan and application first. If there were issues that did not fall under routine, it would go to the Planning Commission. The Planning Commission would be the ultimate check on the Land Use Permits.

The ordinance will go to the PC for additional work.

TCM Hunter motioned to adjourn the meeting. TCM Powell seconded the motion. All votes Aye.

**Meeting adjourned at 8:38 p.m.**



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Beckki Endicott, Huntsville Town Clerk

**HUNTSVILLE TOWN  
ORDINANCE NO. \_\_\_\_\_**

**LAND USE ADMINISTRATIVE AMENDMENTS**

**AN ORDINANCE OF HUNTSVILLE TOWN, REPEALING, RE-ENACTING AND AMENDING THE LAND USE AUTHORITY AND PLANNING COMMISSION ADMINISTRATIVE STRUCTURE; LAND USE DUTIES AND POWERS; LAND USE APPEALS; SEVERABILITY; AND EFFECTIVE DATE.**

**WHEREAS**, Huntsville Town (hereafter “Town”) is a municipal corporation, duly organized and existing under the laws of the State of Utah;

**WHEREAS**, *Utah Code Annotated* §§ 10-8-84 and 10-8-60 allow municipalities in the State of Utah to exercise certain police powers and nuisance abatement powers, including but not limited to providing for safety and preservation of health, promotion of prosperity, improve community well-being, peace and good order for the inhabitants of the Town;

**WHEREAS**, Title 10, Chapter 9a, of the *Utah Code Annotated*, 1953, as amended, enables municipalities to regulate land use and development;

**WHEREAS**, the Town finds it necessary to update its land use ordinances in order to meet the challenges presented by development and to protect public health, safety, and welfare;

**WHEREAS**, after publication of the required notice the Planning Commission held its public hearing on \_\_\_\_\_, to take public comment on the proposed Ordinance, after which the Planning Commission gave its recommendation to \_\_\_\_\_ this Ordinance;

**WHEREAS**, the Town Council received the recommendation from the Planning Commission and held its public meeting on \_\_\_\_\_;

**NOW, THEREFORE**, be it ordained by the Town Council of Huntsville Town as follows:

**Section 1:**     **Repealer.** Section 15.3.4 of the *Huntsville Municipal Code* entitled “Planning Commission” is repealed. Chapter 15.5 of the *Huntsville Municipal Code* entitled “Appeal Authority” is repealed and re-enacted as Land Use Authorities and Appeals. Any other ordinance or portion of the *Huntsville Municipal Code* inconsistent with this Ordinance is hereby repealed and any reference thereto is hereby vacated.

**Section 2: Administrative Actions.** The *Huntsville Municipal Code* is amended to repeal all instances requiring administrative action, or non-legislative action, on a land use application by the Town Council, excepting subdivisions over ten (10) lots.

**Section 3: Adoption.** The following portions of the *Huntsville Municipal Code* are hereby adopted to read as follows:

**15.5.010 Planning Commission.**

1. Establishment. In accordance with Utah Code Annotated §10-9a-301, Town hereby establishes the Planning Commission subject to this Section.
2. Membership. The Planning Commission is composed of five (5) members and one alternate who shall be residents, and registered voters, of the Town duly appointed by the Mayor, subject to the advice and consent of the Town Council. The alternate will be invited to all meetings and in the event of one of the five (5) members being absent, the alternate is eligible to vote.
3. Term. Each member of the Planning Commission shall serve a term of ~~two~~ three (3) years. Terms may be staggered. Members may be reappointed.
4. Vacancy. Any vacancy in the Planning Commission is filled for a ~~two~~ (2) three (3) year term by appointment of the Mayor, subject to the advice and consent of the Town Council.
5. Removal. A member may be removed for missing sixty (60) percent of the meeting in a during a calendar year, or by majority vote of the Town Council.
6. Powers and Duties. The Planning Commission shall only exercise the powers and duties set forth in Utah Code §10-9a-302, and as follows:
  - a. Recommendation. Review and make a recommendation to the legislative body for:
    - i. A general plan and amendments to the general plan.
    - ii. Land use regulations, including:
      1. Ordinances regarding the subdivision of land.
      2. Amendments to existing land use regulations;
  - b. Decision. The Planning Commission shall hear and decide all land use applications, subject to review by the Town Council.
  - c. Review. The Mayor or any member of the Town Council may request to review a decision by the Planning Commission by filing a written request with the Town Clerk within ten (10) days of any decision. The Town Council by majority vote may amend, modify, approve, or deny a land use application under review by the Town Council.
7. Presiding Officer. One member will be appointed by the Mayor with the advice and consent of the Town Council to serve as the Chairman. ~~The Planning Commission shall, at its first meeting each year, elect a Chair and Vice chair from its membership. Each member shall rotate serving as chair for a period of one year commencing the first meeting of each year.~~
8. Quorum. A quorum of the Planning Commission consists of three (3) members present at a public meeting. A decision of the Planning Commission based upon the majority vote

of the quorum present and voting at a public meeting. Each member present at a meeting shall vote on an issue, yea or nay, except when a member declares a conflict of interest. A tie vote fails, or is deemed to be a negative recommendation, as the case may be.

9. Rules. The Planning Commission shall follow the Rules of Procedure and Order adopted by the Town Council.
10. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.

#### **15.5.020 Land Use Authority.**

- 1.Appointment. In accordance with Utah Code §10-9a-302(1)(c), the Mayor, subject to the advice and consent of the Town Council may appoint an Administrative Hearing Officer as the Land Use Authority to review and approve routine and uncontested land use applications, including:
  - a. Land Use Permits (including proper and accurate site plans).
  - b. Conditional Use Permits.
  - c. Subdivisions of three (3) lots or less in accordance with Utah Code §10-9a-605, notwithstanding a plat and compliance with Chapter 15.25 is required.
2. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
3. Applicability. The Administrative Hearing Officer shall serve until removed by the Town Council or a successor is appointed. In the event that an Administrative Hearing Officer is not appointed, or in the event an application is contested, the Planning Commission is hereby designated as the Land Use Authority.
4. Standard. A land use decision is an administrative act and shall be made in accordance with Utah Code §10-9a-306.
5. Contested. A land use application is only deemed contested if an adversely affected party files a written contest with the Town Clerk on a complete land use application duly filed with the Town regarding a land use application under this Section prior to action by the Administrative Hearing Officer or within ten (15) days of decision by the Administrative Hearing Officer.
6. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.

#### **15.5.030 Appeal Authority.**

- 1.Establishment. In accordance with Utah Code §10-9a-701, the Mayor, subject to the advice and consent of the Town Council may appoint an Appeal Authority to hear and decide the appeal of any land use applications decided by the Planning Commission or Town Council.
2. Appointment. The Mayor shall appoint an individual, including alternates, as the Appeal Authority subject to the advice and consent of the Town Council.
3. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
4. Compensation. The Mayor may fix per diem and compensation as established by the Town Council.

5. Authority. The Appeal Authority is quasi-judicial and serves as the final arbiter of issues involving the interpretation or application of the municipal code in the course of hearing and deciding all appeals, including:
  - a. Appeals set forth in Utah Code 10-9a-701(1)(b).
  - b. Variances in accordance with Utah Code §10-9a-702.
  - c. Appeals regarding geological hazards shall be administered in accordance with Utah Code §10-9a-703.
  - d. Any other appeal specified in the municipal code.
6. Time. In accordance with Utah Code §10-9a-704, a written appeal of any land use decision shall be filed with the Town Clerk within ten (10) calendar days of the decision issued by the land use authority. An applicant present at a meeting where a decision is made is presumed to have actual notice of the decision which shall be deemed as the commencement of the ten (10) calendar day appeal period.
7. Burden. In accordance with Utah Code §10-9a-705, the appellant has the burden of proving error.
8. Due Process. Due process is afforded in accordance with Utah Code §10-9a-706.
9. Scope. Subject to the scope set forth in Utah Code §10-9a-707, the standard of review for the appeal authority is as follows:
  - a. For factual matters, the Appeal Authority may review the matter de novo.
  - b. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application.
  - c. An appeal may be made where a Land Use Authority has applied a land use regulation to a particular application, person, or parcel.
  - d. All other standards for making a shall be based upon the preponderance of the evidence.
  - e. The appealing party is limited in raising claims only to those claims that were initially raised at the time the decision was made upon the land use application.
10. Final Decision. The Appeal Authority shall issue a final decision in accordance with Utah Code §10-9a-708.
11. District Court. No person may challenge in district court any land use decision of the Town until that person has complied with Utah Code §10-9a-801, and otherwise exhausted all administrative remedies and in accordance with Utah Code §10-9a-701(2). The following limitations apply:
  - a. No adversely affected parties shall present a theory of relief in district court that was not first presented to the appeal authority.
  - b. Adversely affected parties are precluded from pursuing 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.
  - c. The Appeal Authority may provide that a matter be appealed directly to the district court.

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9. Rules. The Planning Commission shall follow the Rules of Procedure and Order adopted by the Town Council.

**Commented [AP1]:** This seems contradictory. The PC elects a chair and vice chair. But each member rotates serving as chair.

**Commented [AP2]:** Is electronic participation allowed?

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