

## **WORK SESSION—January 19, 2022**

Minutes of the Huntsville Town Council Work Session, Wednesday, January 19<sup>th</sup>, 2022, at the Huntsville Town Hall, 7309 East 200 South at 7 p.m. The purpose of the work session was to discuss making changes to the Planning Commission and Appeals Authority structure by amending the Town Ordinances.

Name	Title	Status
Richard L. Sorensen	Mayor	Present
Bruce Ahlstrom	Council Member	Present
Kevin Anderson	Council Member	Present
Sandy Hunter	Council Member	Zoom
Artie Powell	Council Member	Zoom
Beckki Endicott	Clerk/Recorder	Present
William Morris	Legal Counsel	Excused

### **Citizens:**

Mayor Sorensen opened the meeting and wanted to start with some brief history. He stated when Bruce Ahlstrom was appointed to the Town Council, Bruce wanted to suggest Rod Layton be appointed to the head of the Appeals Authority. Mayor Sorensen had spoken with our attorney, Bill Morris, about heading a different direction and selecting a former ombudsman, Craig Call, to settle the Appeals. Craig Call is the law partner of Kevin Anderson, Town Council Member, making this a conflict of interest. Mayor Sorensen also had some ideas about the Planning Commission, so he reached out to Attorney Morris to draft some ordinance changes. Attorney Morris has been recommending the Planning Commission be changed to a Land Use Authority for several years now.

Mayor Sorensen recommended to Attorney Morris:

- 1) The term of a Planning Commissioner be changed to something less than 5 years. It is currently 5 years.
- 2) The Planning Commission Chair be appointed in 1-year terms, with the opportunity to be reappointed.
- 3) Get rid of the alternate position on the PC
- 4) Make Quorum the majority of the those in attendance live or virtually

Attorney Morris drafted the changes and sent it to Beckki. (**See Attachment #1**)

Mayor Sorensen suggested he would like to see the term changed because it is difficult to get residents to serve the whole five-year term. Currently, it is longer than the Town Council's term. Mayor Truett has suggested previously that it would be a good tool to bring new residents into the Planning Commission in preparation to serve in elected office.

The Planning Commission Chairman has served in perpetuity. However, the Weber County Planning Commission and the Ogden Valley Planning Commission rotate the chair position annually. A lot of business leader boards also rotate this position. Weber Fire Board rotates every year.

Alternates were originally written in the code because the PC was having a hard time getting a full quorum at their meetings.

Sandy Hunter agreed that the alternate is not needed. If there are five on the Town Council, mirroring that in the Planning Commission with five members sounds reasonable. Her definition of a quorum is three members. With her leaving the PC, this would leave one position open. After some thought, Sandy commented that when she recruits residents to the Planning Commission, she tells them if they feel like they can't serve five years, they can resign. She expressed that this might not be the best way to entice people to serve. As far as the chair position term of a year, she would like to see the wording changed so a year would be the term, but reappointment could be considered with no time limit.

Sandy recounted that Rex Harris served as the Land Use Coordinator for some time and went through the application process for a Land Use Permit with residents. The current drafted ordinance calls for that position again, unless it is a subdivision of 5 or more lots. Sandy would like the number downsized to 3 lots but could see that position of Land Use Coordinator or Land Use Authority take the burden off the Planning Commission. She stated if Huntsville didn't have that position, the Planning Commission is the Land Use Authority, and they would have to sign off on the Land Use Permits. Sandy likes the wording in the powers and duties section that refers to the State Code. She can see how some of these changes would be good for Huntsville.

Artie Powell stated he appreciated the history of how the changes came to be and it gives him some additional perspective. He stated there are changes in this code that he doesn't agree with and couldn't go along with. He believes that one-year terms are unreasonable because it takes a considerable amount of training to understand Land Use.

**Attorney Bill Morris entered the meeting at 7:20 p.m.**

Artie continued with his comments stating he does not understand the problems with the Planning Commission and the Variance Board to justify the significant changes in the proposed draft ordinance. He suggested that we set this ordinance aside and talk about what the problems are.

Attorney Morris reviewed the ordinance starting with page two. He cited that every year the state legislature is seeing bills that take away land use authority from the Towns and Cities because the process is slow. Attorney Morris would like to see Huntsville streamline its application process for simple things. The state requires us to have a Planning Commission, but the community can decide how it looks. This is the board that hears from the residents.

Another problem Huntsville has is that the Planning Commission often wants to get into areas of government that are not within their scoop of power. Attorney Morris included more specific powers and duties in the ordinance to clarify the scoop for the Planning Commission. He gave the example of road projects. Last year the Planning Commission wanted to have say in a road project that was in the prevue of the Town Council. The Town Council oversees public roads. He stated

that the Planning Commission should oversee Land Use Permit, Conditional Use Permits, Subdivisions, Zoning, and Re-zoning Ordinances. They should be focused on these five things. Attorney Morris stated there has been constant conflict between the TC and PC and he is seeking to improve that relationship. He also commented the Town Council would not be involved in the Conditional Use and the Subdivision process. It delegates that authority to them and removes the conflict between the committees.

TC Member Kevin Anderson asked if the Town Council could reserve the right to review those Conditional Uses and such if they wanted. He went on to explain that if the Planning Commission was a recommending body only, he would not like to see the deciding power taken away from the Town Council and make the Planning Commission something it wasn't intended in the first place. TCM Anderson would not like to see the Town Council give up the power that it has traditionally had.

Attorney Morris explained the Town Council would retain that power in the legislative process with ordinance changes, zoning changes and the subdivision over how many lots the Town Council decides. He further explained that many cities are turning over the quasi-judicial duties and focusing on the legislative process. Attorney Morris stated the Planning Commission is governed by the ordinance and making decisions based on the ordinance. The Town Council is the legislative body and establishing the code the Planning Commission is basing their decisions on. If the Planning Commission makes a bad decision, it would go to an Appeals Authority who have experience making decisions based on the ordinances. The appeal would not go to the Town Council.

TCM Anderson reiterated that he is not arguing against having a Land Use Authority or Appeals Hearing Officer, he would just like the Town Council to retain the power to hear a Land Use case if it chooses to. If the Town Council does not want to review it then they would not be incumbered by it. Attorney Morris will come up with some language in the proposed ordinance that will allow the Town Council to choose the hear the cases it chooses to hear.

Sandy Hunter asked Attorney Morris who he was thinking about when writing the position of Administrative Hearing Officer. Attorney Morris responded the position was up to the Town Council but could see a resident who is trained in law, engineering or surveying that could come in and get paid as a side job. Once a month, they could come in and meet with Beckki who could make a record of findings and decide. If the decision is contested, it would go to the Land Use Authority (the Planning Commission) and then to the Appeals Authority.

TCM Artie Powell asked about the qualifications for the Administrative Hearing Officer. He suggested some additional language changes. TCM Sandy Hunter stated that it would just take someone who was familiar with Huntsville's Title 15.

Attorney Morris asked about changes in the membership section of the proposed ordinance. TCM Bruce Ahlstrom suggested the PC be 5 people. TCM Hunter agreed. TCM Hunter suggested the term on the PC should be two years. TCM Hunter added that everyone could be reappointed. TCM Powell would like to see the term by 3-5 years. TCM Hunter stated it is difficult to find those who will serve for 5 years. TCM Anderson also explained that 4-5 years is too long, and a shorter term allows more service on the committee creates a pool of experience for elected office as well.

TCM Sandy Hunter suggested the Town Council meet with the Planning Commission to go over the changes.

There was discussion on appointment terms. TCM Ahlstrom suggested that the terms be two years and expire together so that we don't lose track of the terms. Mayor Sorensen would like to stagger the terms to have more continuity on the Planning Commission. Attorney Morris suggested he will work on the language, but it would be easier for Beckki to track the terms if they coincided with each other.

Attorney Morris asked about adjustments to the removal process in the new ordinance. The proposed ordinance calls for removal by the mayor for cause. TCM Powell was concerned about this and wanted to be able to take personalities out of the process. TCM Kevin Anderson suggested the language of "a majority of the Town Council for cause." He suggested that would take out some of the personality conflicts and not be an invitation for litigation.

The presiding officer section allows for the Planning Commission to pick their own chair. That chair will serve for a year and get passed to another person. Attorney Morris suggested this would give everyone the opportunity to gain leadership experience. TCM Hunter liked the idea of the PC electing their own chair. She would like to see the chair have the ability to be reelected every year if it is the desire of the PC. TCM Artie Powell would like to see the vice-chair take that position. Then the vice-chair would be elected every year. However, he would defer to Sandy as well. TCM Ahlstrom can see advantages and disadvantages as well. By consensus Attorney Morris will make the change to have the chair elected every year without restrictions. This reflected TCM Hunter's ideas about this position.

There was a discussion about reimbursement and per diems. There currently is no reimbursement for the Planning Commission and per diems are not established. Kay Larrison is currently working on the policy and procedure manual which would address these issues.

There was a lot of discussion on whether to keep the Appeals Committee as is. Beckki explained that she has had Appeals Members who have asked to get rid of the Appeals Committee. Members have a hard time deciding for childhood friends. TCM Powell stated he is concerned over cost to the Town. Attorney Morris stated he would budget \$1000 for the year. He also confirmed that this cost could be charged to those making the appeal. TCM Powell stated he recognizes the problems and people do not want to make these tough decisions; however, the variance board must follow the Town Code. The conditions to grant a variance are very difficult and most residents do not come prepared to present their case for a variance. TCM Ahlstrom would like to see the same structure. Mayor Sorensen expressed what a difference it has made to have an outside attorney and engineer. It gives the Town a different perspective.

TCM Anderson stated the disadvantage is cost. It can get very expensive if a developer needs an extensive appeal. The cost could be \$10,000 to \$20,000 if the case is a high-profile case. Another disadvantage is that the appeal authority doesn't understand the Town as well as the residents.

Attorney Morris suggested having a resident appointed as the Appeal Authority and have an attorney hired to represent that appeal authority member/resident. The attorney could be a deputy attorney from Weber County. The resident makes the decision, but the attorney will write up the decision.

TCM Anderson would like to see the same language in 15.5.030 as currently drafted in 15.5.020 which states that “the mayor by the advice of the Town Council will establish an Appeal Authority.” This would give the Town Council additional options as they move forward.

Attorney Morris asked the Council about the qualifications for the variance board. TCM Powell stated he did not see how relevant the same qualifications were for the Appeal Authority as the Administrative Hearing Officer.

TCM Anderson stated he had some concerns with paragraph 6. There are some questions he has about the applicant being notified and having a specified time for an Appeal. He is concerned with the second sentence in paragraph 6. Attorney Morris stated the Planning Commission has not sent out notice of action letter in the past. He was trying to find a way to work around this practice. The Planning Commission needs to make a written decision so that they can have a time specified for appeal. TCM Anderson would also like to see an appeal application where the applicant must meet a certain standard for the variance or appeal.

There are additional edits on the ordinance that TCM Powell sent to everyone.

TCM Ahlstrom had questions about the disclosure statements for the Town Council. He is wondering how detailed the disclosure needs to be. Beckki clarified that he should disclose any financial conflict that TCM Ahlstrom could foresee. She gave an example of The Huntsville Mercantile for Mayor Sorensen’s business.

Secondary Water Metering is a mandate that was passed in 2019. TCM Ahlstrom stated we have a small system that does not have any debt. The expense of metering would be devastating to the secondary water company. He would like to send some letters to the legislators. Beckki suggested they put this on the Town Council agenda to discuss the matter.

Mayor Sorensen wanted to reiterate to the Town Council that he is concerned with division between residents in Town and between the Town Council and Planning Commission. He wants to make sure that everyone is doing their best to make efforts to unify the Town.

**TCM Ahlstrom made the motion to adjourn.** TCM Anderson seconded the motion. All votes Aye.

**Meeting adjourned at 8:40 p.m.**



Beckki Endicott, Clerk/Recorder

**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 2: 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 three (3) to five (5) members 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.
3. Term. Each member of the Planning Commission shall serve a term of one (1) year.
4. Vacancy. Any vacancy in the Planning Commission is filled for the remainder of the unexpired term by appointment of the Mayor, subject to the advice and consent of the Town Council.
5. Removal. A member may be removed by the Mayor at any time.
6. Powers and Duties. The Planning Commission is a recommending body and shall only exercise the powers and duties set forth in Utah Code §10-9a-302, and as may be provided by code.
7. Presiding Officer. The Planning Commission shall, at its first meeting each year, elect a Chair and Vice-chair from its membership, which shall be different than the Chair and Vice-chair the prior year. The Chair shall serve as the presiding officer, and the Vice-chair shall serve as such in the absence of the Chair.
8. Quorum. A quorum of the Planning Commission consists of the majority of the 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 site plans).
  - b. Conditional Use Permits.
  - c. Subdivisions of ten (10) 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 (10) days of approval 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 Town hereby establishes an Appeal Authority to hear and decide land use appeals, and other appeals as provided by the municipal code.
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 Annotated §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 Annotated §10-9a-705, the appellant has the burden of proving error.
8. Due Process. Due process is afforded in accordance with Utah Code Annotated §10-9a-706.

9. Scope. Subject to the scope set forth in Utah Code Annotated §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.
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 Annotated §10-9a-801, and otherwise exhausted all administrative remedies and in accordance with Utah Code Annotated §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.



**15.5 APPEAL AUTHORITY**

- 15.5.1 General Considerations
- 15.5.2 Appointment – Membership, Term, and Vacancy
- 15.5.3 Organization - Procedures
- 15.5.4 Powers and Duties
- 15.5.5 Appeals
- 15.5.6 Variances
- 15.5.7 District Court Review of Huntsville Town Appeal Authority Decisions

**15.5.1 General Considerations**

In order to provide for the just and fair treatment in the administration of the Huntsville Town Land Use Title, and to ensure that substantial justice is done, the Huntsville Town hereby appoints the Huntsville Town Appeal Authority to exercise the powers and duties provided in this Title.

The Huntsville Town Appeal Authority established will hear and decide:

- A. Requests for variances from the terms of the Land Use Titles; and
- B. Appeals from decisions applying the Land Use Titles.

**15.5.2 Appointment – Membership, Term, and Vacancy**

**A. Membership:**

- 1. The Huntsville Town Appeal Authority shall consist of five (5) Members and (2) alternate members if the Town Board so chooses.<sup>6</sup>
- 2. The Huntsville Town Council shall appoint the Members and alternate Members for a term of five (5) years.
- 3. The Huntsville Town Council shall appoint Members of the first Huntsville Town Appeal Authority to terms so that the term of one Member expires each year.

**B. Alternate Members:<sup>7</sup>**

- 1. The Huntsville Town Appeal Authority shall make rules establishing a procedure for alternate Members to serve in the absence of appointed Members of the Huntsville Town Appeal Authority.

**C. Member Removal:**

- 1. At the discretion of the Huntsville Town Council, any Member of the Huntsville Town Appeal Authority may be removed upon the receipt of written charges filed against the Member with the Huntsville Town Council.
- 2. The Huntsville Town Council shall provide the Member being considered for removal with a public hearing at a meeting of the Huntsville Town Council if that Member requests one.

**D. Vacancy:**

- 1. The Huntsville Town Council shall fill any vacancy at the next regularly scheduled Huntsville Town Council meeting.
- 2. The Member appointed shall serve for the unexpired term of the Member or alternate Member whose office is vacant.

<sup>6</sup> Amended 9-5-19: Added 2 alternate members if the Town Board so chooses.

<sup>7</sup> Amended 9-5-19: Deleted #1 “The Huntsville Town Council shall appoint however many alternate members that the Huntsville Town Council considers appropriate.” Also deleted #2 “No more than two alternate Members may sit at any meeting of the Huntsville Town Appeal Authority at one time.”

- E. No Member of the Huntsville Town Appeal Authority shall be a Member of either the Huntsville Town Council or the Huntsville Town Planning Commission. However, a Member of the Huntsville Town Council should be present at hearings to explain the decision under appeal.

### **15.5.3 Organization - Procedures**

- A. The Huntsville Town Appeal Authority shall:

1. Organize and elect a Chairperson;
2. Adopt rules that comply with any Ordinance adopted by the Huntsville Town Council;
3. Notify each of its Members of any meeting or hearing of the Appeal Authority;
4. Provide each of its Members with the same information and access to municipal resources as any other Member;
5. Convene only if a quorum of its Members is present; and
6. Act only upon the vote of a majority of its convened Members.

- B. The Huntsville Town Appeal Authority shall meet at the call of the Chairperson and at any other times that the Huntsville Town Appeal Authority determines it necessary to meet.

- C. The Chairperson, or in the absence of the Chairperson, the acting Chairperson, may administer oaths and compel the attendance of witnesses.

- D. Meetings:

1. All meetings of the Huntsville Town Appeal Authority shall comply with the legal requirements of open and public meetings.
2. The Huntsville Town Appeal Authority shall:
  - a. Keep minutes of its proceedings, showing the vote of each Member upon each question, or if absent or failing to vote, indicating that fact; and
  - b. Keep records of its examinations and other official actions.
3. The Huntsville Town Appeal Authority may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.
4. The Huntsville Town Appeal Authority shall file its records in the office of the Huntsville Town Clerk.
5. All records of the Huntsville Town Appeal Authority are public records.

- E. A majority<sup>8 9</sup> of at least three (3) voting members of the Huntsville Town Appeal Authority either attending in person or electronically, is necessary to reverse any order, requirement, decision, or termination of any administrative official or agency or to decide in favor of the appellant.

~~and shall become effective~~ F. ~~Decisions of the Huntsville Town Appeal Authority become effective at the meeting in which the decision is made.~~

- G.<sup>10</sup> Following the meeting which the decision is made a written decision will be delivered by regular mail or hand delivered to the appellants address of record.

### **15.5.4 Powers and Duties**

- A. An Appeal Authority shall:

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<sup>8</sup> Amended 9-5-19: Changed from “The Concurring vote of three Members” to “A majority vote of the Huntsville Town Appeal Authority”

<sup>9</sup> Amended 9-4-21: Changed from “A majority vote” to “A majority of at least 3 voting members of the Huntsville town appeal authority either attending in person or electronically”

<sup>10</sup> Amended 9-5-19: Added Letter G

1. Act in a quasi-judicial manner; and
  2. Serve as the final arbiter of issues involving the interpretation or application of Land Use Titles.
- B. The Huntsville Town Appeal Authority shall hear and decide:
1. Appeals from Land Use decisions applying the Land Use Titles;
  2. Special exceptions to the terms of the Land Use Titles; and
  3. Variances from the terms of the Land Use Titles.
- C. The Huntsville Town Appeal Authority may make determinations regarding the existence, expansion, or modification of nonconforming uses under the Huntsville Town Land Use Titles.

#### 15.5.5 Appeals

- A. The applicant, a board or officer of the municipality, or any person adversely affected by the Huntsville Town Council's decision administering or interpreting a Land Use Title may, within the time period provided, appeal that decision to the Huntsville Town Appeal Authority by alleging that there is error in any order, requirement, decision, or determination made by the Huntsville Town Council in the administration or interpretation of the Land Use Titles.
- B. The Huntsville Town Appeal Authority shall determine the correctness of a decision of the Land Use authority in its interpretation and application of a Land Use Ordinance. Only those decisions in which the Huntsville Town Council has applied the Land Use Titles to a particular application, person, or parcel may be appealed to an Appeal Authority.
- C. A person may not appeal, and the Huntsville Town Appeal Authority may not consider, any Land Use Titles amendments.
- D. The appellant has the burden of proving that the Huntsville Town Council erred in the administration or interpretation of the Land Use Titles.
- E. Appeals may not be used to waive or modify the terms or requirements of the Land Use Titles.
- F. Any appeal to the Huntsville Town Appeal Authority must be filed within ninety (90)<sup>11</sup> days of the adverse decision being appealed from.
- G. Any officer, department or board of town affected by the grant or refusal of a building permit or by any other decision of the administrative officer in the administration or interpretation of the Land Use Titles may appeal any decision of the Huntsville Town Appeal Authority.
- H. The Huntsville Town Appeal Authority shall hear and decide appeals from Huntsville Town Planning Commission decisions regarding conditional use permits.
- I. The Huntsville Town Appeal Authority shall respect the due process rights of each of the participants in the appeal process.
- J.<sup>12</sup> The adversely affected party must present to the Huntsville Town Appeal Authority every theory of relief that it may also raise in district court.

<sup>11</sup> Amended 9-5-19: Changed the timeframe from 10 days to 90 days.

<sup>12</sup> Amended 9-5-19: Deleted previous letter J stating "A decision of the Huntsville Town Appeal Authority takes effect on the date when the Huntsville Town Appeal Authority issues a written decision. A written decision, or other event as provided by Ordinance, constitutes a final decision."

**15.5.6 Variances**

- A. Any person or entity desiring a waiver or modification of the requirements of the Land Use Titles as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest, may apply to the Huntsville Town Appeal Authority for a variance from the terms of the Title.
- B. The Huntsville Town Appeal Authority may grant a variance only if:
  - 1. Literal enforcement of the Land Use Title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Title; and
  - 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone; and
  - 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
  - 4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - 5. The spirit of the Land Use Title is observed and substantial justice done.
- C. In determining whether or not enforcement of the Land Use Title would cause unreasonable hardship, the Huntsville Town Appeal Authority may not find an unreasonable hardship unless the alleged hardship:
  - 1. Is located on or associated with the property for which the variance is sought; and
  - 2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- D. In determining whether or not enforcement of the Land Use Title would cause unreasonable hardship, the Huntsville Town Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
- E. In determining whether or not there are special circumstances attached to the property under 15.5.6.B.2 the Huntsville Town Appeal Authority may find that special circumstances exist only if the special circumstances:
  - 1. Relate to the hardship complained of; and
  - 2. Deprive the property of privileges granted to other properties in the same zone.
- F. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- G. Variances run with the land.
- H. The Huntsville Town Appeal Authority and any other body may not grant use variances.
- I. In granting a variance, the Huntsville Town Appeal Authority may impose additional requirements on the applicant that will:
  - 1. Mitigate any harmful effects of the variance; or
  - 2. Serve the purpose of the standard or requirement that is waived or modified.

**15.5.7 District Court Review of Huntsville Town Appeal Authority Decisions**

- A. Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this Title may file a petition for review of the decision with the district court within thirty (30) days after the local land use decision is final.
  - 1. The time to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 63-34-13, Utah Code Annotated, until thirty (30) days after:
    - a. The arbitrator issues a final award; or



- b. The property rights ombudsman issues a written statement under Subsection 63-34-13(4)(b), U.C.A., declining to arbitrate, or to appoint an arbitrator.
  2. A tolling operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.
  3. A request for arbitration filed with the property rights ombudsman after the time under Subsection (1), above, to file a petition has expired does not affect the time to file a petition.
- B. The petition is barred unless it is filed within 30 days after the Huntsville Town Appeal Authority's decision is final.
- C. No person may challenge in district court a municipality's land use decision made under this Title, or under a regulation made under authority of this Title, until that person has exhausted the person's administrative remedies as provided in this Title.
- D. The courts shall:
1. Presume that a decision, Ordinance, or regulation made under the authority of this Title is valid; and
  2. Determine only whether or not the decision, Ordinance, or regulation is arbitrary, capricious, or illegal.
- E. A final decision of the Huntsville Town Council or an Appeal Authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.
- F. A decision, Ordinance, or regulation involving the exercise of legislative discretion is valid if the decision, Ordinance, or regulation is reasonably debatable and not illegal.
- G. A determination of illegality requires a determination that the decision, Ordinance, or regulation violates a law, statute, or Ordinance in effect at the time the decision was made or the Ordinance or regulation adopted.
- H. Evidence provided to the court:
1. The Huntsville Town Appeal Authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
  2. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
- I. Court review of the record
1. If there is a record, the district court's review is limited to the record provided by the Huntsville Town Appeal Authority.
  2. The court may not accept or consider any evidence outside the record of the Huntsville Town Appeal Authority unless that evidence was offered to the Huntsville Town Appeal Authority and the court determines that it was improperly excluded.
- If there is no record, the court may call witnesses and take evidence.
- J. Filing of petition
1. The filing of a petition does not stay the decision of the Huntsville Town Appeal Authority.
  2. Procedure:
    - a. Before filing a petition under this section, or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, U.A.C., the aggrieved party may petition the Appeal Authority to stay its decision.
    - b. Upon receipt of a petition to stay, the Huntsville Town Appeal Authority may order its decision stayed pending district court review if the Huntsville Town Appeal Authority finds it to be in the best interest of the municipality.



- c. After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, U.A.C., the petitioner may seek an injunction staying the Huntsville Town Appeal Authority's decision.

**15.3 LAND USE PERMIT ADMINISTRATION**

- 15.3.1 Land Use Permits Required
- 15.3.1. A Details on the Acceptable Uses in a Zone Table.
- 15.3.2 Zones Requiring a Land Use Permit
- 15.3.3 Applicant Notice

**15.3.1 Land Use Permits Required**

Land Use Permits shall be required as described in the Building Permits and Signage Titles. Land uses will be subject to the specific zone regulations as well as the applicable Architectural, Landscape and Screening Standards, Business Licensing, Signs, and Sensitive Land regulations of the Huntsville Town Land Use Title.

- A. Details on the “Acceptable Uses in a Zone” table are contained in Appendix One Table 15-1.<sup>1</sup>

**15.3.2 Zones Requiring a Land Use Permit**

No structure shall be constructed, changed in use, or altered until a Land Use Permit is approved as defined in the Building Permit Title.

**15.3.3 Applicant Notice**

For each Land Use application, Huntsville Town shall notify the applicant of the date, time, and place of each public hearing and public meeting to consider the application and of any final action on a pending application.

**15.3.4 Huntsville Town Planning Commission<sup>2</sup>**

The Huntsville Town Planning commission shall be comprised of five (5) members and one alternate, appointed by the Mayor with the advice and consent of the Huntsville Town Council. One member will be appointed to serve as the Chairman, who will conduct the meetings to be held as workload demands, and shall follow the rules of meeting conduct adopted by the Huntsville Town Council. The alternate shall be invited to all meetings and in the event of one of the five members being absent; the alternate is eligible to vote. The Huntsville town council may remove a member of the Huntsville Town Planning Commission if they fail to attend a minimum of 60% of meetings, or exhibit conduct unbecoming the office.

- A. The Huntsville Town Planning Commission is a recommending body only; making recommendations to the Huntsville Town Council on: rezoning and subdividing applications, annexation petitions and land use, building plans and ordinance compliance. They are responsible for drafting land use ordinances and the Huntsville Town General Plan (including zoning maps and periodic updates as required by State law) for the Huntsville Town Council review and conduct of studies as directed by the Huntsville Town Council. All recommendations by the Huntsville Planning commission shall be made by a majority vote of a quorum.
- B. The Huntsville Town Planning commission will identify compliance of all subdivisions and lot boundary changes with applicable Titles and make a recommendation to the Huntsville Town Council for their approval. All subdivisions and boundary changes require review by the Weber County Surveyor prior to submission to the Huntsville Town Planning commission. The landowner shall pay all fees for Weber County Surveyor or Recorders services directly to the County.<sup>3</sup>

<sup>1</sup> Amended 08-21-2014: Allowable Uses in a Zone Table was added to Title 15.3.1.A.

<sup>2</sup> Amended 10-6-2008: 15.3.4 was added along with paragraph A. To allow for an alternate member of the Planning Commission, and to describe Planning Commission responsibilities.

<sup>3</sup> Amended 9-3-2009: Paragraph B was added, Planning Commission will review all subdivisions and lot boundary changes.



- C. Planning Commission terms will be for five years and the alternate Planning Commission member term will be for one year. When a Planning Commission vacancy arises the alternate will be the first considered for the position.<sup>4</sup>

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<sup>4</sup> Amended 3-3-2011: 15.3.4.C: (C.) was added to define Planning Commission term limits.  
As approved by the Huntsville Town Council