

I. APPLICATION:

- A. APPLICANT - Utah County Planning Commission
- B. REQUEST - Proposed Utah County Land Use Ordinance text amendment to Chapters 8, 16, and any other applicable section related to the creation and designation of an administrative law judge to act as the appeal authority for all designated appeal applications, along with associated ancillary changes
- C. LOCATION - Unincorporated Utah County

II. STAFF SUMMARY

Background

Community Development staff and the Utah County Attorney's Office has initiated a review of the Utah County Land Use Ordinance's designation as "appeal authority" of specified bodies for hearing and deciding all applications for variances and appeals. The Ordinance defines "appeal authority" as the following:

"A person, board, commission, agency, or other body designated by this ordinance to decide an appeal of a decision of a land use application or a variance."

Presently, the Utah County Board of Adjustment is designated as the appeal authority for hearing quasi-judicial matters such as variance requests and applications of alleged errors in administration of the Land Use Ordinance.

Historically, the Board also heard and decided "special exceptions", a type of conditional use that was prescribed in Utah State Code. Special exceptions were eliminated from State Code and such uses were treated as conditional uses. The Utah County Land Use Ordinance was amended in 2008 to reflect this change and all conditional use approvals (and former special exception approvals) were all assigned to review and approval by the Board of Adjustment. This assignment was somewhat unusual as most jurisdictions around the state designated their respective Planning Commissions as the body to hear and approve conditional uses and left their Board of Adjustment (or similar body) as strictly an appeal authority.

As a result, the land use ordinance was amended in 2024 to designate the Utah County Planning Commission as the land use authority for all conditional uses, leaving the Board of Adjustment solely as an appeal authority.

Requests to appear before the appeal authority are relatively few, resulting in only one or two meetings a year, with some years having no requests/meetings. With the Board of Adjustment being filled by citizen volunteers, this can result in training concerns with such infrequent meetings and the inexperience of volunteers on these quasi-judicial matters.

Staff feels that best practices would dictate the provision for a land use administrative law judge to act as an appeal authority be allowed by ordinance. An administrative law judge would be required to be a lawyer in good standing with the Utah State Bar and have experience in land use matters. This would ensure more familiarity with the legal matters associated with applications appearing before the appeal authority.

To that end, Community Development staff has worked with the Attorney's Office to draft a proposed amendment to the existing Ordinance to reflect this change. The proposal also includes other ancillary changes staff feels appropriate to promote consistency, clarification, and/or improvement.

Applicant's Request:

Please refer to the attached proposed amendment(s) to Chapters 8 and 16 of the Utah County Land Use Ordinance:

Attachment "A" – Proposed Amendment of Chapters 8 and 16 of the Utah County Land Use Ordinance

Applicable Ordinances and Statutes

1. **Section 1.08** of the Utah County Land Use Ordinance identifies the intent and purpose of the Ordinance.
2. **Section 2.08** provides definitions to various terms and uses associated with the Ordinance.
3. **Chapter 8** identifies uses with special review provisions and establishes supplementary requirements and procedures applicable within zones for those uses.
4. **Chapter 16** outlines the powers and duties of both the Board of Adjustment and the Planning Commission, along with other applicable administrative procedures for both bodies.

5. **Sections 16.92-C and 16.100** establish the criteria for Planning Commission recommendation of approval to the County Commission for any land use ordinance amendment.
6. **Title 17, Chapter 27a, Part 7** of the Utah State Code contains the provisions governing appeal authorities and variances.

III. Staff Findings:

1. The application for land use ordinance amendment appears to meet the requirements of Section 16.92-C and Section 16.100 of the Utah County Land Use Ordinance which establish the criteria for Planning Commission recommendation of approval to the County Commission for a land use ordinance amendment.
2. The application proposes to provide consistency with best practices around the state of Utah, along with providing flexibility for the designation of an administrative law judge as an appeal authority. This will help to ensure more familiarity with the legal matters associated with applications appearing before the appeal authority. The proposal also includes other ancillary changes staff feels appropriate to promote clarification and/or improvement.

IV. Staff Recommendation:

That the Utah County Planning Commission recommend **approval** to the Utah County Commission of the proposed Utah County Land Use Ordinance text amendment to **Chapters 8 and 16** related to the creation and designation of an administrative law judge to act as the appeal authority for all designated appeal applications, including associated ancillary changes, along with any applicable re-numbering and re-formatting in each section, based on the findings specified in this staff report under subsection III.