

SAN JUAN COUNTY

ORDINANCE NO. 2024-02

**AN ORDINANCE REPLACING AND AMENDING THE PROCESS FOR
APPEALS OF LAND USE DECISIONS**

WHEREAS San Juan County ordinances governing land use appeals under Utah Code Title 17, Chapter 27a, Part 7 have undergone several amendments in recent years;

WHEREAS it is in the best interests of San Juan County to ensure that a final land use decision on appeal is accomplished in a just, expeditious, and inexpensive process;

WHEREAS achieving finality in a land use dispute while observing San Juan County's best interests requires certain procedures be followed;

WHEREAS San Juan County recognizes that most land use decisions provide sufficient grounds to allow review on the record without requiring the parties to incur the additional cost of creating a record for review;

WHEREAS detailed procedures to be followed by the San Juan County Appeal Authority, the County, the applicant, and, if applicable, adversely affected parties will promote the just, expeditious, inexpensive resolution of land use appeals;

WHEREAS the Board of San Juan County Commissioners is the legislative body of San Juan County, Utah and is therefore authorized by the laws of the State of Utah to enact ordinances and rules and make regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by state law, and as are necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace, and good order, comfort, and convenience of the County and its inhabitants, and the protection of property in the County; and

WHEREAS the State of Utah requires San Juan County to establish a land use appeal authority and authorizes the County to enact procedures for pursuing such appeals:

NOW, THEREFORE, THE COUNTY LEGISLATIVE BODY OF SAN JUAN COUNTY ORDAINS AS FOLLOWS:

The following Chapter of the San Juan County, Utah Code of Ordinances is adopted. This ordinance shall be published on the San Juan County website's Planning and Zoning page until publication by the County's code service provider.

CHAPTER 12: LAND USE APPEALS

12.000 PURPOSE.

This Chapter addresses administrative appeals of land use decisions affecting property within the jurisdiction of San Juan County, Utah. This Chapter repeals, replaces, and supersedes all other and previous ordinances enacted by San Juan County regarding the administrative appeal of land use decisions. If there is a discrepancy between a provision of this Chapter and that of another ordinance regarding the administrative appeal of a land use ordinance, this Chapter controls.

12.001 DEFINITIONS.

The definitions used in the County Land Use, Development, and Management Act (CLUDMA), Utah Code sections 17-27a-101 *et seq.*, are hereby adopted and incorporated into this Chapter addressing land use appeals.

12.002 LAND USE APPEAL AUTHORITY.

The San Juan County Land Use Appeal Authority shall hear and decide appeals of the County's land use decisions made by its land use authorities, proceeding according to the requirements of state law and this ordinance.

12.003 PARTIES.

Only the land use applicant, San Juan County, or an adversely affected party may appeal a land use decision to the Appeal Authority.

12.004 INITIATING AN APPEAL.

(A) Time. A land use appeal must be filed within 10 business days of receiving actual or constructive notice of the land use decision being appealed.

(B) Form. The land use appeal shall be filed either using the County's form or a document clearly and prominently labeled a "Notice of Appeal."

- (C) Content. The Notice of Appeal shall clearly set forth:
- (1) The appellant's identity and contact information (including an email address);
 - (2) The land use decision being appealed, including the date thereof and, if applicable, the date the appellant discovered the decision;
 - (3) If available, a copy of the land use decision being appealed;
 - (4) If the land use applicant is not the appellant, the identity and contact information for the applicant;
 - (5) The basis for the appellant's standing to bring the appeal; and
 - (6) Every theory of relief the appellant intends to raise on appeal. The appellant must raise every theory of relief it can raise in district court.

(D) Fee. Contemporaneous with the Notice of Appeal, the appellant shall tender to San Juan County the relevant fee per the County's schedule of fees.

(E) Filing. The Notice of Appeal shall be filed with the San Juan County Chief Administrative Officer. It may be filed by: (1) email (preferred), (2) hand-delivery; or (3) by first class U.S. Mail. The date of delivery shall be considered the date of filing using the first two methods, the postmarked date if using the third method. If delivery is by email, the subject line must clearly identify the message as a “Notice of Appeal.”

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12.005 APPEAL PROCESS.

(A) Intake. Upon receiving a Notice of Appeal, the Chief Administrative Officer shall inspect it for compliance with the foregoing Section 12.004’s requirements. If the Notice of Appeal is compliant, it shall be transferred immediately to the Appeal Authority and the San Juan County Attorney’s Office. If the Notice of Appeal is not compliant, the Chief Administrative Officer shall inform the appellant of the deficiencies. If the deficiencies are timely cured, the Notice of Appeal shall be considered to have been filed when the initial notice was filed.

(B) Notice to Parties. Upon receiving the Notice of Appeal from the Chief Administrative Officer, the Appeal Authority shall immediately determine whether it is brought by the applicant. If not, the Appeal Authority shall immediately inform the applicant of the appeal, invite the applicant to participate as a party to the appeal, and the Appeal Authority and all other parties shall treat the applicant as a party to the appeal.

(C) Record. Immediately upon receiving the Notice of Appeal, the County Attorney shall assemble and serve on the Appeal Authority and the other parties the record of the land use decision on appeal. The record shall include relevant minutes, complete applications at issue, relevant communications with the applicant, relevant communications with the appellant where applicable, and any written record of the decision. The County shall Bates-stamp these documents, which shall become the record on appeal. Absent extraordinary circumstances, the County Attorney shall serve the record on the parties before the scheduling conference is held.

(D) Scheduling Conference. Upon receiving the Notice of Appeal, the Appeal Authority shall in timely fashion hold a scheduling conference to include:

- (1) Deciding whether the grounds for the land use decision appear in the record provided by the County Attorney;
- (2) Scheduling the hearing;
- (3) Setting a submission date for briefing; and
- (4) Confirming the theories of relief to be addressed on appeal.

(Excluding jurisdictional issues, theories of relief and issues not confirmed at the scheduling conference, including regarding the completeness and adequacy of the record, will not be considered by the Appeal Authority. The appellant must raise every theory of relief it can raise in district court.)

Unless extraordinary circumstances prohibit it, the scheduling conference shall be held within 14 days after the Appeal Authority receives the Notice of Appeal. The scheduling conference need not be held in person but shall include all parties.

(E) Briefing.

(1) Prior to the hearing, the parties (the appellant, the County, and, if applicable, the applicant) shall file simultaneous briefs on the theories of relief and issues confirmed at the scheduling conference. The briefs shall not exceed fifteen double-spaced pages, excluding the caption, signature block, certificate of service, and exhibits. The briefs shall follow the formatting required by Utah Rule of Civil Procedure 10(d) and be filed and served on the Appeal Authority and all parties via email. Except as provided in Subparagraph (H) below, no affidavits or declarations or other evidentiary documents beyond those contained in the record may be attached to the briefing.

(2) All theories of relief and issues, including jurisdiction, the completeness of the record, or a party's standing, shall be reserved for the briefing and hearing, not presented through separate filings.

(3) No other briefing shall be filed or considered unless the Appeal Authority orders supplemental briefing as described below. The date set for the filing and service of briefs shall not be less than 7 days before scheduled hearing.

(F) Hearing.

(1) At the hearing, the parties shall present argument to the Appeal Authority.

(2) Except as provided in Subparagraph (H) below, the hearing need not be held in person.

(G) Supplemental Briefing. If at the end of the hearing the Appeal Authority determines that supplemental briefing is necessary in order to render an informed decision, the Appeal Authority may order supplemental briefing to be filed on a specifically identified and narrow question. The Appeal Authority shall set a date for the supplemental briefing to be filed, the briefing length, and whatever else it deems appropriate. Unless extraordinary circumstances require otherwise, the supplemental briefing shall be filed within 14 days of the hearing. Supplemental briefing should be rare and permitted only in extraordinary circumstances.

(H) Inadequate Record. If at the scheduling conference the Appeal Authority determines that the grounds for the land use decision do not appear in the record provided by the County Attorney, then the foregoing process is altered in the following ways:

(1) Each party may attach to its brief affidavits or declarations and all documentary evidence related to the land use decision beyond the record provided by the County Attorney that the party wishes the Appeal Authority to consider. Absent good cause, documents not attached to a party's brief will not be considered. The Appeal Authority generally will follow the Utah Rules of Evidence when considering the submitted affidavits or declarations and documentary evidence.

(2) The parties may examine and cross-examine witnesses during the hearing. Such testimony shall be guided generally by the Utah Rules of Evidence.

(3) The hearing shall be held in person at the County's administrative offices.

(4) If at the end of the hearing the Appeal Authority determines that supplemental evidence is necessary in order to render an informed decision, the Appeal Authority may order specific supplemental evidence to be filed following Subsection (G)'s procedure and direction.

12.006 DECISION.

(A) Issuance. Absent extraordinary circumstances, the Appeal Authority shall serve on all parties a concise written decision within 28 days of the hearing or of any ordered supplemental submissions, whichever is later. If the Appeal Authority can do so, it is encouraged to issue its decision sooner.

(B) Standard of Review. Except as provided in Subsection (C), the Appeal Authority shall review the land use decision and determine only whether it is supported by substantial evidence or illegal. A land use decision is illegal if it is based on an incorrect interpretation of a land use regulation, conflicts with the authority granted by CLUDMA, or is contrary to law.

(C) Inadequate Record. If at the scheduling conference the Appeal Authority determines that the grounds for the land use decision do not appear in the record provided by the County Attorney, then the Appeal Authority shall determine whether the land use decision was correct.

(D) Content. The Appeal Authority's written decision shall set forth factual findings and legal conclusions sufficient for review. The Appeal Authority may only affirm or reverse, in whole or in part, the land use decision. If reversed entirely or in any part, the Appeal Authority shall provide the County instructions to issue a land use decision consistent with the Appeal Authority's decision.

(E) Notification. The Appeal Authority's decision shall set forth in bold typeface the parties' rights to petition for judicial review, citing the appropriate statute and providing a non-binding calculation of the filing deadline.

PASSED AND ADOPTED by action of the Board of San Juan County Commissioners for San Juan County in an open meeting this 16th day of January 2024.

Voting Aye: _____

Voting Nay: _____

ATTEST:

SAN JUAN COUNTY BOARD OF
COMMISSIONERS:

Lyman Duncan, Clerk/Auditor

Jamie Harvey, Chair