

CHAPTER 3 APPEALS

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. This administrative appeal process is independent of Title I, Chapter 11 of the San Juan County Code and none of those provisions apply to administrative appeals of Land Use Decisions. If there is a discrepancy between a provision of this Chapter and that of another ordinance regarding an administrative appeal, this Chapter controls.

The definitions used in CLUDMA are hereby adopted and incorporated into this Chapter addressing land use appeals.

Section 1: 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 LUDMO.

Section 2: PARTIES

Only the land use applicant or an Adversely Affected Party may appeal a Land Use Decision to the Appeal Authority.

Section 3: INITIATING AN APPEAL

1. Time. A land use appeal must be filed within 10 business days of actual or constructive notice of the issuance of the written Land Use Decision being appealed.
2. 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."
3. Content. The Notice of Appeal shall clearly set forth:
 - A. The appellant's identity and contact information (including an email address);
 - B. The Land Use Decision being appealed, including the date thereof and, if different, the date the appellant discovered the decision;
 - C. If available, a copy of the land use decision being appealed;
 - D. If the land use applicant is not the appellant, the identity and contact information for the applicant;
 - E. The basis for the appellant's standing to bring the appeal; and
 - F. 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.

CHAPTER 5 VARIANCES

Section 1: VARIANCE PROCEDURE

1. Any person or entity desiring a variance from the requirements of the LUDMO as applied to real property that he or she owns, leases, or in which he or she holds some other beneficial interest may apply for a variance from the terms of the ordinance.
2. Applications: Applications for variance shall be filed with the San Juan County Planning & Zoning and Building Department. Applications shall contain the following information:
 - A. A description of the requested variance, together with a designation of that section of this LUDMO from which relief is being requested;
 - B. An accurate site plan, if appropriate, indicating the manner in which the variance will be applied and its effect upon adjacent properties; and
 - C. The required filing fee as established by the County.
3. A complete application shall be forwarded to the San Juan County Administrative Law Judge (ALJ) for consideration. The ALJ shall follow CLUDMA in determining whether to grant the variance. The ALJ may proceed as it sees fit in considering the application, including requesting additional information, seeking comment and information from county personnel, and holding meetings with the applicant.4. The ALJ shall decide the application in a timely manner and shall issue a written decision with findings and conclusions of law capable of review and include a notation in bold typeface informing the applicant of its right to petition for judicial review, citing the appropriate statute and providing a non-binding calculation of the filing deadline.
4. The ALJ shall serve the applicant, the County Attorney, the Planning Administrator and the Planning Commission with its decision upon issuance. Such service may be accomplished by email.
5. After rendering its decision, the ALJ shall provide the County Attorney a digital copy of the record of the decision, which the County shall maintain for a period of five years after the ALJ's decision.

4. 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. The appeal is not complete until the fee has been paid.
5. 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) 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."

Section 4: APPEAL PROCESS

1. Intake. Upon receiving a Notice of Appeal, the Chief Administrative Officer shall inspect it for completeness under the foregoing Section 3 requirements. If the Notice of Appeal is complete, it shall be transferred immediately to the Appeal Authority and the San Juan County Attorney's Office. If the Notice of Appeal is not complete, the Chief Administrative Officer shall reject the appeal and immediately inform the appellant.
2. 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.
3. 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 if applicable, a transcript of the proceeding if available, the complete applications and related submissions at issue, relevant communications with the applicant, relevant communications with the appellant where applicable, relevant LUDMO provisions, and the written record of the decision. The County shall Bates-stamp these documents, which shall become the record on appeal. Absent extraordinary circumstances, the record should be served before the scheduling conference is held.
4. Scheduling Conference. Upon receiving the Notice of Appeal, the Appeal Authority shall in timely fashion hold a scheduling conference to:
 - a. Confirm that the Land Use Authority made findings of fact and conclusions of law that appear in the record in support of the Land Use Decision under review;
 - b. Schedule a hearing;
 - c. Set submission dates for briefing; and
 - d. Confirm 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.)

5. Unless extraordinary circumstances prohibit it, the scheduling conference shall be held within 28 days after the Appeal Authority receives the Notice of Appeal. The scheduling conference need not be held in person but shall include all parties and be public.
6. Briefing.
 - A. Prior to the hearing, the parties (the appellant, the County, and, if applicable, the applicant) shall file briefs on the theories of relief and issues confirmed at the scheduling conference. The appellant shall file a principal brief, the appellee(s) a brief in opposition, and the appellant a reply brief. The principal and opposition briefs shall not exceed fifteen, and the reply brief shall not exceed ten, 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. No affidavits or declarations or other evidentiary documents beyond those contained in the record may be attached to the briefing.
 - B. 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.
 - C. No other briefing shall be filed or considered. The date set for the filing and service of the reply brief shall not be less than 7 days before scheduled hearing.
7. Hearing.
 - A. At the hearing, the parties shall present argument to, and answer questions of, the Appeal Authority.
 - B. The hearing need not be held in person, but shall be public.
8. Inadequate Record. If the Appeal Authority determines that the Land Use Authority did not make findings of fact and conclusions of law that appear in the record in support of the Land Use Decision under review, then the Appeal Authority shall remand the matter to the Land Use Authority to do so immediately. In that case, the County shall refund the fee paid by the appellant. Any appeal from the revised decision must be taken using the procedure set forth in this Chapter.
9. Incomplete Record. If the Appeal Authority determines that the record provided by the County Attorney is materially incomplete, it shall order that the County supplement the record and determine whether supplemental briefing and argument is warranted.

Section 5: DECISION

1. Issuance. Absent extraordinary circumstances, the Appeal Authority shall serve on all parties a concise written decision within 28 days of the hearing. If the Appeal Authority can do so, it is encouraged to issue its decision sooner.

2. **Standard of Review.** The Appeal Authority shall review the land use decision and determine only whether the record includes substantial evidence for each essential finding of fact and the correctness of the Land Use Authority's interpretation and application of the plain meaning of county Land Use Regulations. The Appeal Authority shall interpret and apply a Land Use Regulation to favor a land use application unless the Land Use Regulation plainly restricts the land use application.
3. **Content.** The Appeal Authority's written decision shall set forth factual findings and legal conclusions sufficient for judicial 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 instruct the Land Use Authority to issue a Land Use Decision consistent with the Appeal Authority's written decision. The Appeal Authority is not authorized to dictate or manage the County's personnel or internal policies or processes.
4. **Notification.** On the date of its issuance, the Appeal Authority's written decision shall be sent via email to the parties. It 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.
5. **Record.** After rendering its decision, the Appeal Authority shall provide the County Attorney a digital copy of the appeal record, which the County shall maintain for a period of five years after the Appeal Authority's decision.