



STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: October 2, 2019
Type of Item: Code Amendment – Public Hearing
Process: Legislative

RECOMMENDATION: Staff recommends that the Summit County Council review the proposed language to amend the formal process of appeals in the Snyderville Basin Development Code, conduct a public hearing and approve the attached ordinance per the findings of fact and conclusions of law written in this staff report.

Proposal

The purpose of the amendments is to create language relating to the timing of when an appeal may be submitted, clarifies what constitutes a completed application, and clarifies appellate procedures for the appeal.

Background

In 2017 it was determined a more formal process for appeals of land use decisions would be beneficial. To that end, an appeal policy was adopted by the Council which has been in place since then. However, recently there have been several appeals which brought to light that additional changes may be needed in our code sections, especially considering a recent court ruling in one of those appeals. These changes represent what has been the practice for the last 20 years, however, because of the court's decisions and some of the arguments made, it was believed that the language should be clarified to make what has been the practice of the law. The changes are consistent with the policies and procedures that were adopted in 2017 and likewise, those policies are now being required under the code changes.

Analysis

Section 10-7-3 of the Snyderville Basin Development Code states that whenever there is initiated an amendment to the Code, it must be reviewed by the Planning Commission who will deliver a recommendation to the County Council. The County Council, after holding a public

hearing, shall approve, approve with modifications or deny the amendment according to the following criteria.

Criteria 1: The amendment shall be consistent with the goals, objectives, and policies of the general plan. **COMPLIES**

Analysis: Policy 2.5 of the Snyderville Basin General Plan States:

“Policy 2.5: Eliminate advisory language from the Code and include clear, predictable, and measurable standards.”

The proposed amendments to the Snyderville Basin Development Code clarify the process for appeals in the Code and brings it into conformance with current County practices and what has been the practice of Courts of Law. The changes make the procedures in the Code clear and easy to understand.

Criteria 2: The amendment shall not permit the use of land that is not consistent with the uses of properties nearby. **COMPLIES**

Analysis: These amendments do not directly affect any land uses in the Snyderville Basin.

Criteria 3: The amendment will not permit suitability of the properties affected by the proposed amendment for the uses to which they have been restricted. **COMPLIES**

Analysis: The amendment will not permit suitability of the properties affected by the proposed amendment to the uses to which they have been restricted.

Criteria 4: The amendment will not permit the removal of the then existing restrictions which will unduly affect nearby property. **COMPLIES**

Analysis: The proposed Code language does not remove any existing restrictions that would unduly affect nearby property owners.

Criteria 5: The amendment will not grant special favors or circumstances solely for one property owner or developer. **COMPLIES**

Analysis: Staff finds no evidence that these regulations would constitute a special favor or create a favorable circumstance for a single property owner.

Criteria 6: The amendment will promote the public health, safety and welfare better than the existing regulations for which the amendment is intended to change. **COMPLIES**

Analysis: The proposed changes will formalize appeal practices and policies that have been in effect since at least 2017. They will make the process clear and easier for members of the public to understand and will provide specific rules on when an appeal application is due and what constitutes a “complete” application. All these measures will better promote the health safety and welfare of the community better than our current regulations.

Recommendation

Staff recommends that the Summit County Council review the proposed language to amend the formal process of appeals in the Snyderville Basin Development Code, conduct a public hearing and approve the attached ordinance per the findings of fact and conclusions of law written in this staff report.

Findings of Fact

1. In 2017 it was determined by the County Council that a more formal process for appeals of land use decisions would be beneficial.
2. In 2017 an appeal policy was adopted by the Council.
3. The proposed changes are consistent with the policies and procedures that were adopted in 2017 and likewise, those policies are now being required under the code changes.
4. The proposed amendments to the Snyderville Basin Development Code clarify the process for appeals in the Code and brings it into conformance with current County practices and what has been the practice of Courts of Law. The proposed Code language does not remove any existing restrictions that would unduly affect nearby property owners.
5. The Snyderville Basin Planning Commission conducted a public hearing for this item on July 9, 2019.
6. On July 9, 2019, the Snyderville Basin Planning Commission forwarded a positive recommendation to the County Council.

Conclusions of Law:

1. The amendment is consistent with the goals, objectives, and policies of the General Plan.
2. The amendment will not permit the use of land that is not consistent with the uses of properties nearby.
3. The amendment will not permit suitability of the properties affected by the proposed amendment for the uses to which they have been restricted.
4. The amendment will not permit the removal of the then existing restrictions which will unduly affect nearby property.

5. The amendment will not grant special favors or circumstances solely for one property owner or developer.
6. The amendment will promote the public health, safety and welfare better than the existing regulations for which the amendment is intended to change.

Exhibits

Exhibit A. Proposed Language

**SUMMIT COUNTY, UTAH
ORDINANCE NO. _____**

**AN ORDINANCE AMENDING THE SNYDERVILLE BASIN
DEVELOPMENT CODE SECTION 10-9-22 CREATING LANGUAGE RELATING TO THE TIMING OF
WHEN AN APPEAL MAY BE SUBMITTED, CLARIFIES WHAT CONSTITUTES A COMPLETE
APPLICATION AND CLARIFIES APPELLATE PROCEDURES FOR AN APPEAL**

PREAMBLE

WHEREAS, Utah Code Annotated (“UCA”) §17-27a-102(b) provides that counties can enact all ordinances that they consider necessary or appropriate to govern, among other things, land uses; and,

WHEREAS, Policy 2.5 of the Snyderville Basin General Plan states that language from the Code include clear, predictable, and measurable standards; and

WHEREAS, in furtherance of this goal, §10-1-1(D) of the Summit County Code (“Code”) states that the intention of the county is to assure the managed, proper and sensitive development of land to protect and enhance these desired qualities and the lifestyle that exists; and,

WHEREAS, having clear and understandable requirements for appeals in the Snyderville Basin is an important component to protecting these goals and policies; and,

WHEREAS, the proposed changes to the appeal procedures of the Snyderville Basin Development Code are consistent with the policies and procedures that were adopted in 2017; and,

WHEREAS, the Snyderville Basin Planning Commission held a public hearing on July 9, 2019; and

WHEREAS, the Snyderville Basin Planning Commission recommended adoption of the amended sections of the Snyderville Basin Development Code on July 9, 2019; and

WHEREAS, the County Council held a public hearing on October 2, 2019; and,

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. **SNYDERVILLE BASIN DEVELOPMENT CODE** The Snyderville Basin Development Code is amended as depicted in Exhibit A.

Section 2. Effective Date. This Ordinance shall take effect immediately after publication.

Enacted this ___ day of _____.

ATTEST:

SUMMIT COUNTY COUNCIL

Kent Jones
Summit County Clerk

Roger Armstrong, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson	_____
Councilmember Robinson	_____
Councilmember Clyde	_____
Councilmember Armstrong	_____
Councilmember Wright	_____

Exhibit A
PROPOSED AMENDMENT TO CHAPTER 10-9-22

10-9-22: APPEAL PROCEDURES:

A. Appeals of administrative, commission, board of adjustment, and county council actions shall occur as follows in the appeals chart:

Decision Maker	Action	Form Of Appeal To	Appeal Period	Appellate Body	Comments
CDD		Form to the CDD	10 days	County council	If the appeal is for a decision regarding a building permit, the permit shall be stayed until action is taken
Commission		Form to the CDD	10 days	County council	If the appeal is for a decision regarding a CUP, the CUP shall be stayed until action is taken. The county council has to schedule the appeal within 30 days from the date of the appeal
County manager		Form to the CDD	10 days	County council	
County manager	Amendments to a road within a subdivision, including road vacations	Court filing	30 days	District court	In accordance with Utah code, as amended
County manager	Enforcement actions	Court filing	30 days	District court	In accordance with Utah code, as amended
County council		Court filing	30 days	District court	In accordance with Utah code, as amended
Board of adjustment		Court filing	30 days	District court	In accordance with Utah code, as amended

(Ord. 730, 12-2-2009)

B. **Timing:** Unless otherwise specified in this Section or under the County Land Use Management Act contained within Title 17, Chapter 27a of the Utah Code, all appeal periods are based upon calendar days and appeals must be received on or before the close of business (5:00 p.m.) on the last day of the appeal period. Failure to file a completed appeal form (application) within the time period specific shall act as a jurisdictional bar and render the appeal moot. Electronic submissions of Completed Applications (email) will be accepted by the County if time stamped as being received prior to 5:00 p.m. on the last day of the appeal period.

C. **Completed Application:** Unless otherwise specified, the form required by this Section shall be obtained from and filed with the Community Development Department and is considered a "development application" under this Code. As such, pursuant to Section 10-3.2(B)(1) the application must be complete including all requested information, a "wet" (non-electronic) signature and all fees paid in order to be considered complete. An application for appeal shall be deemed insufficient if any relevant information is not provided, if the application form is not signed by the applicant or authorized agent, required fees are not paid, or if other information, as may be specified by the CDD or designated planning staff member and which is necessary to adequately review the

application, is not supplied in a timely fashion. Failure to file a completed application within the appeal time period specified shall act as a jurisdictional bar to the appeal.

D. Appellate Procedures. For all non-court appeals, the Appellate Procedures adopted by the Summit County Council and made part of the Appeal application shall be in effect and binding on the parties.

E. Pursuant to Utah Code Ann. §17-27a-801 et. seq., an appeal of a County Council or Board of Adjustment action goes to district court. (Ord. 708, 12-10-2008)