



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 Eastern Summit County 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 11-5-3 of the Eastern Summit County Development Code establishes a process for amendments to the text of the Code, it states that whenever an amendment to the Code is initiated, 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, can approve, approve with modifications or deny the amendment. There is no criterion.

The Eastern Summit County General Plan has specific goals related to future amendments.

Goal 2.1. States:

“Develop land use codes which balance the diversity of desires of Eastern Summit County residents, including private property rights.”

The proposed amendments are designed to provide clarity to citizens who are considering an appeal, of a land use decision made by the County. In the past there has been confusion on when the appeal is due, what materials are required to be submitted, when the fees must be paid etc. Before these amendments there was a County policy that spelled out these requirements, but they were not completely written in the Code. These amendments will make the Code consistent with the policy.

Recommendation

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

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 Eastern Summit County 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. On July 18, 2019 the Eastern Summit County Planning Commission conducted a public hearing for this proposal.
6. On July 18, 2019, the Eastern Summit County 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 Eastern Summit County General Plan.
2. 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 Ordinance

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

**AN ORDINANCE AMENDING THE EASTERN SUMMIT COUNTY
DEVELOPMENT CODE SECTION 11-7-16 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, Goal 2.1 of the Eastern Summit County General Plan states, “develop land use codes which balance the diversity of desires of Eastern Summit County residents, including private property rights;” and

WHEREAS, in furtherance of this goal, §11-1-1 of the Summit County Code (“Code”) states the county will fully exercise all of the powers granted to it by Utah Code Annotated title 17, to require, to the extent possible and practical, that all development and change within eastern Summit County will occur in a manner that is consistent with the goals and expectations of the residents; and,

WHEREAS, having clear and understandable requirements for appeals in Eastern Summit County is an important component to protecting these goals and policies; and,

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

WHEREAS, the Eastern Summit County Planning Commission held a public hearing on July 18, 2019; and

WHEREAS, the Eastern Summit County Planning Commission recommended adoption of the amended sections of the Eastern Summit County Development Code on July 18, 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. **EASTERN SUMMIT COUNTY DEVELOPMENT CODE** The Eastern Summit County 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 11-7-16

11-7-16: 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; amd. Ord. 737, 4-14-2010)

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 11-3.2(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; amd. Ord. 737, 4-14-2010)