

ORDINANCE NO. 2008-5

AN ORDINANCE AMENDING CHAPTER 7, ADMINISTRATION AND ENFORCEMENT, SECTIONS 7-1 TO 7-26, OF THE UTAH COUNTY LAND USE ORDINANCE

THE COUNTY LEGISLATIVE BODY OF UTAH COUNTY ORDAINS AS FOLLOWS:

Part I:

Chapter 7 of the Utah County Land Use Ordinance is hereby amended to read as follows:

CHAPTER 7

ADMINISTRATION AND ENFORCEMENT

7-1: ZONING ADMINISTRATOR APPOINTED

The Community Development Director, or his/her authorized agent, is designated as the Zoning Administrator, and is charged with the administration and enforcement of this Land Use Ordinance.

7-2: POWERS AND DUTIES OF THE ZONING ADMINISTRATOR

The Zoning Administrator is designated as the Land Use Authority to act upon the following duties concerning land use;

- A. Issue building and grading permits.
- B. Issue business licenses.
- C. Issue zoning compliance permits.
- D. Issue and renew, where applicable, temporary use permits.
- E. Enforce the provisions of this ordinance.
- F. Conduct inspections which are necessary to insure compliance with the various provisions of this ordinance.
- G. Maintain a copy of the current Utah County zoning regulations, zone map, and records of amendments thereto.
- H. Refer matters to the Planning Commission, County Commission, or other agency as required by the terms of this ordinance.
- I. Perform such other duties as are assigned by this ordinance.

7-3: SCOPE

From the time of the effective date of this ordinance, permits shall not be granted for the construction or alteration of any building or structure, or for the moving of a building or structure onto a lot, or for the commencement, continuation, or change in use of any land, building, or structure, if such construction, alteration, moving, or use would be in violation of any of the provisions of this ordinance.

7-4: PERMITS FOR BUILDING, GRADING, AND LAND USE

Any owner or authorized agent who intends to establish or change the use of land, fill, excavate, or grade earth materials, construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install,

enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the building and safety codes adopted by the County, or to cause such work to be done, shall first make application to the Zoning Administrator and shall obtain the required permits and a zoning compliance permit.

7-5: PLANS REQUIRED

All applications for permits as required in the land use ordinance, chapter 7 shall be accompanied by the appurtenant permit fee in the current amount as set by the County Commission and by the required plot plans and construction drawings containing complete information as required for the type of permit desired.

7-6: PERMIT TO COMPLY WITH ORDINANCE

No permit shall be issued by the Zoning Administrator, or any other person or agency, which is not in conformance with the provisions of this ordinance. Any permit so issued shall be null and void.

7-7: UTILITY INSTALLATION UNLAWFUL WITHOUT PERMIT

It shall be unlawful for any person, property owner, contractor, corporation, or other entity to install or allow to be installed any electrical, natural gas, sewer, or water utility line or facility before a permit therefor has been approved and issued by the Zoning Administrator. Any such unpermitted installation shall be a violation of this ordinance.

7-8: CONSTRUCTION AND USE TO COMPLY WITH PERMIT

All permits for conditional uses, building permits, zoning compliance permits, and other permits for land uses, building, grading, and occupancy authorize only the lot, use, layout, extent of construction, and the other terms of issuance set forth in the approved application and plans. Any remodeling or any change in the lot, use, layout, construction or other item that varies from that which is stated on the approved application form, plan and permit shall be a violation of this ordinance. To be lawful, a new permit must be issued to authorize such remodel or other change.

7-9: ZONING COMPLIANCE PERMIT REQUIRED

A. INITIAL ZONING COMPLIANCE PERMIT

It shall be unlawful to construct, use or occupy, or permit the construction, use or occupancy, of any building or land until an initial zoning compliance permit has been issued by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this ordinance.

B. ZONING COMPLIANCE PERMIT TO CHANGE A NONCONFORMING USE OR A NONCOMPLYING STRUCTURE

No nonconforming use or noncomplying structure shall be changed or extended until a zoning compliance permit is issued by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this ordinance.

C. CERTIFICATE OF OCCUPANCY - FINAL ZONING COMPLIANCE PERMIT, LIMITED REVIEW

Where the Zoning Administrator has determined that a proposed building or use will comply with this ordinance and issues a building permit therefore; and the

construction has been completed; the Administrator's scope of review in issuing a Certificate of Occupancy - Zoning Compliance Permit shall be limited to the approved application form, approved plans, and the terms of the approved permits, not a review de novo.

- D. **CERTIFICATE OF OCCUPANCY - FINAL ZONING COMPLIANCE PERMIT ISSUED UPON COMPLETION OF CONSTRUCTION; EXCEPTION**
A Certificate of Occupancy - Final Zoning Compliance Permit shall not be issued until all construction is completed.

7-10: **BOARD OF ADJUSTMENT CREATED, MEMBERS, TERMS**

- A. There is hereby created a Board of Adjustment which shall consist of five members (termed "regular members") appointed by the County Commission plus whatever number of alternate members the County Commission may appoint. The term of a regular member shall be for a period of three years and until their successors are appointed, and the term of an alternate member shall be for the time period specified at the time of appointment. The terms of the regular members shall be staggered so that the term of at least one member shall expire each year on December 31. Appointments to fill vacancies shall be for the unexpired term of the vacant office.
- B. Both regular members and alternate members shall be administered the oath of office after being appointed but before taking part in any deliberations of the Board. An alternate member shall have full power to act in any capacity of a regular member when there are fewer than five regular members present. When there is a vacancy and more than one alternate member is available at the meeting, the Chairman of the Board of Adjustment shall select which alternate shall sit with the Board. If, while deliberations on an agenda item are in progress, a regular member arrives, the regular member shall not take the seat of an alternate member until the next agenda item comes before the Board.
- C. Members of the Board of Adjustment shall be residents of Utah County and may reside in either the unincorporated area or an incorporated municipality
- D. Any member of the Board of Adjustment may be removed for cause by the County Commission if written charges are filed against the member with the County Commission. The County Commission shall provide the member with a public hearing, if he requests one, before taking action on the charges.

7-11: **ORGANIZATION, MEETINGS, RECORDS**

- A. The Board of Adjustment shall organize, shall elect a chairman and other officers necessary to fulfill its duties, and shall adopt rules in accordance with the provisions of this ordinance. "Roberts' Rules of Order" shall be followed in the conduct of meetings wherever applicable. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine.
- B. The chairman or, in his absence, the acting chairman shall conduct all meetings and may administer oaths and compel the attendance of witnesses. The Secretary of the Board of Adjustment shall keep minutes of the proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official actions. These minutes and records, along with the appeal application, written statements, and other facts bearing on the appeal and decision of the Board, shall be filed in

the office of the Board of Adjustment and shall be public record.

- C. The Secretary of the Board of Adjustment may make a tape recording of the proceedings of the Board, and a transcription may be requested from the Secretary. The Board shall establish rules relating to such requests, including a reasonable compensation to be paid to the Secretary for making the transcription. The secretary shall oversee the making of the transcript and shall be responsible for maintaining the integrity of the tape. Where more than one record exists or is purported to exist, a transcription caused to be prepared by the Secretary and certified to its accuracy before a notary public, shall be the official record of the proceedings of the Board of Adjustment.

7-12: POWERS AND DUTIES OF THE BOARD

The powers and duties of the Board of Adjustment shall be limited to the following:

- A. The Utah County Board of Adjustment is designated as the appeal authority to hear and decide appeals from any order, requirement, refusal or other decision made in applying this Land Use Ordinance.
- B. The Utah County Board of Adjustment is designated as the appeal authority to hear and decide appeals for variances from the area, width, setback or other terms of this Land Use Ordinance; except a use variance shall not be granted.
- C. The Utah County Board of Adjustment is designated as the Land Use Authority to hear and decide requests for special exceptions which are specifically authorized in this ordinance.

7-13: POWER OF BOARD LIMITED

The powers and duties and duties of the Board of Adjustment are limited to the judicial and administrative guidelines set forth in this ordinance. The Board shall not have the authority to amend this ordinance, nor to act outside of the authorized rules set forth in chapter 7 of this ordinance nor the Utah Code Annotated 1953, as amended. Moreover, no decision shall be made in such a way so as to destroy the intent and purpose of the land use ordinance. Furthermore, the Board of Adjustment does not have the power to sue and be sued; its decisions are subject to review only according to the provisions of chapter 7 of this ordinance and the Utah Code Annotated 1953, as amended.

7-14: REQUESTS TO APPEAR BEFORE THE BOARD OF ADJUSTMENT

Any person or entity wishing to appeal a decision made in applying the land use ordinance, or to appeal for a variance, or to request a special exception, may commence such action by completing the standard forms adopted by the Board of Adjustment and filing the forms in the office of the Board. The Secretary of the Board of Adjustment, or other person designated by the Board to receive and process appeals forms, shall accept and process such forms only if they are properly completed and accompanied by the filing fee in the current amount set by the County Commission. To be heard at any meeting of the Board of Adjustment, such forms must be received in proper form with the filing fee before 5:00 P.M. of the thirtieth (30th) day prior to the date of the meeting. Moreover, any appeal of a decision made in applying the zoning ordinance must be properly filed within forty-five (45) days of the date of the contested decision, or it shall be time-barred and not heard.

7-15: PROCEDURE

Upon receipt of the request forms, the Secretary of the Board of Adjustment or, other person appointed to receive the forms, shall forthwith notify the zoning administrator of the matter and invite his response; also notice shall be given as required elsewhere by this ordinance and state law. If the Board of Adjustment finds that the request forms were properly filed, and the filing fee paid, it shall hold a public hearing and take action on the request.

7-16: HEARING

- A. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof by publication of notice at least five days prior to the date of the hearing, and decide the same. The Board of Adjustment shall set a standard procedure for conducting public hearings and reviewing requests before the Board, which may include: reasonable limits of time in which appellants, respondents, and other parties may speak; sign-up sheets for those who wish to speak at the public hearing (and cut off times for adding names); deadlines for submitting written comment; and other rules needed to conduct a fair and orderly hearing.
- B. The decision of the Board shall be based upon the facts and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing. Any party may appear at the hearing in person or by agent or by attorney.

7-17: ACTION TAKEN BY THE BOARD OF ADJUSTMENT, APPROVAL, DENIAL

A. QUORUM

To take action on a request, the Board of Adjustment must have at least three (3) members participating in the deliberations.

B. APPROVAL

1. An appeal shall be approved only when the Board finds that all of the forms, procedures, and rules have been completed and fully complied with.
2. To reverse any order, requirement, decision, or determination made in administering or interpreting the land use ordinance by any administrative official or agency; or to decide in favor of any appellant who has been denied a permit or approval according to the terms of the land use ordinance and who has requested a variance; it shall require the concurring vote of three members of the Board of Adjustment.
3. To approve any request for a special exception it shall require the concurring vote of a majority of those participating in the deliberations.
4. When an appeal or request is approved, the Board shall enter into the official minutes the specific reasons for approval, any conditions or limitations of the approval, and the names of those voting for and against.

C. DENIAL

If the decision of the Board of Adjustment is to deny an appeal or request, the Board shall enter into the official minutes the specific reasons for denial and the names of those voting for and against.

7-18: RULES FOR HEARING AND DECIDING APPEALS ON ALLEGED ERRORS

When the Board of Adjustment acts under its power to hear and decide appeals in which it is alleged that there is error in an order, requirement, decision, or

determination made in the administration or interpretation of the land use ordinance, the Board shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:

A. JURISDICTIONAL REQUIREMENTS

Prior to filing the appeal with the Board of Adjustment, the Board shall lack jurisdiction and shall not hear the appeal unless all the following requirements have been met:

1. Within twenty (20) days of the date of the decision being appealed, the appellant must present the Zoning Administrator, or other person or entity which made the decision in question, with a claim of error which fully sets forth:
 - a. A brief statement of the facts; and
 - b. The nature of the claim of error.
2. Within thirty-five (35) days of the date of the decision being appealed, the Zoning Administrator, or other person or entity which made the decision in question may, but is not required to, respond in writing to the claim of error. The claim of error shall be deemed denied if the Zoning Administrator, or other person or entity which made the decision in question, fails to approve or deny the claim of error or otherwise respond.

B. REQUIRED STANDARDS

When the Board of Adjustment acts under its power to hear and decide appeals in which it is alleged that there is error in an order, requirement, decision, or determination made in the administration or interpretation of the land use ordinance, the Board shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:

1. The appellant has complied with the jurisdictional requirements of Subsection A.
2. The appellant has filed a properly completed application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by said alleged error.
3. The application for appeal was properly filed with the Board forty-five (45) days or less after the date of the decision being appealed.
4. The appellant must be a party which was adversely affected by the subject decision applying the land use ordinance.
5. The decision in question must be one made in applying this, the land use ordinance, not some other state or county law, office policy, personnel matter, or other decision beyond the purview of the zoning ordinance.
6. Legislative zoning decisions (e.g. decisions made by the County Commission enacting or amending the land use ordinance) shall not be within the purview of the Board of Adjustment.
7. If the Board of Adjustment grants the appellant's request, the result must be consistent with the provisions of the land use ordinance, and not waive or modify any of the terms or requirements thereof.
8. The applicant has the burden of proving that an error was made; however, expressions of support or protest alone shall not constitute the basis of approval or denial.

9. The Board of Adjustment shall presume that the order, requirement, decision, or determination made in the administration or determination of the land use ordinance is valid; and determine only whether or not the order, requirement, decision, or determination is arbitrary, capricious, or illegal.
 - a. An order, requirement, decision, or determination is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.
 - b. A determination of illegality requires a determination that the order, requirement, decision, or determination violates a law, statute, or ordinance in effect at the time the order, requirement, decision, or determination was made.
10. If there is a record, the Board of Adjustment's review is limited to the record provided; and the Board of Adjustment may not accept or consider any evidence outside the record, unless that evidence was previously offered and it was improperly excluded. If there is no record, the Board of Adjustment may call witnesses and take evidence.

7-19: RULES FOR HEARING AND DECIDING APPEALS FOR VARIANCES

Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the zoning ordinance. The Board of Adjustment shall not grant approval unless it finds that all of the following standards have been met:

- A. The substance of the variance must be a request to vary the requirements for height, bulk, width, setback, or other numerical or quantitative requirement, as distinguished from approval to have a land use that is not listed as permitted in a zone (e.g. no "use variance" shall be granted).
- B. The appellant has filed a properly completed application which states the normal or standard amount of area, distance, size or volume required by the land use ordinance, the specific amount of variance being requested, and all other information required by the application form.
- C. The Board of Adjustment may grant a variance only if:
 1. literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;
 2. there are special circumstances attached to the property that do not generally apply to their properties in the same district;
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 5. The spirit of the land use ordinance is observed and substantial justice done.
- D. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection C-1, the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship:
 1. is located on or associated with the property for which the variance is sought; and

2. comes from circumstance peculiar to the property, not from conditions that are general to the neighborhood.
- E. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection C-1, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.
- F. In determining whether or not there are special circumstances attached to the property under subsection C-2, the Board of Adjustment may find that special circumstances exist only if the special circumstances:
 1. relate to the hardship complained of; and
 2. deprive the property of privileges granted to other properties in the same district.
- G. The applicant shall bear the burden of proving by a preponderance of the evidence that all of the conditions justifying a variance have been met.
- H. Variances run with the land.
- I. Neither the Board of Adjustment nor any other body may grant use variances.
- J. Any variance granted shall be no greater than the minimum amount necessary to afford relief.
- K. In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:
 1. mitigate any harmful affects of the variance; or
 2. serve the purpose of the standard or requirement that is waived or modified.

7-20: RULES FOR HEARING AND DECIDING APPEALS FOR SPECIAL EXCEPTIONS

When the Board of Adjustment acts under its power to hear and decide requests for special exceptions, the special exception shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed special exception cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the special exception may be denied. The Board shall grant approval if the following rules and applicable standards have been met:

- A. The applicant has filed a properly completed special exception application form.
- B. The land use ordinance specifically identifies the special exception in question as one which the Board is empowered to approve.
- C. The special exception shall meet the following standards:
 1. It shall not degrade the public health, safety, or welfare.
 2. It shall be consistent with the general purposes and intent of the land use ordinance.
 3. It shall be consistent with the "characteristics and purposes" stated for the zoning district involved and the adopted general plan.
 4. It shall be compatible with the public interest and with the characteristics of the surrounding area.
 5. It shall not adversely affect local property values.
 6. It shall comply with all of the terms and requirements of the land use ordinance, including but not limited to those found in Chapter 3, and Chapter 5, of the land use ordinance.

7. It shall not result in a situation which is cost ineffective, administratively infeasible, or unduly difficult for the provision of essential services, including but not limited to: roads and access for emergency vehicles and residents; fire protection; police protection; schools and school busing; healthful water, sewer, and storm water facilities; and garbage removal.
- D. The applicant has the burden of proving by a preponderance of the evidence that all the conditions for granting a special exception have been met and must meet that burden based on the facts presented for the record; expressions of support or protest alone shall not constitute the basis of approval or denial.
- E. When necessary, the Board may attach conditions which work out an adjustment between the special exception and the surrounding area and to mitigate any harmful effects; such conditions may include, but are not limited to, the following:
 1. Parking;
 2. Traffic acceleration lanes;
 3. On-site storm water retention facilities;
 4. Special security or fire protection facilities;
 5. Water, sewer, and garbage facilities;
 6. Landscape screening or buffer areas;
 7. Requirements for the management and maintenance of the above facilities;
 8. Limited hours of operation;
 9. Limited use of equipment emanating offensive noise, light, dust, or traffic;
 10. Travel or route restrictions.

7-21: NOTIFICATION AND DURATION OF APPROVAL

- A. Within fifteen (15) days after a decision has been made, the secretary shall file a written notice of the decision of the Board of Adjustment in its offices and mail a copy of the notice to the applicant at the address supplied in the application form. The decision of the Board shall be deemed final at the time it is filed in its offices.
- B. After each decision of the Board of Adjustment has been filed in its offices and become final, as provided in subsection A above, said Board shall record the decision with the Utah County Recorder.
- C. Except as provided in subsection D below, if a request for a variance or special exception is approved, the notice shall also contain the date such approval terminates if a building permit (or other permit or license, if applicable) is not obtained pursuant thereto. Such termination shall automatically be one year from the date of the decision of the Board of Adjustment.
- D. The Board of Adjustment may, as a condition of approval, set a different termination date for a variance or special exception on a finding that a different date is necessary for substantial justice to be done. After the hearing, the Board of Adjustment may order the termination date for a variance or special exception enlarged if the request was made in writing, made before the expiration of the period originally prescribed, and a different date is necessary for substantial justice to be done. Any request for an enlargement of time shall comply with the applicable notice requirements for a variance or special exception. This request for an enlargement of time shall not be considered a rehearing under Chapter 7 of this ordinance.

7-22: RECOURSE FROM ACTIONS TAKEN BY THE BOARD

- A. Any person adversely affected by any decision of the Board of Adjustment may file a petition with the 4th District Court for Utah County for a review of that decision. Any such appeal or petition shall be barred unless it is filed within 30 days of the date when the decision becomes final, which is the date said decision is filed in the office of the Board. The petition shall be limited to the allegation that the decision of the Board of Adjustment was arbitrary, capricious, or illegal.
- B. The Board of Adjustment shall transmit to the reviewing court the complete record of its proceedings, including applications, exhibits, minutes, findings, orders, and any transcript of tape recordings which may be on file with the Board. The person or entity filing the petition for review shall request from the secretary to the Board a verbatim transcript of the record and such person or entity shall pay the reasonable transcription fees as set by the Board. If there is a record, the review of the District Court is limited to the record, and the Court may not accept or consider evidence outside of the record unless it determines that such evidence was offered to the Board of Adjustment and improperly excluded. If there is no record, the Court may call witnesses and take evidence.
- C. The Court shall affirm the decision of the Board of Adjustment if the decision is supported by substantial evidence in the record.
- D. Filing a petition for review with the Court does not automatically stay the decision of the Board of Adjustment.
 - 1. Before filing the petition for review with the Court, the aggrieved party may petition the Board of Adjustment to stay its decision. The Board shall take action on any petition to stay only in a meeting where proper notice was given and where a quorum is present. Upon considering such petition to stay, the Board may grant the stay if it finds such to be in the best interests of the county.
 - 2. After filing a petition for review with the Court, the petitioner may seek an injunction staying the decision of the Board of Adjustment.
- E. No decision of the Board of Adjustment shall be subject to rehearing by the Board, except when remanded from a court of competent jurisdiction.

7-23: POWERS AND DUTIES OF THE PLANNING COMMISSION

- A. There is hereby created a Planning Commission which shall consist of seven members (termed "regular members") appointed by the County Commission, plus up to two alternate members appointed by the County Commission. The terms of the regular members shall be for a period of three years and until their successors are appointed, and terms of the alternate members shall be for a period of one year and until their successors are appointed. The terms of the regular members shall be staggered so that terms of at least two and no more than three of the regular members shall expire each year on December 31; any unexpired terms shall be filled for the remainder of the term. The County Commission may appoint residents of the unincorporated area and residents of incorporated municipalities. Regular members and alternate members may be removed with or without cause by the County Commission. The Planning Commission shall elect a chair from its regular members, and may employ a Planning Director and other agents or staff to carry out its duties. Alternate members shall have full power to act in the capacity of regular members when there are fewer than seven regular members present. When there is

a vacancy and more than one alternate member is available at the meeting, the Chair of the Planning Commission shall select which alternate member shall sit with the Commission. If, while deliberations on an agenda item are in progress, a regular member arrives, the regular member shall not take the seat of an alternate member until the next agenda item comes before the Commission. The Planning Commission members may receive a stipend for their services and may be reimbursed for mileage or other actual expenses incurred. To carry out its duties, the Planning Commission and its agents and staff shall have the powers granted to such by this chapter and by the Utah Code Annotated, 1953 as amended.

- B. The Planning Commission may prepare and recommend a general plan for Utah County, or amendments thereto, in accordance with Utah Code Annotated 1953, as amended, which plan, once adopted, shall be used by the Planning Commission as an advisory guide for land use decisions and recommendations.
- C. The Planning Commission may propose a land use ordinance and zone map for Utah County or may propose amendments of an existing land use ordinance or zone map to the County Commission, and may adopt procedures for the proposals to be initiated by its members, its staff, or members of the public at large. The Planning Commission shall also consider and give its recommendations on any amendment to the land use ordinance which is proposed by the County Commission and submitted to the Planning Commission for recommendation. Before the Planning Commission proposes any land use ordinance or zone map amendment, or makes a favorable recommendation of an amendment, it shall find that:
 - 1. The amendment will conform to the land use element and other provisions of the general plan (or conform to a proposed amendment to the general plan which is considered concurrently with the zoning amendment).
 - 2. The amendment will not substantially decrease nor otherwise adversely affect the health, safety, convenience, morals, or general welfare of the public.
 - 3. The amendment will more fully carry out the general purposes and intent of this ordinance.
 - 4. In balancing the interest of the petitioner with the interest of the public, both interests will be better served by making the change. In considering a proposed amendment to the land use ordinance or zone map, the Planning Commission may submit a recommendation to the County Commission for or against the proposal, or it may recommend an alternate amendment.
- D. The Planning Commission is designated as the Land Use Authority to take action to approve or disapprove any applications for a conditional use permit where its approval is required by this ordinance. When the Planning Commission acts under its power to hear and decide applications for conditional uses, the conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied. The Planning Commission shall grant approval if the following rules and applicable standards have been met:

1. The appellant shall have submitted a properly completed application form.
 2. The land use ordinance specifically identifies the conditional use in question as one which the Planning Commission is empowered to approve.
 3. The conditional use shall meet the following standards:
 - a. It shall not degrade the public health, safety, or welfare.
 - b. It shall be consistent with the general purposes and intent of the land use ordinance.
 - c. It shall be consistent with the "characteristics and purposes" stated for the zoning district involved and with the adopted general plan.
 - d. It shall be compatible with the public interest and with the characteristics of the surrounding area.
 - e. It shall not adversely affect local property values.
 - f. It shall comply with all of the terms and requirements of the land use ordinance, including but not limited to those found in Chapter 3, and Chapter 5, of this land use ordinance.
 - g. It shall not result in a situation which is cost ineffective, administratively infeasible, or unduly difficult for the provision of essential services, including but not limited to: roads and access for emergency vehicles and residents; fire protection; police protection; schools and school busing; healthful water, sewer, and storm water facilities; and garbage removal.
 4. The applicant has the burden of proving by a preponderance of the evidence that all conditions for granting a conditional use have been met and must meet that burden based on the facts presented for the record, expressions of support or protest alone shall not constitute the basis of approval or denial.
 5. When necessary, the Planning Commission may attach conditions to fit the use with the surrounding area, and to mitigate any harmful effects; such conditions may include, but are not limited to, the following:
 - a. Parking.
 - b. Water, sewer, and garbage facilities .
 - c. Landscape screening or buffer areas.
 - d. Traffic acceleration lanes.
 - e. On-site storm water retention facilities.
 - f. Special security or fire protection facilities
 - g. Requirements for the management and maintenance of the above facilities.
 - h. Limited hours of operation.
 - i. Limited use of equipment emanating offensive noise, light, dust, or traffic.
 - j. Travel or route restrictions.
- E. The Planning Commission shall take action to recommend to the County Commission approval or disapproval of any proposed large scale development projects in accordance with the terms of Chapter 6 plus any procedural bylaws the Planning Commission may have adopted under authority of this ordinance. Land use ordinance Chapter 6 constitutes the standards and criteria for recommending approval or disapproval of the requested conditional use permit and for

recommending approval or disapproval of a plat. Approval of a plat constitutes the granting of a conditional use permit for a large scale development. The fact that "dwellings" may be permitted uses in the underlying zone does not alter or affect the standards and criteria applicable for approval or disapproval of a large scale development.

- F. The Planning Commission may adopt rules of procedure for the conduct of its meetings and the performance of its other duties, which rules shall not be in conflict with state law or the terms of this ordinance.
- G. The Planning Commission shall perform other duties as required under the terms of this ordinance.

7-24: POWERS AND DUTIES OF THE COUNTY COMMISSION

- A. The powers and duties of the County Commission concerning zoning and planning shall be as found in Utah Code Annotated 1953, as amended.
- B. The County Commission may adopt a general plan for Utah County, or amend any existing general plan, by following the procedures of Utah Code Annotated 1953, as amended.
 - 1. Notwithstanding anything contained in this Ordinance to the contrary, the general plan for Utah County is only an advisory guide for land use decision.
 - 2. All proposals to amend the Utah County General Plan, or this ordinance, to allow for the siting of a storage facility or transfer facility for the placement of high-level nuclear waste or greater than class C radioactive waste wholly or partially within unincorporated Utah County are rejected.
- C. The County Commission may amend, change, or modify any provisions of the land use ordinance or zone map provided:
 - 1. The proposed amendment, change or modification has first been proposed by the Planning Commission or submitted to it for its recommendations; (However, if the Planning Commission fails to return its recommendation within forty-five (45) days from its receipt of the proposed amendment, the County Commission may assume an affirmative recommendation.)
 - 2. Before taking action a public hearing on the proposed amendment was held by the Planning Commission or the County Commission and notice given as specified herein.
 - 3. No material change in or departure from the recommendation of the Planning Commission shall be made unless the change or departure is submitted to the Planning Commission for its consideration and recommendation. Upon receiving the reconsidered recommendations of the Planning Commission, the County Commission may accept, accept in part, or reject the recommendation of the Planning Commission and amend the land use ordinance accordingly.
 - 4. Where necessary, the County Commission shall amend the general plan to conform to the finished provisions of the land use ordinance or zone map.
- D. The County Commission shall take action to approve or disapprove of proposed large scale development projects by following the land use ordinance Chapter 6 Chapter 6 constitutes the standards and criteria for approval or disapproval of the requested conditional use permit and for approval or disapproval of a plat. Approval of a plat constitutes the granting of a conditional use permit for a large

scale development. The fact that "dwellings" may be permitted uses in the underlying zone does not alter or affect the standards and criteria applicable for approval or disapproval of a large scale development.

- E. The County Commission shall perform other duties as required under the terms of this ordinance or state law.

7-25: AMENDMENTS TO ORDINANCE AND MAP

- A. Either the Planning Commission or the County Commission may propose amendments to this Land Use Ordinance or the zone map.
- B. Any other person or organization seeking an amendment of the Land Use Ordinance or zone map shall petition the Planning Commission, in writing, to initiate such amendment using the petition forms and procedures adopted by the Planning Commission. The petitioner shall designate fully and clearly on the forms the change desired and the reasons therefor.
- C. Upon receipt of the petition, the Planning Commission shall consider the amendment request and may: recommend approval, approval with change, disapproval, or hold the matter for future consideration.
- D. All recommended amendments shall conform to the general plan (or to proposed amendments to the general plan which are adopted concurrently with the land use amendment) and be consistent with the other provisions of this land use ordinance
- E. Amendments to this ordinance may be adopted by the County Commission only after a public hearing by the Planning Commission or County Commission at which parties of interest and other persons have an opportunity to be heard. Notice of the date, time and place of the first public hearing to consider the adoption or modification of the Land Use Ordinance shall be made as specified herein. Any changes to the proposed amendment based on facts presented at the public hearing or otherwise, which have not been presented to the Planning Commission, shall be submitted to the Planning Commission for its recommendation prior to enactment as a part of this ordinance.

7-26: VIOLATIONS

- A. No land, building or structure shall be used for any purpose not allowed in the zone in which such land, building or structure is located.
- B. Any person who violates any provision of this Land Use Ordinance is guilty of a class C misdemeanor upon conviction. In addition, the provisions of this Land Use Ordinance may also be enforced by injunction, mandamus, abatement, civil penalty, or any other remedy provided by law.
- C. Any person, corporation or other entity, whether as owner, occupant, agent or employee, who causes, permits or otherwise participates in any violation of the provisions of this Land Use Ordinance may be held responsible for the violation, suffer the penalties, and be subject to the remedies provided by law.
- D. Whenever any act or omission is made unlawful in this Land Use Ordinance, it shall include causing, permitting, aiding, or abetting such act or omission.
- E. Any one, all, or any combination of the penalties and remedies set forth herein may be used to enforce the provisions of the Land Use Ordinance.
- F. Each day that any violation exists shall be considered a separate offense for purposes of the civil penalties and other remedies set forth in this Land Use Ordinance.

- G. Utah County may withhold building permits, zoning compliance permits, and all other permits related to a use or parcel of property in violation of this Land Use Ordinance, until all violations of this Land Use Ordinance are resolved.
- H. The civil penalties for any violation of this Land Use Ordinance shall be as follows:
 1. \$25.00 per day per offense if the offense is corrected prior to the date of mailing of written notification of violation from the County.
 2. \$50.00 per day per offense if the offense is corrected within fifteen (15) days from the date of mailing of written notification of violation from the County.
 3. \$100.00 per day per offense if the offense is corrected within thirty (30) days from the date of mailing of written notification of violation from the County.
 4. \$1,000.00 per day per offense if the offense is not corrected within thirty (30) days from the date of mailing of written notification of violation from the County.

Part II:

The Utah County Land Use Ordinance, as amended herein, is hereby adopted in book form and a copy of said Utah County Land Use Ordinance is hereby ordered to be filed in the office of the Utah County Clerk/Auditor.

Part III:

If any of the sections, sentences, clause or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

Part IV:

This ordinance shall become effective fifteen (15) days after it is passed, and upon at least one (1) publication in a newspaper published in and having general circulation in Utah County.

PASSED and ordered published this 11 day of March, 2008

UTAH COUNTY COMMISSION

VOTE



 GARY J. ANDERSON, CHAIR

Aye



 LARRY ACELLERTSON, COMMISSIONER

Aye



 STEVE WHITE, COMMISSIONER

Aye

ATTEST:
BRYAN E. THOMPSON
County Clerk/Auditor

By: *Linda Strickland* Deputy

APPROVED AS TO FORM:
JEFFREY R. BUHMAN
County Attorney

By: *Jeffrey R. Buhman* Deputy

Date of Publication: Once only, as soon as possible



PROOF of PUBLICATION

from

The Daily Herald

STATE OF UTAH }
Utah County } SS

NOTICE

ORDINANCE NO. 2008-5 WAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF UTAH COUNTY, UTAH, ON MARCH 11, 2008, AMENDING CHAPTER 7, ADMINISTRATION AND ENFORCEMENT, SECTIONS 7-1 TO 7-26, OF THE UTAH COUNTY LAND USE ORDINANCE.

A COMPLETE COPY OF THE ORDINANCE IS AVAILABLE AT THE COUNTY CLERK/AUDITOR'S OFFICE. COMMISSIONER STEVE WHITE, COMMISSIONER GARY J. ANDERSON, AND COMMISSIONER LARRY A. ELERTSON VOTED IN FAVOR OF THE ORDINANCE.

Legal Notice 316432 Published in The Daily Herald April 2, 2008.

I, Rowena Adams, being first duly sworn depose and say that I am the Legal Billing Clerk of the Daily Herald, a newspaper of general circulation, published seven times each week at Provo, Utah, County of Utah; that the notice attached hereto, 316432-NOTICE ORDINANCE NO. , and which is a copy, was published in said newspaper, the first publication having been made on the 2nd day of April, 2008, and the last on the 2nd day of April, 2008; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and the same was published in the newspaper proper and not in the supplement.

Rowena A. Adams

Subscribed and sworn before me
this 2nd day of April, 2008.

Debbie L. Chandler

Notary Public

Residence: Spanish Fork, Utah
My commission expires 05/18/09

APR 11 2008

