

BYLAWS
of
THE GRAND COUNTY BOARD OF ADJUSTMENT
Grand County, Utah
(30 Nov 08 draft)

ARTICLE I
Officers

I.1. Officers. At the first meeting of the BOA in each calendar year, the regular members of the BOA shall elect from among themselves a Chairman and Vice-Chairman. A majority of three votes is required for election of officers. Alternate Members are not eligible for election as officers. If an Officer resigns during a calendar year, the BOA shall elect a replacement at its first ensuing meeting. The function of Executive Secretary, writing the record of decision of the BOA in any hearing, is performed by assigned staff from the Grand County Community Development Department or County Council Administrator's office.

I.1.1. Chairman. The Chairman has the following duties and powers

I.1.1.1. The Chairman presides at all meetings of the BOA, and insures that the procedures prescribed in Article III are followed in the handling of appeals of land use Final Decisions and applications for variance.

I.1.1.2. The Chairman receives appeals and applications, reviews these for completion and jurisdiction with staff as described in Appeals Procedures below, and schedules all meetings of the BOA.

I.1.1.3. The Chairman receives letters of resignation and letters of resignation withdrawal and polls the BOA membership as to their acceptance, then informs the member submitting the letter as to its acceptance, as described in II.1.2.

I.1.1.4. The Chairman can order recusal of a BOA member when that member displays a conflict of interest which, in the opinion of the Chairman, severely compromises public perception of that member's impartiality in a matter being heard before the BOA and that member declines to recuse themselves.

I.1.1.5. The BOA reviews, amends as necessary, and finalizes the record of decision of the BOA by signature of the Chairman.

I.1.2. Vice Chairman. The Vice Chairman performs the duties of the Chairman in the absence of the Chairman, or as delegated those duties by the Chairman.

I.2. Ethics

I.2.1. Recusal. Each member of the BOA has an affirmative ethical duty to recuse themselves from hearing any matter before the BOA in which financial, familial, or intimate social interests, or public statements, would call into question their ability to be impartial in the minds of a substantial portion of the general public; or in which a vote against the interests of one's family and close associates would likely cause significant tensions in those ongoing relationships.

I.2.2. Avoid ex parte communications. Each member of the BOA has an ethical duty to avoid obtaining alleged facts about, or opinions about, the merits of an appeal or variance application before the BOA. Each case must be decided only on the basis of the evidence placed on the record in a public hearing of a matter before the BOA. If a member of the public approaches a BOA member wanting to talk about a matter scheduled to be heard by the BOA, the BOA member should politely decline to discuss the matter.

I.2.3. Maintain public impartiality.

II.2.3.1. Each member of the BOA has an ethical duty to avoid saying anything in public for or against the merits of any matter before the BOA, or any party to a matter before the BOA, before the hearing is concluded and a Finding of Fact is adopted by the BOA.

II.2.3.2. Members of the BOA have a duty to scrupulously avoid involvements with parties to appeals which might call into question their impartiality. For example, gifts or gratuities from a "grateful" applicant or applicant after a hearing in which the BOA member voted in favor of the party should not be accepted.

I.2.4. Faithful attendance and performance. Each member of the BOA has an ethical duty to put aside other claims on their time to attend BOA meetings and conscientiously perform their duties as BOA members. If their circumstances come to prevent faithful attendance and performance of BOA member duties, the member should resign from the BOA.

ARTICLE II Resignation of Membership

II.1. Resignations. Any member of the BOA must submit a signed letter of resignation specifying the effective date on which the member's service will cease. The letter of resignation shall be submitted to the Chairman of the BOA via the office of the BOA's staff in the Community Development Department of Grand County.

II.1.1. Acceptance of Resignation. Upon receipt of the written letter of resignation, the

Chairman shall poll the remaining regular members of the BOA and record their votes to accept or reject the resignation, and to accept or seek to negotiate a different effective date for the resignation than that proposed. If three members of the BOA vote to accept the resignation on its proffered terms, the Chairman will inform the member in writing that their resignation has been accepted and declare the seat officially vacant, whereupon legal notice of vacancy and solicitation of applicants to fill the seat shall be promptly made by staff.

A member may choose to approach the Chairman to discuss their desire to resign from the BOA on terms which cause the function of the BOA least disruption, but until the member submits a signed letter of resignation specifying an effective date on which the resignation is effective, no resignation from membership has occurred. Only BOA seats which are vacant due to term expiration or accepted resignation can be legally advertised to the public to solicit applications for appointment to the seat.

II.1.2. Withdrawal of Resignation. After a resignation has been accepted, the former BOA member may submit a letter to the Chairman withdrawing their resignation. The Chairman shall poll the remaining regular members of the BOA and record their votes as to whether to accept this withdrawal of resignation or not. If three or more BOA members vote to accept the withdrawal of resignation, the Chairman shall inform the resigned member that their resignation has been vacated and they continue in service in their term as a regular member or Alternate on the BOA.

If the vacant position has already been legally advertised to the public as vacant, then the former member cannot withdraw a resignation. Any qualified legal resident of Grand County can submit an application for a vacant seat on the BOA, regardless of prior service on the BOA or circumstances of their termination.

ARTICLE III Appeals Procedure

III.1. Review for completeness and jurisdiction. The Chairman and staff shall review the appeal document for:

III.1.1. completeness and timeliness:

III.1.1.1. Completeness means that the appeal specifies the Final Decision appealed, by whom the Final Decision was made and the date of decision, the Basis or Bases of Appeal - specifying the failure(s) in compliance with the requirements with the Land Use Code or mistake(s) in interpretation of the Land Use Code which the appellant argues were committed by the zoning administrator; presenting facts or arguments in support of these Bases of Appeal; and specifying the relief sought in the matter from the BOA.

III.1.1.2. Timeliness means that the appeal was filed within the time after the date the Final Decision was made required by the Grand County Land Use Code.

III.1.2. whether it is an appeal of a land use decision that is administrative or legislative in character.

If the appeal is not considered to be complete or timely upon review, or the Chairman and staff conclude the appeal is of a legislative land use decision not within the jurisdiction of the BOA, the appeal shall be returned to the appellant with a written explanation of what is needed to complete it, why the appeal does not meet timeliness requirements of the Land Use Code, or the reason the BOA review concluded the BOA does not have jurisdiction in the matter.

The appellant can appeal the issue of completeness, timeliness or jurisdiction, returning the appeal to the BOA with a written brief on why the information the BOA review says is missing is in fact not needed for a complete appeal on the matter at hand, why the appeal submittal should be considered timely, or why the land use Final Decision appealed is administrative in character and not legislative. Upon receipt of such appeal, the Chairman shall call a hearing of the BOA to decide the question of completeness, timeliness or jurisdiction. The hearing will hear only the arguments that an appeal is or is not complete, on time, or that the BOA does or does not have jurisdiction, and will render a written Finding of Fact as to whether and why the BOA considers the appeal to be complete, on time, or whether the BOA has jurisdiction over the Final Decision appealed. The BOA's written finding of fact can be appealed to the Utah District Court.

If the BOA finds that the appeal at hand is complete, was submitted on time, or is of a Final Decision within its jurisdiction, absent a stay due to appeal of that decision, the Chairman shall schedule the appeal for hearing on its merits. If the BOA finds the appeal is incomplete, then the appeal will not be heard by the BOA until a complete appeal is submitted by the appellant. If the BOA finds the appeal to be of a legislative land use Final Decision not within its jurisdiction, the BOA will not hear the matter unless the Utah District Court concludes on appeal that the BOA has jurisdiction and remands the appeal to the BOA to be heard. If the appeal was not filed within the time frame prescribed by the Land Use Code, then it will not be heard.

III.2. Scheduling a hearing. If the appeal document appears complete and to be an appeal of an administrative Final Decision, then the Chairman shall proceed to schedule a hearing on the matter as promptly as possible, within the requirements for timeliness imposed by the current Land Use Code, and instruct staff to notify the appellant of this scheduling and negotiate with the appellant as to the periods of time the appellant can attend a hearing.

III.2.1. Preparations for hearing in complex appeals. When an appeal contains multiple Bases for Appeal and extensive enumerated arguments or assertions of fact supporting each, the BOA Chairman may request that:

III.2.1.1. the County Attorney or her designee prepare a response brief which

agrees with, disputes, or states insufficient information to do either in respect to each of the enumerated arguments and assertions of fact in the appeal. This permits the BOA to identify and hear arguments only on points in dispute.

III.2.1.2. the appellant or the County Attorney provide supporting documentation not already provided as exhibits which bear on points in dispute, e.g., the appellant claims that state or county code requires something and the County Attorney does not interpret the code as requiring it, but a copy of the relevant section of code is not provided so the BOA members can read the section and interpret its meaning for themselves.

III.2.1.3. the parties prepare briefs presenting their arguments on points in dispute, and then answer each other's briefs with a rebuttal, in order to provide these materials to the BOA members in writing in order to sharpen their understanding of complex points of dispute instead of having to rely solely on comprehension of verbal arguments during a hearing.

ARTICLE IV Hearing Procedure

IV.1. Polling of the BOA members for ex parte communications and conflicts of interest. The Chairman shall convene the hearing and introduce the members of the BOA. The Chairman will ask each member of the BOA in turn, including herself, to describe any ex parte communications they may have had about the variance or appeal at hand with any of the parties or other members of the public, in which they received alleged facts or opinions about the merits of the case. The Chairman will ask each member of the BOA in turn, including herself, about any financial or personal interests they may have in the matter and any public expression of their opinions on the matter they have made.

The Chairman may recognize members of the public present at the hearing who have evidence to offer as to ex parte communications or conflicts of interest not revealed by the BOA member during this polling. If the Chairman concludes that the BOA member did fail to disclose true communications or interests, the Chairman may conclude that the BOA member's public impartiality and credibility has been so compromised by this that the Chairman can order the BOA member recused from the hearing.

Having experienced ex parte communications does not require recusal of a BOA member. The purpose of revealing ex parte communications is to get them on the record as experiences that might influence the decision of a BOA member because they can influence the BOA member's perception of the appeal. When on record, these ex parte communications can then be addressed and confirmed or refuted by evidence presented by the parties during the hearing. However, if exposure of a BOA member to information or opinions about the appeal before the hearing convenes has caused that member to

“make up their mind” about the merits of the appeal before hearing all the evidence in the BOA hearing, that BOA member has an affirmative duty to recuse themselves from hearing the appeal.

If a member of the BOA, or members of their family, business partners, and the like have a direct stake in the matter appealed due to financial or personal considerations, the BOA member should be recused from hearing the matter for two reasons. First, the public perception of BOA member impartiality is severely compromised by awareness of such personal and/or financial interests in the matter being appealed. Second, the BOA member of conscience who votes against the interests of friends, family, and business associates with whom she has continued close relationships might pay an unfair and unnecessary personal price for being fair and impartial.

IV.2. Hearings on variances. After convening the hearing and polling the BOA members as described in IV.1, the Chairman shall explain the criteria outlined in state law which must be met for a variance to be granted. The Chairman shall then invite the applicant to present their case for granting a variance in terms of how their application satisfies these criteria. The Chairman will then call for any party present to present their case for how one or more of these criteria are not met by the variance application at hand. The Chairman may recognize the applicant and other parties to speak to criteria in dispute until the Chairman is satisfied that substantive evidence on the issue is adequately developed.

Any member of the BOA other than the Chairman may ask to be recognized by the Chairman in order to make a motion as to a Finding of Fact on the variance application, to the effect that the criteria for granting the variance have been met and the variance granted, or have not been met and the application for variance is therefore denied. If this motion is seconded, the Chairman can call for discussion before calling the question.

Alternately, the Chairman can poll each member of the BOA as to whether they vote for or against a Finding of Fact that the criteria for granting a variance have or have not been met. If three or more members vote that the criteria have been met, then the Chairman can declare the variance granted.

IV.3. Hearings on appeals.

IV.3.1. Introduction by Chairman. After convening the hearing and polling the BOA members on ex parte communications, the Chairman shall explain the role and function of a Board of Adjustments as a quasi-judicial body, and explain to members of the public attending that the BOA hearing is a public meeting but not a public hearing so members of the public will not speak unless called upon as witnesses. The Chairman will provide a brief overview of what Final Decision is being appealed, and introduce those representing the appellant and those representing the county in the proceedings.

IV.3.2. Overview presentation of appeal by the appellant. The Chairman will recognize the representative of the appellant to present a summary of their case. During this presentation, the appellant may present new evidence and new arguments not in previous appeal documents. If such new evidence or arguments are presented, copies of these in writing for each member of the BOA must be provided.

IV.3.3. Overview presentation of case for refutation of appeal by county. The Chairman will then recognize the representative of Grand County as defendant to present a summary of their case arguing that the Final Decision being appealed is lawful and valid.

If the County fails to dispute any Basis of Appeal mounted by the appellant, stipulating to all the supporting facts in that Basis of Appeal, then the Chairman shall enter a summary judgment that the Basis is Appeal is valid because it was not disputed, and will grant relief to the appellant by vacating the Final Decision appealed. The hearing will then be closed because any additional Bases of Appeal are moot: there no longer exists a Final Decision of record to appeal.

The County as defendant may request a continuance in order to afford time to study and prepare a response to substantial bodies of new evidence or new Bases of Appeal introduced by the appellant at the BOA hearing.

IV.3.4. Hearing of arguments on facts in dispute. The Chairman will ask the appellant and then the defense to present their arguments for and against each fact in dispute. The parties can call and examine witnesses in support of these arguments.

The Chairman can call upon the parties to respond to each other's arguments until the Chairman is satisfied that the substantial evidence on the point has been as fully developed on the record as is feasible and necessary. The Chairman and BOA members can ask questions of the appellant, the defense, and their witnesses, and can call witnesses themselves to cast light on evidentiary questions, e.g., if the LUC requires that an issue be considered in making a decision and the record of the Final Decision under appeal does not say whether or not that consideration was attended by the zoning administrator, the BOA may call the zoning administrator as a witness to ask her about her recollection of what she considered and what information she used in the process.

The proceedings will be conducted in an efficient manner in which focus on the relevant points of dispute is maintained. Going off on tangents, ideological speeches and long-winded proceedings are not to be tolerated in order to minimize possible confusion and deterioration of judgment on the part of the BOA members due to fatigue and "noise."

IV.3.5. Conclusion of hearing. An appeal hearing of the BOA concludes with a majority vote of three or more BOA members as to one of the following:

IV.3.5.1. Relief granted. Finding of Fact that the appellant has met the burden of proof for one or more Bases of Appeal that the Grand County Land Use Code was not followed by, or was misinterpreted by, the Zoning Administrator in a Final Decision, and that Final Decision is therefore vacated.

IV.3.5.2. Relief denied. Finding of Fact that the appellant has not met the burden of proof on any Bases of Appeal. In this case, the Final Decision stands.

IV.3.5.3. Continuance: If the BOA concludes that it does not have in hand one or more crucial pieces of evidence necessary to fully support a Finding of Fact, the BOA can vote to continue the hearing to a date certain in order to afford the BOA time to obtain the missing evidence and present it at hearing into the record.

A Finding of Fact by the BOA shall include a vote by the members as to whether the burden of proof was met by the applicant on each Basis of Appeal if more than one Basis was presented in the appeal. For each Finding of Fact on a Basis of Appeal, the BOA shall render a finding on each disputed fact or point and this shall be recorded in the approved record of final decision produced by the BOA in order to document the rationale for the BOA's decision.

A decision by the BOA can be appealed to the Utah District Court which acts as an appeal court on the matter. The Utah District Court does not hear the case de novo, but is instead restricted to reviewing the written record of decision in order to determine if the BOA's Finding of Fact proceed rationally from the evidence in the record of decision, and whether the appellant enjoyed his rights of due process and equal protection under the law in the matter. The record of decision from the BOA must therefore be complete as to the evidence considered and reasoning used to arrive at each Finding of Fact rendered.

The Finding of Fact vote may be initiated either by motion of any member of the BOA other than the Chairman, or by polling of the members by the Chairman, as described in VI.1. above.

ARTICLE V Adoption and Amendment of Bylaws

These Bylaws can be adopted and amended by a majority vote of at least three of the regular members of the Board of Adjustments. The Chairman may schedule consideration of amendment of the Bylaws on any BOA meeting agenda. A petition signed by any three members of the Board of Adjustments shall also place consideration of amendment of the Bylaws on the next BOA meeting agenda, with or without the concurrence of the Chairman.

Adoption and amendment of bylaws is subject to legal review and approval by resolution of the County Council before taking effect.