

**TOWN OF CASTLE VALLEY, UTAH  
ORDINANCE # 2006-3**

**AN ORDINANCE ESTABLISHING THE PLANNING AND LAND USE COMMISSION  
and  
DESIGNATING LAND USE AND APPEAL AUTHORITIES  
(This Ordinance 2006-3 Dated May 19, 2010 Supersedes any Earlier Dated  
Ordinance 2006-3)**

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- 4.21. District Court Review of Board of Adjustments Decision.**
- 5. Effective Date.**

**WHEREAS** the State of Utah requires that each municipality enact an ordinance establishing a planning commission (Utah Code 10-9a-301 (last revision 7-28-05)),

**WHEREAS** the State of Utah requires that the Planning Commission recommend to the legislative body, an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application and an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority (Utah Code 10-9a-302 (last revision 7-28-05)),

**NOW THEREFORE**, it is hereby ordained by the Town Council of the Town of Castle Valley that:

**SECTION 1. Planning and Land Use Commission Created.** The Town of Castle Valley (Town) Planning and Land Use Commission (Commission) is created pursuant to the enabling authority granted by Section 10-9a-301 of the Municipal Land Use Development and Management Act of the Utah Code Annotated (UCA) or its successor. The Commission shall act as a non-partisan, long range planning body for the Town. The Commission shall consist of five (5) regular members and two (2) alternate members. Appointments to the Commission shall be made on a basis that fairly represents the interests of all residents of the community. Members shall be appointed to the Commission by the Mayor with the advice and consent of the Town Council. Vacancies shall be filled by the Mayor, with the advice and consent of the Town Council. The person appointed to fill a vacancy shall serve for the unexpired term.

**SECTION 1.2. Terms of Service.** Members shall serve a four-year term. Terms shall be staggered with initial terms of appointment as of January 1, 2006 as follows:

- A – 1/1/06 through 6/30/08
- B – 1/1/06 through 12/31/08
- C – 1/1/06 through 12/31/10
- D – 1/1/06 through 6/30/10
- E – 1/1/06 through 6/30/10
- Alternate 1 - 1/1/06 through 12/31/08
- Alternate 2 - 1/1/06 through 12/31/10

Members shall continue to serve until their successors are appointed. Members are deemed to have resigned when they move their residences outside the Town limits or upon receipt of letter to the Mayor stating intent to resign with effective date.

**SECTION 1.3. Commission Member Eligibility and Selection Process.** A candidate must be a resident of the Town for one year before applying. Notice of vacancy shall be posted two months prior to the end of a member's term. Candidates shall submit a letter of interest to the Town Clerk. The Mayor shall interview each candidate to establish ability to perform the duties of the Commission pursuant to Section 10-9a-302 UCA. The Mayor shall then appoint an eligible candidate with the advice and consent of the Town Council.

**SECTION 1.4. Cause for Removal.** Any Commission member who is absent from three (3) consecutive regularly scheduled meetings without notification to the Chair or Vice-chair, or is absent from more than half of the regularly scheduled meetings per calendar year, or who violates the Code of Ethics clause, may be called before the Town Council

and asked to resign or be removed for cause by the Town Council.

**SECTION 1.5. Code of Ethics.** To guide member conduct, the Commission shall adhere to the Municipal Officers' and Employees' Ethics Act (10-3-1301 UCA) and adopt the General Ethics described in the Handbook for New Planning Commissioners, Utah League of Cities and Towns.

**SECTION 1.6. Authority of the Commission.** The Commission shall have all necessary authority conferred on Planning Commissions pursuant to Section 10-9a-302 UCA or its successor, and such other powers as designated in Ordinance 85 – 3, as amended.

The Commission shall make a recommendation to the legislative body for:

- (1) a general plan and amendments to the general plan;
- (2) land use ordinances, zoning maps, official maps, and amendments;
- (3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
- (4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
- (5) application processes that:
  - (a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
  - (b) shall protect the right of each:
    - (i) applicant and third party to require formal consideration of any application by a land use authority;
    - (ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
    - (iii) participant to be heard in each public hearing on a contested application.

**SECTION 1.7. Open Public Meetings.** All meetings of 3 or more members of the Commission constitute an open public meeting and must comply with the Open and Public Meetings Act (52-4) UCA.

**SECTION 1.8. Meetings.** The Commission, at its December meeting, and in coordination with Town Council and the Town Clerk, shall establish the regular meeting schedule (day and time) for the upcoming calendar year. Regular meetings shall be held approximately once a month. A regular meeting date may be changed upon concurrence of all 5 Commissioners (via telephone or e-mail) and shall be properly noticed.

Special meetings may be called by action of the Commission at a meeting; by order of the Chair; or by written or email request to the Chair and the Town Clerk by at least three regular members.

The Commission may conduct workshops with three or more members with the intention of providing members with the opportunity to conduct background work necessary to support decisions to be made. Workshops are public meetings and shall be properly noticed. No decisions shall be made at workshops.

All meetings shall be held at the Town Community Building unless the Commission determines that an alternate location better meets the purpose and need of the meeting.

**SECTION 1.9. Quorum and Vote.** The Commission shall not conduct any business at a regular or special meeting unless a quorum is present. Attendance of three (3) members at a properly noticed regular or special meeting shall constitute a quorum.

All actions of the Commission shall be represented by a vote of the membership, including the Chair. Decisions shall be determined by motion. A minimum of three affirmative votes, of the voting members present at the meeting at which a quorum is present shall be required for any action taken. The decision of the Commission shall become effective immediately upon adoption.

**SECTION 1.10. Public Hearings.** The Commission shall schedule and give public notice of all public hearings. Public Hearings are intended to allow public comment on the matter at hand rather than to provide a discussion forum. The Commission may provide clarification but may limit the extent of discussion. The Commission shall not make any decisions during a public hearing. The Commission shall establish rules for conduct of Public Hearings and the Chair shall inform those at any hearing of these rules.

Public Hearings shall not be placed on the agenda of a regular meeting, but may be held in conjunction with a regular meeting.

**SECTION 1.11. Notice.** All meetings and business of the Commission shall be noticed pursuant to Title 10 Chapter 9a and 52.4 UCA. The commission shall prepare, and review annually, a notice matrix that succinctly displays noticing procedures.

**SECTION 1.12. Minutes and Records.** The Town Council shall appoint or hire a person to document the regular and special meetings and hearings of the Planning Commission. These proceedings shall be recorded. Minutes of the regular and special meetings shall be prepared that include meeting date, time, and location; names of members present and absent; the substance of all matters proposed, discussed or decided, and a record, by individual member, of votes taken; the names of all citizens who appeared and the substance in brief of their testimony; and any other information that any member requests be entered in the minutes.

Hearing minutes shall be recorded as a synopsis of the proceedings with an audio recording back-up.

Prior to the next regular meeting, the preparer of the minutes shall forward, in a timely manner, a draft version to the Commission. Upon approval of minutes, the Town Clerk shall file a hard copy, marked as final with adoption date, and associated documents in the Town Records. A computer version shall be stored on the Clerk's computer in read-only PDF format. Tapes shall be stored for 5 years.

The approved minutes are public record and shall be available within 10 days after approval.

**SECTION 1.13. Agenda.** An agenda for regular and special meetings shall be prepared by the Chairperson or, in the absence of the Chairperson, by the Vice-chairperson. The draft agenda shall be circulated among the Commission members for review and for the opportunity to add agenda items.

The agenda shall be posted at least 24 hours prior to the meeting at the locations specified by the Town Council.

**SECTION 1.14. Rules of Order.** Robert's Rules of Order shall guide the conduct of Commission meetings. For situations that warrant more formal parliamentary procedure, the Chair has the discretion to call for the use of Roberts Rules of Order.

**SECTION 1.15. Compensation.** The members of the Commission shall serve without compensation except for reasonable expenses. Necessary and reasonable expenses associated with training, travel mileage, lodging/meals shall be approved by the Town Council on request from Chairperson. Other incidental expenses submitted for reimbursement must be pre-approved by the Chair.

**SECTION 1.16. Officers.** The Commission shall at its first meeting of the calendar year elect a Chairperson and Vice-Chairman.

**SECTION 2. Land Use Authority.** The Land Use Authorities for the Town of Castle Valley shall be as designated in Ordinance 85 – 3, as amended.

**SECTION 3. Appeal Authority.** Except for decisions determining that a land use application is routine, the Appeal Authority for the Town of Castle Valley shall be the Board of Adjustments.

**SECTION 3.1. Standards for Review of Appeals to the Planning and Land Use Commission**

The Planning and Land Use Commission shall act as the appeal authority from decisions by the Building Permit Agent determining that a land use application, as specified in Ordinance 85-3 section I.2.4. as amended, is routine if an appeal from the determination of the Building Permit Agent is filed within 15 calendar days after the date that a determination is officially made by the Building Permit Agent. If, upon appeal, the Planning and Land Use Commission determines that the land use application is routine, it may issue approval on the land use application.

**SECTION 4. Board of Adjustments Created.** The Town of Castle Valley (Town) Board of adjustments (Board) is created pursuant to the enabling authority granted by Section 10-9a-301 of the Municipal Land Use Development and Management Act of the Utah Code Annotated (UCA) or its successor. The Board shall consist of three (3) members. The Town Council will strive to ensure that at least one member have expertise in land use law. Members shall be appointed to the Board by the Mayor with the advice and consent of the Town Council. Vacancies shall be filled by the Mayor, with the advice and consent of the Town Council. The person appointed to fill a vacancy shall serve for the unexpired term.

**SECTION 4.1. Terms of Service.** Board members shall serve a four-year term. Terms shall be staggered with initial terms of appointment as of December 16, 2009 as follows:

A – 12/16/09 through 10/1/10

B – 12/16/09 through 10/1/12

C – 12/16/09 through 10/1/12

Alternate 1 - 4/1/10 through 10/1/14

Alternate 2 - 4/1/10 through 10/1/12

Board members shall continue to serve until their successors are appointed. Board members are deemed to have resigned upon receipt of letter to the Mayor stating intent to resign with effective date.

**SECTION 4.2. Board Member Eligibility and Selection Process.** Candidates shall submit a letter of interest to the Town Clerk. The Mayor shall interview each candidate to establish ability to perform the duties of the Board of Adjustments pursuant to Section 10-9a-701 UCA. The Mayor shall then appoint an eligible candidate with the advice and consent of the Town Council.

**SECTION 4.3. Cause for Removal.** Any Board member who violates the Code of Ethics clause may be called before the Town Council and asked to resign or be removed for cause by the Town Council.

**SECTION 4.4. Code of Ethics.** To guide member conduct, the Board shall adhere to the Municipal Officers' and Employees' Ethics Act (10-3-1301 UCA) and adopt the General Ethics described in the Handbook for Appeal Authorities, Utah League of Cities and Towns.

**SECTION 4.5. Open Public Meetings.** All meetings and hearings of two (2) or more members of the Board constitute an open public meeting and must comply with the Open and Public Meetings Act (52-4) UCA. Prearranged private meetings between a member or members of the Board of Adjustments and applicants, their agents, or other interested parties outside of an Open Public Meeting are prohibited. Information on any application received by a member or members of the Board of Adjustments whether by mail, telephone, email, or other communication must be made part of the public record. The Board may deliberate in a closed session that is duly called.

**SECTION 4.6. Meetings and Hearings.** All meetings and hearings by the Board of Adjustments shall be held at the Town Community Building unless the Board determines that an alternate location better meets the purpose and need of the meeting or hearing.

**SECTION 4.7. Quorum and Vote.** The Board shall not conduct any business at a meeting or hearing unless a quorum is present. Attendance of two (2) members at a properly noticed meeting or hearing shall constitute a quorum.

All actions of the Board shall be represented by a vote of the membership, including the Chair. Decisions shall be determined by motion. A minimum of two (2) affirmative votes, of the voting members present at the meeting at which a quorum is present shall be required for any action taken.

**SECTION 4.8. Notice.** All meetings, hearings, and business of the Board shall be noticed pursuant to the Utah Open and Public Meetings Act, as well as notice to the parties in interest.

**SECTION 4.9. Minutes and Records.** The Town Council shall appoint or hire a person to document the meetings and hearings of the Board of Adjustments. These proceedings shall be recorded. Minutes of the meetings and hearings shall be prepared that include meeting or hearing date, time, and location; names of Board members present and

absent; the substance of all matters proposed, discussed or decided, and a record, by individual member, of votes taken; the names of all citizens who appeared and the substance in brief of their testimony; and any other information that any member requests be entered in the minutes. The Finding of Facts, or the written facts and evidence used in making a decision, may be included in the record as a separate document from the minutes. However, the substance of the Finding of Fact must be reflected in the minutes. Deliberations of duly called closed meetings shall not be part of the record of proceedings; however, any decision shall be made in an open public meeting. The record shall show the grounds for each decision and vote of each member upon each question; this record of proceedings shall be a public record.

In processing each petition, the Board of Adjustments shall cite the relevant law or Town Ordinance and have the minutes reflect that the law was read and interpreted to the facts in the case and that every effort was made to apply the law as written to the specific situation.

Hearing minutes shall be recorded as a synopsis of the proceedings with an audio recording back-up.

The preparer of the minutes shall forward, in a timely manner, a draft version to the Board. Upon approval of minutes, the Town Clerk shall file a hard copy, marked as final with adoption date, and associated documents in the Town Records. A computer version shall be stored on the Clerk's computer in read-only PDF format. Tapes shall be stored for 5 years.

The approved minutes are public record and shall be available within 10 days after approval.

**SECTION 4.10. Agenda.** An agenda for meetings and hearings shall be prepared by a member designated by the Board of Adjustments.

**SECTION 4.11. Compensation.** Unless otherwise determined by the Council, the members of the Board shall serve without compensation except for reasonable expenses. Necessary and reasonable expenses associated with training, travel mileage, lodging/meals shall be approved by the Town Council on request from the Board member.

**SECTION 4.12. Officers.** The Board shall elect a Chairperson at the start of each meeting.

**SECTION 4.13. Powers and Duties.** The powers and duties of the Board of Adjustments shall be to:

1. Hear appeals on decisions applying to zoning ordinances of the Town of Castle Valley; and
2. Hear and decide variances from the terms of the zoning ordinance.

**SECTION 4.14. Standards for Review of Appeals to the Board of Adjustments.**

1. The applicant or any other person or entity adversely affected by a decision administering or interpreting a Town zoning ordinance may appeal that decision

applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

2. Any person, including any officer or body of the Town of Castle Valley, affected by a decision administering or interpreting a Town zoning ordinance or affected by the grant or refusal of a building permit or by any other decisions of the Land Use Authority in the administration or interpretation of the Town's zoning ordinances may appeal such a decision to the Board of Adjustments. An appeal must be made within thirty (30) calendar days from the date of such decision by filing with the Town Clerk a written notice of appeal specifying the grounds thereof. When an appeal is taken from a decision of the Land Use Authority, the Town Clerk shall forthwith transmit to the Board of Adjustments all papers, if any, constituting the record upon which the action appealed from was taken.
3. If there is a record, the Board of Adjustment's review is limited to the record provided by the Land Use Authority. The Board of Adjustments may not accept or consider any evidence outside the Land Use Authority's record. If there is no record, the Board may call witnesses and take evidence. Appellants may always reapply to the appropriate land use authority if they have new information that might change a decision previously made by the Land Use Authority.
4. An appeal filed in accordance with this section stays all proceedings in the appeal action, unless the Land Use Authority from whom the appeal is taken certifies to the Board of Adjustments that by reason of facts stated in the certificate the stay would in his/her opinion cause imminent peril of life or property. In such cases, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustments or by the district court on application and notice and on due cause shown.
5. The Board of Adjustments, with the consultation of the appellant, shall fix the time for hearing any appeal within five (5) business days of the date of filing such appeal with the Town Clerk and shall give public notice thereof in accordance with the Utah Open and Public Meetings Act. The Board of Adjustments shall give notice to the Town of Castle Valley as well as notice to the parties in interest, at least ten (10) business days prior to the meeting to hear the appeal stating the time, place, and purpose of the meeting. The hearing shall take place no later than fifteen (15) business days from the filing of the appeal unless all parties, including the Town of Castle Valley and any land use applicants who have had a stay of proceedings applied to their application, agree otherwise.
6. Proceedings and hearings before the Board of Adjustments shall be pursuant to rules adopted by the Town and in conformance with general principles of due process. Any party in interest may appear at such hearing in person, by agent, or by an attorney of his/her choice.
7. The person or entity making the appeal has the burden of proving that an error has been made in administering or interpreting the Town's zoning ordinances.
8. Only decisions applying the zoning ordinance may be appealed to the Board of Adjustments. A person may not appeal, and the Board of Adjustments may not

consider, any zoning ordinance amendments.

9. Appeals may not be used to waive or modify the terms or requirements of the Town's zoning ordinances.
10. Decision on an appeal is final when the Board of Adjustments dates and puts in writing their record of decision, which shall include: the "Finding of Facts" or the written facts and evidence used in making the decision; conclusions based on any provisions of any Town land use ordinance or any rule or regulation relied on; and the reasons why the conclusion is deemed appropriate in light of the facts found.

**SECTION 4.15. Decisions on Appeal by the Board of Adjustments.** In exercising the above-mentioned powers the Board of Adjustments may affirm, wholly or partly, or may modify the order, requirement, decision or determination of a Land Use Authority.

**SECTION 4.16. Variance.** Any person or entity desiring a waiver or modification of the requirements of the Town's zoning ordinances as applied to a parcel of property that he/she owns, leases, or in which he/she holds some other beneficial interest may apply to the Board of Adjustments for a variance from the terms of the Town's zoning ordinances.

**SECTION 4.17. Standards for Variances.**

1. The Board of Adjustments may grant a variance only if each of the following conditions are met:
  - a. Literal enforcement of the Town's zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of the zoning ordinance;
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - e. The spirit of the Town's zoning ordinances are observed and substantial justice is done.
2. In determining whether or not enforcement of the Town's zoning ordinances would cause unreasonable hardship under this section, the Board of Adjustments may not find an unreasonable hardship:
  - a. If the hardship is self-imposed or economic;
  - b. Unless it is located on or associated with the property for which the variance is sought; and

- c. Unless it comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- 3. In determining whether or not there are special circumstances attached to the property under this section, the Board of Adjustments may find that special circumstances exist only if the special circumstances:
  - a. Relate to the hardship complained of; and
  - b. Deprive the property of privileges granted to other properties in the same zone.
- 4. The applicants shall bear the burden of proving all of the conditions justifying a variance have been met.
- 5. Variances run with the land.
- 6. The Board of Adjustments may not grant use variances.
- 7. In granting a variance, the Board of Adjustments may impose additional requirements on the applicant that will:
  - a. Mitigate any harmful affects of the variance; or
  - b. Serve the purpose of the standard or requirement that is waived or modified.
- 8. Decision on variance application is final when the Board of Adjustments dates and signs the application, stating approval or denial of the application and the "Finding of Facts" or the written facts and evidence used in making the decision.

**SECTION 4.18. Building Permits.** The Building Permit Agent or the Planning and Land Use Commission shall not issue any building permit for any building, construction or repair of any building unless such fully conforms to all Town zoning regulations or ordinances in effect at the time of application.

**SECTION 4.19. Notice to Council of Meeting for Variance or Appeal of a Land Use Application.** Before any application for a variance or an appeal is heard by the Board of Adjustments, the Board of Adjustments shall give notice to the Town of Castle Valley as well as other parties of interest at least ten (10) business days prior to the meeting stating the time, place, and purpose of the meeting.

**SECTION 4.20. Notice of Final Decision for Variance or Appeal of a Land Use Application.** The Board of Adjustments shall give written notice of all final decisions on variance applications or appeals of land use decisions to the Town of Castle Valley, appellant, applicant and other parties of interest at least (10) business days after such a final decision is made.

**SECTION 4.21. District Court Review of Board of Adjustments Decision.**

- 1. Any person adversely affected by any decision of the Board of Adjustments may petition the district court for a review of the decision.

2. In the petition, the plaintiff may only allege that the Board of Adjustments' decision was arbitrary, capricious, or illegal.
3. The petition is barred unless it is filed within thirty (30) calendar days after the Board of Adjustments' decision is final.
4. The Board of Adjustments shall transmit to the district court the record of its proceedings including minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If the proceeding was taped, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
5. If there is a record, the district court's review is limited to the record provided by the Board of Adjustments. The court may not accept or consider any evidence outside the Board of Adjustments' record unless that evidence was offered to the Board of Adjustments and the court determines that it was improperly excluded by the Board of Adjustments. If there is no record, the court may call witnesses and take evidence.
6. The court shall affirm the decision of the Board of Adjustments if the decision is supported by substantial evidence in the record.
7. The filing of a petition does not stay the decision of the Board of Adjustments. Upon receipt of a petition to stay, the Board of Adjustments may order its decision stayed pending district court review if the Board of Adjustments finds it to be in the best interest of the Town.

**SECTION 5. Effective Date.** This ordinance shall take effect upon its first posting.

Date of Adoption: May 19, 2010.

Those voting **AYE**: Dave Erley, Aaron Davies, Tory Hill, Brooke Williams.

Those voting **NAY**: None.

Those **ABSENT**: Valli Smouse.

Date of Posting: May 25, 2010.

**APPROVED:**

**ATTESTED:**

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**David Erley, Mayor**

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**Denise Lucas, Town Clerk**

**Seal of the Town of Castle Valley:**