

ORDINANCE 85-3

THE TOWN OF CASTLE VALLEY

(This Ordinance 85-3 dated ~~December 13, 2017~~, supersedes any earlier dated Ordinance 85-3)

AN ORDINANCE PROVIDING FOR LAND USE IN THE TOWN OF CASTLE VALLEY, UTAH.

Be it ordained by the Town Council of the Town of Castle Valley, Utah:

In order to provide for Land Use Regulation within the Town of Castle Valley this Land Use Ordinance of the Town of Castle Valley is enacted to read as follows:

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1.6 DEFINITIONS

For the purpose of this land use ordinance, certain words and phrases require specific definition of meaning. Words and phrases used in the present tense include the future and the singular word or number includes the plural and the singular. Unless otherwise defined in this Ordinance, all capitalized terms used herein shall have the meaning ascribed to them in the Municipal Land Use, Development, and Management Act at Section 10-9a-103, Utah Code Annotated.

Intent

It is the intent of this section in setting forth the understanding of said terms and phrases to facilitate understanding of said terms and phrases in the sense intended by the Town Council.

~~FULL BATHROOM: An area within a building containing a sink, toilet, and a bathtub and/or shower.~~
DWELLING: Any building or structure that is used, ~~designed or intended to be used, for human habitation and occupied as a residence~~ regardless of the type of building, facilities it contains, or intended future use. Residing in additional structures, such as but not limited to accessory buildings, Temporary Dwellings and other temporary structures that cannot be given building permits such as Yurts and Teepees, is not permitted if another structure is being used as a residence. ~~or~~ A dwelling is also defined as any building or portion of a building that includes one kitchen and one or more full bathroom(s) as defined in this land use ordinance all of the following: facilities for living/sleeping, food preparation, bathing and sanitation (toilet, sink, and approved wastewater disposal system.) Only one structure is allowed per legally platted lot that contains all of these facilities. Only one kitchen as defined in this Land Use Ordinance is allowed per building legally per-platted lot. Additional kitchens may be allowed in a separate building through an approved conditional use permit. Yurts, teepees and other temporary structures that cannot be given building permits are considered dwellings if used and occupied as a residence, except when occupied occasionally by visiting family or friends of the lot owner or lawful tenant.

DWELLING, SINGLE-FAMILY: A dwelling designed for or occupied by no more than one (1) family.

FAMILY: An individual or group of people, not to exceed four (4) nonrelated persons and maintaining a common household. The term family shall not be construed to mean a group of nonrelated individuals such as a fraternity, club, or institutional group.

(Section 1.6 DEFINITIONS continued)

GRADE, EXISTING: For sites which have never been disturbed, existing grade is the same as the natural grade which is the elevation of the surface of the ground created through the action of natural forces and has not resulted from ~~man~~human-made cuts, fills, excavation, grading, or similar earth-moving processes. For sites that have existing structures or older disturbances to the land that make natural grade indistinguishable from existing grade, existing grade shall be the ground level established when the existing structure or disturbance was created. Recent or new earth-moving ~~work~~ will not necessarily qualify as existing grade and will require a determination from the Building Permit Agent.

GRADE, FINISHED: The elevation where the vertical face of the structure intersects the ground after all man-made cuts, fills, excavation, grading, or similar earth-moving processes have been completed. A window well that is entirely within five feet of an exterior wall of the structure or the stair to a Basement that is entirely within eight feet of an exterior wall of the structure shall not be considered in determining the Finished Grade. The drawings which are identified as Illustrations D, E, in Section 1.7 of this land use ordinance are included in the definition of Finished Grade.

HEIGHT, BUILDING: Building Height is the vertical distance between a horizontal line extending from the highest point of any roof, wall, or parapet and the lower of either 1) the lowest point where the vertical face (or a vertical line extending directly below the vertical face) around the perimeter of the building intersects the Existing Grade or 2) the lowest point where the vertical face (or a vertical line

extending directly below the vertical face) around the perimeter of the building intersects the Finished Grade. Building Height does not include chimneys, vents or building mounted or roof-mounted solar photovoltaic panels or modules. The vertical face of the structure includes, but is not limited to walls, foundations, footings, piers, or columns that support a wall. Piers, columns or posts that support a part of the structure that is not enclosed, such as decks or porches, shall not be considered part of the vertical face of the structure when determining height. For structures for which no part is enclosed, such as carports, height shall be measured from the highest point of the structure to the lowest point in the Finished Grade directly below the structure. The drawings which are identified as Illustrations C1 and C2 in Section 1.7 of this land use ordinance are included in the definition of Building Height.

KITCHEN: An area within a building used, or designed or intended to be used, for the preparation of food ~~and contains a sink, refrigerator and stove~~. Only one kitchen is allowed ~~per building~~ per legally platted lot. Additional kitchens may be allowed in a separate building through an approved conditional use permit.

TEMPORARY DWELLING: A manufactured mobile unit (other than a mobile home) designed and permitted by its manufacture as a temporary dwelling for travel, recreational, and vacation use, including recreational vehicles such as: travel trailers, park trailers, camp trailers, motor homes, truck campers and vans and installed as a dwelling and occupied for any length of time, i.e. intermittent occupancy or long term residency. A travel trailer shall not require special highway movement permits when towed on public highways, and shall not exceed eight (8) feet in width of forty (40) feet in length. A park trailer shall not exceed an area of 400 square feet. The unit must be self-contained or attached to a septic system approved by the State Sanitarian. A temporary dwelling is considered a dwelling. Only one dwelling is permitted on a legally platted lot in the Town (except that an unused recreational vehicle may be stored while not in use).

3.1 DESIGNATION OF LAND USE AUTHORITY

3.1.1 Building Permit Agent

The Building Permit Agent shall act as the Land Use Authority to perform Grade Reviews prior to any earth-moving. They shall review and determine whether an application for a Land Use Decision is routine or nonroutine and act on routine requests for a Land Use Decision for routine building permits, routine requests for conditional use permits, routine requests for temporary dwelling permits, routine requests for electrical or solar energy system permits, routine requests for certificates of land use compliance, routine requests for a decommissioning contract, requests for septic permits and routine requests for certificates of occupancy. The Building Permit Agent shall determine if, upon renewal, a temporary dwelling permit shall require additional conditions for its continued use as a temporary dwelling and refer those that require conditions to the Planning and Land Use Commission. The Building Permit Agent may not deny or condition a routine Land Use Application, but shall deem an application which may be denied or conditioned to be nonroutine. The Building Permit Agent shall deem all Land Use Applications as nonroutine that require advice or other services to the Town by professional parties to properly evaluate its compliance with Town Land Use Regulations and its impact in the zone in which the land use is to be located.

3.1.2 Roads Manager

The Roads Manager shall act as the Land Use Authority to perform Town Drainage Reviews and approve right of way encroachment permit applications.

3.1.32 Planning and Land Use Commission

The Planning and Land Use Commission shall review Land Use Applications and make recommendations to the Town Council prior to the Town Council taking action as the Land Use Authority with regard to all Land Use Applications where the Town Council is the Land Use Authority including applications for nonroutine conditional use permits, subdivisions, and the annual review of conditional use permits.

The Planning and Land Use Commission shall act as the Land Use Authority to act upon ~~nonroutine~~ requests for a Land Use Decision for nonroutine building permits, temporary dwelling permit renewals that require additional conditions for the continued use of the temporary dwelling, nonroutine requests for electrical or solar energy system permits, nonroutine requests for certificates of land use compliance, or nonroutine requests for decommissioning contracts.

3.1.43 Town Council

The Town Council shall act as the Land Use Authority to review and act upon Land Use Applications related to the following: subdivision approval; nonroutine conditional use permits; review, annual renewal and revocation of both routine and nonroutine conditional use permits; Temporary Accessory Dwellings For Medical Purposes; noncomplying buildings; nonconforming uses; the interpretation of the provisions of Town Land Use Regulations related to permitted and non-permitted uses; lot divisions; and any other Land Use Decision not specifically assigned to another Land Use Authority.

The Town Council shall, by the issuance of a written determination, act as the Land Use Authority regarding the interpretation of the provisions of Town Land Use Regulations and resolve any discrepancies or situations where the text of a Town Land Use Regulation does not provide definitive clarity.

The Town Council shall act as the Land Use Authority to designate a lot for commercial agriculture use in order to employ exclusionary fencing as provided for in Ordinance 2003-3 and in Chapter 4 of this Land Use Ordinance.

3.2 DESIGNATION OF APPEAL AUTHORITY

3.2.1 Planning and Land Use Commission

The Planning and Land Use Commission shall act as the Appeal Authority for decisions by the Building Permit Agent determining that an application for a Land Use Decision for a building permit, a conditional use permit, an electrical or solar energy system permit, a certificate of land use compliance, or a decommissioning contract is routine or nonroutine, 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 a Land Use Application for a building permit, ~~conditional use permit~~, an electrical or solar energy system permit, a certificate of land use compliance, or a decommissioning contract is routine, it shall remand the Land Use Application to the Building Permit Agent for processing.

If, upon appeal, the Planning and Land Use Commission determines that a conditional use permit is routine, it shall ratify the Building Permit Agent's determination and approval of the conditional use permit.

If, upon appeal, the Planning and Land Use Commission determines that the Land Use Application for a building permit, electrical or solar energy system permit, a decommissioning contract, or the certificate of land use compliance is nonroutine, it may review and issue a Land Use Decision for the ~~temporary dwelling building~~ permit, the electrical or solar energy system permit, the decommissioning contract, or the certificate.

If, upon appeal, the Planning and Land Use Commission determines that a conditional use permit is nonroutine, it shall review the conditional use permit application and recommend action to the Town Council, which will act as the Land Use Authority to approve, approve with conditions, or deny the application.

3.2.2 Variance and Appeal Hearing Officer

Except for decisions determining that a Land Use Application is routine, an individual appointed by the Town Council as the Variance and Appeal Hearing Officer (Officer) shall be the Appeal Authority for purposes of Town Land Use Regulations including Appeals from the assessment of Land Use Application fees. ~~and The Officer~~ shall also have the responsibility to review and act upon applications for Vvariances.

3.3 LAND USE AUTHORITY (LUA) AND APPEAL AUTHORITY TABLE

The table in this section is for reference purposes only and the text in other sections of this land use ordinance, not the table, governs the role of each entity shown on the table.

| <u>Land Use Application</u> | <u>Advise LUA</u> | <u>Land Use Authority</u> | <u>Appeal Authority</u> |
|-------------------------------------------------------------------------|----------------------------------------------------------|------------------------------|------------------------------------|
| Subdivision approval | Planning and Land Use Commission | Town Council | Appeal Officer |
| Temporary Accessory Dwellings (TADs) for Medical Purposes | Planning and Land Use Commission | Town Council | Appeal Officer |
| Applications related to Noncomplying Buildings | Planning and Land Use Commission | Town Council | Appeal Officer |
| Applications related to Nonconforming Uses | Planning and Land Use Commission | Town Council | Appeal Officer |
| Ordinance interpretations related to uses | Planning and Land Use Commission | Town Council | Appeal Officer |
| Others Land Use Decisions not assigned | Planning and Land Use Commission | Town Council | Appeal Officer |
| Annual review and renewal of Conditional Use Permits | Planning and Land Use Commission if requested | Town Council | Appeal Officer |
| Determination if an application for a Conditional Use Permit is Routine | | Building Permit Agent | Planning and Land Use Commission** |
| Routine Conditional Use Permits | | Building Permit Agent | Appeal Officer |
| Nonroutine Conditional Use Permits | Planning and Land Use Commission | Town Council | Appeal Officer |
| Determination if Land Use Applications are Routine* | | Building Permit Agent | Planning and Land Use Commission** |
| Routine Building Permits and Certificates of Occupancy | | Building Permit Agent | Appeal Officer |
| <u>Septic Permits</u> | | <u>Building Permit Agent</u> | <u>Appeal Officer</u> |
| Routine Temporary Dwelling Permits | | <u>Building Permit Agent</u> | Appeal Officer |
| Routine Electrical and Solar Energy System Permits | | Building Permit Agent | Appeal Officer |

| <u>Land Use Application</u> | <u>Advise LUA</u> | <u>Land Use Authority</u> | <u>Appeal Authority</u> |
|-----------------------------------------------------------------------------------------|-------------------|----------------------------------|-------------------------|
| Routine Certificates of Land Use Compliance | | Building Permit Agent | Appeal Officer |
| Routine Decommissioning Contracts | | Building Permit Agent | Appeal Officer |
| Nonroutine Building Permits | | Planning and Land Use Commission | Appeal Officer |
| Nonroutine Temporary Dwelling Permit renewals <u>that require conditions</u> | | Planning and Land Use Commission | Appeal Officer |
| Nonroutine Solar Energy System Permits | | Planning and Land Use Commission | Appeal Officer |
| Nonroutine Certificates of Land Use Compliance | | Planning and Land Use Commission | Appeal Officer |
| Nonroutine Decommissioning Contracts | | Planning and Land Use Commission | Appeal Officer |
| <u>Drainage Reviews</u> | | <u>Roads Manager</u> | <u>Appeal Officer</u> |
| <u>Land Use Application Fee***</u> | | | <u>Appeal Officer</u> |
| Variances | | Appeal Officer | District Court |

*Land Use Applications include Building Permits, Temporary Dwelling Permits, Electrical and Solar Energy System Permits, Certificates of Land Use Compliance, and Decommissioning Contracts.

**Appeals must be filed within 15 calendar days after the date that a determination is officially made.

***Land Use Application Fees are established by Resolution 2013-1, as amended, and by the Designated Land Use Authority per review of a Land Use Application.

4.2 PERMITTED USES FOR RAR-1 ZONE

- A. Agriculture, the work of producing crops and the raising, care, and keeping of no more than one and one-half (1.5) animal units of livestock per acre on each legally platted lot as determined from section 4.9 of this land use ordinance. One acre of land on each legally platted lot shall be deemed as a residential housing acre and shall be excluded from the total acreage available for animal unit calculations. Also, no more than 8 large sized animals, or 30 medium sized animals, or 100 small sized animals shall be allowed on each legally platted lot as determined from the chart in section 4.9.
- B. The keeping of no more than thirty (30) bee-hives on each legally platted Town lot.
- C. One Single-family dwellings per legally platted lot and buildings or structures accessory thereto.
- D. One stand for the display and sale of agricultural and livestock products raised on the premises.
- E. The keeping of operable farm machinery, farm products and agricultural storage shed(s) for use on the premises.
- F. Feed storage buildings for the storage of farm products.
- G. Barns, corrals, pens, coops, and sheds for the keeping of livestock provided that such structures are located at least 70 feet from property lines between contiguous lots and at least 100 feet from any existing dwelling on a neighboring lot or parcel, and 20 feet from any open waterway that drains into a natural stream or into a drainage way that drains into a natural stream.
- H. Fences that conform to the Town Fencing Ordinance, except as described in Section 4.5.G of this Land Use Ordinance and in ~~the Town Fencing Ordinance 2003-3~~ as a fence designated for commercial agricultural use as determined by the Town Council.
- I. Signs limited to one nonlighted sign not larger in area than eight (8) square feet and no higher than 6 feet from the natural grade immediately below the sign.
- J. One Temporary Dwellings per legally platted lot, as provided for in this Land Use Ordinance.
- K. One Temporary Accessory Dwellings for Medical Purposes per legally platted lot, as provided for in this Land Use Ordinance.
- L. Above ground water tanks that are no more than twelve (12) feet in height when measured from the top of the tank to natural grade and have a flat, non-reflective finish that is similar in color to the surrounding soil and vegetation.
- M. Solar energy systems for residential or agricultural uses.
- M.N. One operational and approved septic waste-water disposal system per legally platted lot.

4.3 PERMITTED USES FOR RG-15 ZONE

Single family dwelling.

4.4 PROHIBITED USES FOR RAR-1 AND RG-15 ZONES

- A. Short-term rentals are prohibited. The use of property through rental arrangements for a period of less than twenty-five (25) days is a commercial use of property and is not permitted unless specifically allowed under other provisions of this Land Use Ordinance. The intent of this provision is to prohibit use of property for commercial rental as overnight accommodations.
- B. Bed & Breakfasts are prohibited.
- C. Livestock feedlots, fur farms, animal hospitals, kennels, animal byproducts rendering plants, and migratory beekeeping operations of any size, either permanent or temporary, are prohibited.
- D. On-site motor vehicle, trailer or boat repair shops; auto body and/or fender repair shops; manufacture of, assembly of, or on-site repair shops for heavy equipment, major appliances, or engines; junkyards; and mortuaries or crematoriums are prohibited. (See also Section 4.8.2 Prohibited Uses for Home and Premises Occupations.)

4.5 CONDITIONAL USES FOR RAR-1 ZONE

4.5.1 Nonpermanent Conditional Use Permits

Nonpermanent Conditional Use Permits may be deemed routine or nonroutine as further provided for under other sections of this Land Use Ordinance. The following nonpermanent uses of land may be permitted in the RAR-1 zone upon compliance with the requirements set forth in this Land Use Ordinance and after approval has been granted by the designated Land Use Authority for a nonpermanent conditional use permit:

- A. Nurseries, botanical.
- B. Premises Occupations as provided for in this land use ordinance. (See also Section 4.8.2 Prohibited Uses for Home and Premises Occupations)
- C. Home Occupations as provided for in this land use ordinance. (See also Section 4.8.2 Prohibited Uses for Home and Premises Occupations)
- D. The raising, care, and keeping of no more than three (3) animal units of livestock per acre on each legally platted lot in the Town of Castle Valley as determined from section 4.9 of this land use ordinance. One acre of land on each legally platted lot shall be deemed as a residential housing acre and shall be excluded from the total acreage available for animal unit calculations. –Also, no more than 12 large sized animals, or 50 medium sized animals, or 150 small sized animals shall be allowed on each legally platted lot as determined from the chart in section 4.9.
- E. Animals not listed on the chart in section 4.9 of this land use ordinance.
- F. Day care nurseries and family day care centers.
- G. Fences which exceed four (4) feet in height and which enclose more than one (1) acre of land on lots designated for commercial agricultural use as provided in Ordinance 2003-3.
- G.H. Additional kitchens, as defined in this Land Use Ordinance, exceeding one kitchen per legally platted lot.

4.5.2 Permanent Conditional Use Permits

Permanent Conditional Use Permits shall be deemed nonroutine. The following permanent buildings and structures may be permitted in the RAR-1 zone upon compliance with the requirements set forth in this Land Use Ordinance and after approval has been granted by the Designated Land Use Authority for a permanent conditional use permit:

- A. Public buildings.
- B. New or substantial changes to existing irrigation ditches, spring fed ponds, water pipelines, and flood control structures.
- C. Above ground water storage tanks that are different from those specified in Section 4.2.K of this Land Use Ordinance.
- D. Schools, churches, cemeteries, parks, playgrounds and arboretums.
- E. Windmills and other wind energy systems.

4.6 CONDITIONAL USES FOR RG-15 ZONE

None.

4.7.5 Conditional Use Permit Renewal

Permits for permanent conditional uses run with the land, transfer to new owners automatically, and are not required to be renewed each year. Permits for nonpermanent conditional uses (including home and premises occupations) are personal to the applicant, nontransferable, do not run with the land, and must be renewed each year.

A nonpermanent conditional use permit, whether routine or nonroutine, and including home and premises occupation permits shall be valid for a period of one year from the date of approval or until the next regular review of conditional use permits as provided for in this chapter.

Each nonpermanent conditional use permit shall be reviewed annually on a date or dates to be determined by the Land Use Authority. An inquiry shall be made prior to review asking the permit holder if the holder wishes to renew the permit. If the holder of the permit applies for renewal, the conditional use permit shall be renewed unless the Land Use Authority concludes that the conditions imposed have not been complied with or that the impact of the conditional use exceeds the impact of permitted uses in the RAR-1 zone.

At the time of review, the Land Use Authority may amend the conditions imposed, and may also impose additional conditions on the use if the land use authority concludes that substantial evidence in the record demonstrates that amendments to the conditions or additional conditions are necessary to ensure that the impact of the conditional use does not exceed the impact of permitted uses in the RAR-1 zone.

The Land Use Authority may also refuse to renew the nonpermanent conditional use if it concludes ~~that~~ any of the following: its use is conducted in conflict with any Town Land Use Regulation in effect at the time; its use is conducted in conflict with any applicable federal, state and local statutes; or that substantial evidence in the record demonstrates that the negative aspects of the use cannot be mitigated so that the impact of the use does not exceed the impact of permitted uses in the RAR-1 zone.

4.7.6 Conditional Use Permit Revoked

Any conditional use permit, whether routine or nonroutine, nonpermanent or permanent, may also be revoked at any time if substantial evidence in the record supports any one of the following findings:

1. That the conditions imposed on the conditional use permit do not adequately mitigate the negative effects of the conditional use so that it can be conducted in a manner that meets the standards for conditional uses provided in this chapter; or
2. That the permit was obtained by misrepresentation or fraud; or
3. That the use for which the permit was granted has ceased or was suspended for 12 or more consecutive calendar months; or
4. That one or more of the conditions of the permit have not been met; or
5. That the use is conducted in conflict with any Town Land Use Regulation in effect at the time, or any applicable federal, state and local statutes, including the procuring of all necessary permits, licenses, and inspections from the Town or any other local, state, or federal agency; or
6. The use has exceeded the scope of the original permit.

The Land Use Authority shall not amend the conditions, impose additional conditions, refuse to renew, or revoke a conditional use permit without first providing reasonable notice to the holder of the permit of a date and time when the holder can appear before the Land Use Authority, be heard on the issues associated with the review of the permit, and respond to any evidence provided that supports amending, refusing to renew, or revoking the conditional use permit.

4.10 SPECIFIC REVIEW CRITERIA FOR NONROUTINE CONDITIONAL USE PERMITS FOR LIVESTOCK EXCEEDING ONE AND ONE HALF (1.5) ANIMAL UNITS PER ACRE FOR RAR-1 Zone

The purpose of this section is to allow for a greater number of animal units per acre through the application and approval of a nonroutine conditional use permit. The intent is to insure a balance of sustainable livestock practices for personal and business uses while preserving the quality of life for adjacent neighbors and protection of the Town's unconfined aquifer. Sustainable livestock practices ensure that the demands placed on the natural environment do not exceed or endanger the current supply of resources needed to sustain such practices. Also, it is the intent of this section to insure that animals have a humane environment under conditions and care that limit stress and are able to live in an appropriate and comfortable environment that includes sufficient space, proper facilities, shelter, and resting areas.

The following requirements have been put in place to assist the Designated Land Use Authority in making well-informed decisions whether to grant, grant with conditions, or deny conditional use permits for livestock of more than one and one half (1.5) animal units per acre, and for livestock not listed on the chart in section 4.9 of this land use ordinance, at their discretion based on the potential impact on the surrounding residential community and natural environment.

4.11 TEMPORARY ACCESSORY DWELLINGS FOR MEDICAL PURPOSES (TADs)

The Town of Castle Valley (herein referred to as Town) allows only one dwelling per legally platted lot. Repeated surveys regarding owners' and residents' preferences have continually supported maintaining one dwelling per lot as well as a rural agricultural environment. Over the years, however, a few residents have requested a way to care for aging parents who are able to maintain a separate residence but need close proximity of their family for assistance. The Temporary Accessory Dwelling For Medical Purposes section of this land use ordinance is designed to accommodate this specific need. No TAD shall be allowed that does not comply with maximum square footage and building height requirements as further provided for in this Land Use Ordinance. Property owners may remove a building or buildings in order to install a TAD and not exceed Town Land Use Regulations pertaining to maximum square footage and building height requirements.

4.11.1 Physical Characteristics

- A. TADs must be a recreational vehicle, park trailer, or a single-wide manufactured home.
- B. TADs must remain mobile by retaining their wheels, axles, and towing hitch. No TAD may have masonry skirting.
- C. TADs must be connected to the main dwelling's utilities and septic system. A septic upgrade is permitted, but no second septic system is allowed for a TAD. There will be no second electric meter for the TAD.
- D. TADs must be situated to the main dwelling in a manner that does not disrupt the current view shed of adjoining neighbors, and to protect open space.
- E. TADs may not have a basement, or other additions. No additional accessory buildings to serve the TAD shall be permitted.

4.11.2 Use

- A. Residents of a TAD are limited to people certified infirm, either physically or mentally, or to no more than three (3) care-givers for the infirm property owners residing in the principle residence. The latter must be certified to be infirm. A care giver may be allowed to reside in the TAD with the infirm family member upon approval by the Town Council. Infirmity means that the person(s)

are incapable of maintaining a residence on separate property. The infirmity must be due to physical or mental impairment. Financial hardship conditions, childcare and other convenience arrangements not relating to physical and mental impairment are not considered an infirm condition for which a permit can be issued.

B. The nature of the infirmity must be certified by two (2) written statements: one from the patient's current primary care medical doctor (MD) or osteopath (DO), the second opinion from the patient's local primary care medical doctor from a Utah or Colorado licensed MD or DO. The statements shall be on the care provider's stationary or stamped by the office, and shall indicate that the patient is not physically or mentally capable of maintaining him/herself in a residence on a separate property, and is dependent upon someone being close by for assistance. The Town Council may allow the second certification from the patient's local primary care doctor to be submitted to the Town within three (3) months of the infirm family member taking occupancy of the TAD.

C. TADs may only be used by immediate family members or designated caregivers. "Immediate family" is defined as the parents, children and siblings only of the property owners or lawful tenant of the property owner.

D. No more than a total of three (3) persons shall occupy a TAD.

E. Applicants must be one of the following: the property owners or legal tenant of the subject lot; the property owner's or legal tenant's health-care power of attorney or legal guardian; a resident named as a trustee on the title of the subject lot; or an immediate family member of the lot owner or legal tenant. ~~or if~~ the applicant is ~~the lawful tenant of~~ not the property owner, the property owner (or legal guardian) must consent to the requirements of this application in writing including having their signature notarized on the application.

F. A TAD permit is issued for a specific persons type of occupant who are to be ~~named in~~ listed on the permit such as a designated or paid caregiver, an immediate family member, or the property owner. Only the ~~persons named~~ type of occupant listed in the permit may reside in the TAD.

G. No TAD may be rented or leased.

H. The care giver may remain in the TAD for up to thirty (30) days after the infirm family member no longer resides in the TAD.

4.11.3 Other

A. TADs must remain taxable as personal property. The owner must retain the title, or "MSO", and a copy must accompany the application and be filed with the Town. No "affixture" may be filed.

B. The applicant must receive Town approval for temporary use of water rights to allow the temporary residential use of a TAD.

C. TAD permits do not run with the land. No amount of investment by the permittee shall constitute a reason to have the TAD run with the land.

D. A permittee assumes all financial risk related to installing and removing a TAD.

E. No TAD shall violate the provisions of any deed restriction.

F. The permit shall be signed by all of the property owners of the subject property and their signatures notarized, and recorded in the Recorder's Office of Grand County, Utah.

4.11.4 Renewal Of Permits

A. TAD permit is valid for no more than two (2) years from the date of issuance and must be renewed on a ~~bi~~BI-annual basis. All renewal requests must comply with the requirements for issuance specified at the time of renewal.

- B. It is the sole responsibility of the applicant to initiate and complete the renewal process.
- C. The Town will attempt to give a courtesy notice of the upcoming renewal date, but failure to receive notice does not waive enforcement of the renewal compliance date.
- D. The permit shall not be renewed until a review has been conducted by the Designated Land Use Authority to determine the continued validity of the use.
- E. Updated certifications of infirmity must be received from the patient's local primary care medical doctor from Utah or Colorado licensed medical doctors or osteopaths, unless the Town Council waives this requirement.

4.11.5 Expiration Of Permit

- A. A TAD permit will expire immediately when any one (1) of the following occurs:
 - 1) At the end of two (2) years, if the permit has not been renewed.
 - 2) When the designated users of the TAD or the primary dwelling can no longer maintain a separate residence.
 - 3) When there is no longer someone residing in the principle residence who can provide the needed assistance for the residents of the TAD.
- B. The applicant shall agree to remove or decommission the TAD within sixty-ninety (960) calendar days after the unit has ceased to be used by the person(s) for which the permit was issued. In any event, the unit shall be removed from the premises by the day of the expiration of the permit, unless the permit has been renewed or the TAD has been decommissioned in conformity with these requirements.
- C. Upon completion of the permitted use, the TAD must be:
 - 1) decommissioned as a dwelling;
 - 2) removed from the property if it is a single-wide manufactured home; or
 - 3) stored in a manner that includes being disconnected from the septic and all utilities if it is a recreational vehicle.

D. The Applicant may decommission, as a dwelling, a TAD that is a single-wide manufactured home and convert it to an accessory building through a nonroutine decommissioning contract. Conditions may be placed by the Planning and Land Use Commission in the nonroutine decommissioning contract to include: removal of some of the fixtures, facilities, and plumbing that are part of what defines a dwelling in this Land Use Ordinance such as the removal and walling over of any 220 receptacles and gas line stubs used for cooking facilities, all the way to the attic or the crawl space; attachment of structure to an approved permanent foundation as provided for in the most recent ICBO Guidelines for Manufactured Housing Installation; a statement of the intended new use; and guarantee that the building will never be used as a dwelling regardless of length of time of occupancy. Decommissioning must occur within ninety (90) calendar days after the unit has ceased to be used by the person(s) for which the permit was issued.

4.12 TEMPORARY DWELLING PERMITS ISSUED

Only one Temporary Dwelling is allowed per legally platted lot. A property owner shall obtain a permit to use a Temporary Dwelling (as defined in section 1.6) on their lot for a period of two (2) years. The Town requires that a plot plan be submitted showing the location of the temporary dwelling and any other improvements on the lot. A permit for a Temporary Dwelling Permit must be obtained before installation for human habitation of a Temporary Dwelling on a legally platted lot may occur (for any length of time, i.e. intermittent occupancy or permanent residency) ~~on a lot may occur.~~ (An unoccupied RV may be stored on a legally platted lot without a permit.)

A ~~T~~emporary ~~D~~welling must be connected to a septic system or be self-contained. An inspection by the State Sanitarian regarding sewage disposal may be required. ~~The Town may discontinue issuing and/or renewing Temporary Dwelling Permits at any time.~~ There shall be no right created by this land use ordinance to use a Temporary Dwelling for human habitation for more than the two (2) year period of the permit. A Temporary Dwelling Permit is nontransferable. New owners of a lot that has a legally permitted Temporary Dwelling installed by previous owners must apply for a new Temporary Dwelling Permit in their own name or decommission the Temporary Dwelling as provided for in this Chapter. Granting of a new Temporary Dwelling Permit under the new owner's name shall not be unreasonably withheld so long as it complies with all Town Land Use Regulations in effect at the time.

4.13 TEMPORARY DWELLING PERMIT RENEWAL

If a ~~T~~emporary ~~D~~welling has not been replaced with a permanent one, removed, or changed to a stored RV two (2) years from the date of the issuance of the ~~T~~emporary ~~D~~welling ~~P~~ermit, the property owner must apply for a renewal of the temporary dwelling permit by submitting a written request to the Town. Renewals are for two (2) year periods. In granting a renewal, the Planning and Land Use Commission may stipulate additional conditions for the continued use of the Temporary Dwelling.

4.14 TEMPORARY DWELLING DECOMMISSIONING

One Temporary Dwelling may be located on a legally platted lot with a new dwelling under construction, along with a Decommissioning Contract. A ~~T~~emporary ~~D~~welling must be decommissioned no later than thirty (30) days after the occupancy of a new permanent dwelling on a legally platted lot. Decommissioning may include removal of the Temporary Dwelling RV, or change of use to a stored RV, including disconnecting from a septic system. A site inspection by a Town official will be held to verify the decommissioning of the Temporary Dwelling.

4.15 SOLAR ENERGY SYSTEMS

The purposes of this section is to allow and encourage solar energy systems in conjunction with residential and agricultural uses on a lot, to promote reduced dependence on nonrenewable energy sources, and to design solar energy systems in a manner that minimizes visual impacts on adjacent properties and that are not detrimental to public health, safety and welfare.

4.15.1 General Design Standards

1. All solar energy systems shall comply with setback requirements in section 5.2 of this ordinance.
2. To the maximum extent feasible, ancillary solar equipment shall be located inside a building or screened from public view. Solar energy system appurtenances shall be screened without compromising the effectiveness of the solar collectors to the extent reasonably feasible.
3. The applicant shall demonstrate that the height, location, setback or base elevation of a solar energy system minimizes potential glare and visual impacts of the system on adjacent properties without compromising the effectiveness of the solar collectors to the extent reasonably feasible.
4. Any solar energy system that has been determined to be unsafe by the Grand County Building Inspector, shall be subject to Section 115 (Unsafe Structures and Equipment) of the International Building Code, which may require the panels or modules and associated equipment to be removed, or the unsafe condition otherwise mitigated if it is determined to be unsafe. If it is

determined by the Grand County Building Inspector that the unsafe condition of the panels or modules and/or associated equipment cannot be mitigated, then they shall be promptly removed from the property to a place of safe and legal disposal, after which the site and/or building, as applicable, must be returned to its preexisting condition.

5. All building-mounted or roof-mounted solar energy system permits (routine and nonroutine) shall only be approved for systems that will be mounted on an existing building or in conjunction with an approved building permit for the building on which the system will be mounted.
6. For routine ground-mounted or pole-mounted solar energy system permits, the vertical distance between the highest point of any panel or module (at its maximum design tilt) to finished grade or slab on grade directly below, shall not exceed twelve (12) feet.
7. For routine and nonroutine building-mounted or roof-mounted solar energy system permits, the vertical distance between the highest point of any panel or module (at its maximum design tilt) to the roof directly below, shall not exceed one (1) foot, unless roof pitch is 3:12 or less, in such case up to two (2) feet is permitted. No portion of a solar energy system shall project above the maximum allowed building height of 25 feet as measured on a vertical axis from the highest point of the system to the lower of either 1) the lowest point where the vertical face (or a vertical line extending directly below the vertical face) around the perimeter of the building intersects the Existing Grade or 2) the lowest point where the vertical face (or a vertical line extending directly below the vertical face) around the perimeter of the building intersects the Finished Grade.
- 7.8. Applicants must submit approval of an interconnection agreement from the local electric utility company in order to gain Town approval on systems that will be interconnected to the Town's electrical infrastructure.
- 8.9. The total combined kilowatts for all routine permitted solar energy systems shall not exceed 10 kilowatts per legally platted lot.
- 9.10. Storage facilities that require a building permit to store battery backup and ancillary equipment for a solar energy system (routine and nonroutine); must receive a building permit for the building in which said equipment will be stored before final approval of the solar energy system is granted.

4.15.2 Nonroutine Solar Energy System Permits

Applicants may apply for approval of a solar energy system that exceeds the maximum allowed height and kilowatts in section 4.15.1 through a nonroutine solar energy system permit application. The Land Use Authority shall ask applicants to demonstrate that a system taller than twelve (12) feet in height is needed in order to prevent compromising the effectiveness or safety of the solar collectors. Applicants must also demonstrate that a system larger than 10 kilowatts is needed by listing intended uses of the electricity generated from the proposed system. The Planning and Land Use Commission shall act as the Land Use Authority for such applications and shall require a design review of nonroutine solar energy systems in order to minimize visual impacts on adjacent properties and ensure public health, safety and welfare.

1. In reviewing an application, the Land Use Authority shall identify the potential negative effects of the proposed system such as, but not limited to, potential glare and visual impacts on adjacent properties, and may require additional screening, placement and design layout without compromising the effectiveness of the solar collectors to the extent reasonably feasible.
2. The Land Use Authority may require an engineering assessment from the local electric utility company or a Town approved expert to assess specific placement and sizing of the proposed system and its compatibility with the Town's existing electrical infrastructure to ensure public health, safety and welfare. Based on this assessment, additional requirements may be imposed, and Town approval may be contingent upon, the Applicant being responsible for the cost to upgrade the Town's electrical infrastructure to ensure public health, safety and welfare and to ensure that it will not compromise the safety, reliability and operability of the Town's utility infrastructure or place other residents' electrical equipment at risk.
3. The total combined kilowatts for all nonroutine permitted solar energy systems shall not exceed 25 kilowatts per legally platted lot.
4. For nonroutine ground-mounted or pole-mounted solar energy system permits, the vertical distance between the highest points of any panel or module (at its maximum design tilt) to finished grade or slab on grade directly below, shall not exceed nineteen (19) feet.
5. For nonroutine ground-mounted or pole-mounted solar energy system permits, total combined square footage of all ground-mounted or pole-mounted photovoltaic panels or modules shall not exceed 1500 square feet.

4.16 ADDITIONAL KITCHENS EXCEEDING ONE KITCHEN PER LEGALLY PLATTED LOT

The purpose of this section is to allow lot owners to have additional kitchens in accessory structures, such as canning kitchens or kitchens that are part of a home-based business, while protecting the Town's residential and rural character and prevent short term rentals, multiple dwellings, duplexes and mother-in-law apartments.

Additional kitchens that are used as part of a premises occupation conditional use permit shall also follow the provisions as further provided for in Section 4.8 of this Land Use Ordinance. Property owners may have additional kitchens (as defined by this Land Use Ordinance) per legally platted lot through a nonpermanent conditional use permit provided that the kitchen: does not create more than one kitchen per building; does not create a second dwelling as defined by this Land Use Ordinance; and is never used as part of an illegal short-term rental. If any of said instances occur, the nonpermanent conditional use permit may be revoked or denied annual renewal and removal of the kitchen will be required. This may include removal of some of the fixtures, facilities, or plumbing that are part of what defines a Kitchen in this Land Use Ordinance such as the removal and walling over of any 220 receptacles and gas line stubs used for cooking facilities, all the way to the attic or the crawl space. Conditional use permit applicants for additional kitchens are required to sign a statement of intended use, and a guarantee that the kitchen will never be used as part of an illegal second dwelling or short-term rental.

5.2 SETBACK REQUIREMENTS

The Land Use Authority may require an applicant to submit a topographical drawing prepared by a registered land surveyor or civil engineer identifying all property lines, road easements and required setbacks if deemed necessary to verify that the setback requirements in this section are met.

A. For all buildings, including municipal buildings, water wells, solar ~~panel arrays~~energy systems and other alternative energy structures, above ground water cisterns, above ground metal shipping containers and septic systems, setbacks shall be fifty (50) feet from a platted public street easement line.

B. ~~Except for barns, corrals, pens, coops, and sheds for the keeping of livestock, all~~The setbacks for solar ~~panels~~energy systems and other alternative energy structures, above--ground water cisterns, above--ground metal shipping containers, and all buildings (except for those listed in subsection E below), including municipal buildings, shall be thirty (30) feet from the property line between contiguous lots.

C. Water wells shall be located at least fifty (50) feet from the property line between contiguous lots and at least 100 feet from any existing septic system.

D. Septic systems shall be located at least fifty (50) feet from the property line between contiguous lots and at least 100 feet from any existing water well.

E. Barns, corrals, pens, coops, and sheds for the keeping of livestock shall be located at least 70 feet from property lines between contiguous lots and a least 100 feet from any existing dwelling on a neighboring lot or parcel.

5.3 BUILDING AREA AND HEIGHT LIMITS

A. Except for municipal buildings, the combined square footage of all buildings located on a legally platted lot shall not exceed 7,000 square feet.

B. The combined square footage of all municipal buildings located on a legally platted lot shall not exceed 9500 square feet.

C. No building or addition to an existing building, including municipal buildings, shall exceed twenty-five (25) feet in building height except as provided for in Subsection H of this section.

D. Except for municipal buildings, no more than 5,000 square feet of combined square footage on a legally platted lot shall exceed a building height of nineteen (19) feet tall.

E. Except for new additions to existing buildings, the highest point of the structure determines building height for all of the combined square footage of that building. The highest point of a new addition to an existing building determines the building height for all of the combined square footage of that addition.

F. All buildings, including agricultural buildings, on a legally platted lot are included in the maximum combined square footage except one or two accessory buildings as provided in section G.

G. No more than two accessory buildings on a legally platted lot may be excluded from the calculation of the maximum combined square footage if the excluded building or buildings are each no more than

120 square feet in area and no more than twelve (12) feet in building height, when measured from finished grade.

H. Buildings on a legally platted lot that were erected, or for which a complete building permit application was submitted, before May 13, 2008 and which do not comply with the provisions of Section 5.3 may continue in use as noncomplying buildings.

I. The owner of property upon which is erected a building which is noncomplying under Subsection H because of the building height, may make one addition that exceeds 25 feet in height to that building, provided that the one addition: does not exceed the building's existing maximum height; does not exceed a maximum height of thirty (30) feet; and does not exceed 500 square feet. No addition shall be allowed under this Subsection I which would increase the combined square footage of the building affected by the addition to more than 5,000 square feet.

5.4 EVERY BUILDING TO BE ON LEGALLY PLATTED LOT

All buildings, whether for dwelling or accessory use, shall be located and maintained on a legally platted lot in the Town of Castle Valley.

5.5 ONLY ONE DWELLING PER LEGALLY PLATTED LOT

Repeated Town surveys regarding owners' and residents' preferences have continually supported maintaining one dwelling per lot and protecting the Town's rural character and drinking water quality. The purpose of limiting one dwelling per legally platted lot is to protect the Town's drinking water supply by reducing septic density and to protect the rural character and sense of open space in the Town.

Only one (1) building which contains a dwelling as defined in this Land Use Ordinance shall be located and maintained on a legally platted lot in the Town of Castle Valley. One (1) Temporary Accessory Dwelling for Medical Purposes (TAD), as provided for in Chapter 4 of this Land Use Ordinance, may also be located on a legally platted lot in the Town of Castle Valley along with one (1) dwelling. One Temporary Dwelling may be located on a legally platted lot with a new dwelling under construction, along with a Decommissioning Contract, as provided for in Chapter 4 of this Land Use Ordinance. A new dwelling may be constructed on a legally platted lot already containing an existing dwelling along with a Decommissioning Contract, as provided for in Section 5.9 Chapter 5 of this Land Use Ordinance.

Residing in additional structures, such as but not limited to, accessory structures, Temporary Dwellings and other temporary structures that cannot be given building permits such as Yurts and Teepees, are not permitted if another structure is being used as a residence. Only one structure is allowed per legally platted lot that contains all of the following: facilities for living/sleeping, food preparation, bathing and sanitation (toilet, sink, and approved wastewater disposal system). Yurts, teepees and other temporary structures that cannot be given building permits are considered dwellings if used and occupied as a residence, except when occupied occasionally by visiting family or friends of the lot owner or lawful tenant. Only one kitchen as defined by this Land Use Ordinance is allowed per building-per platted lot. Additional kitchens may be allowed in a separate building through an approved conditional use permit. The intent of the regulations in this section is to prevent guest houses, apartments, duplexes, mother-in-law apartments or other construction creating more than one dwelling per legally platted lot and to prevent short-term overnight rentals, all of which are prohibited.

5.6 APPROVAL REQUIRED FOR LOT DIVISION

To preserve the rural characteristic of the Town of Castle Valley through low density development and the health standards of the Town of Castle Valley through reasonably spaced water and septic systems, approval by the Town Council will be required before any legally platted lot in the Town can be divided. Such a division will only be considered for the purpose of adding the divided sections to existing lots of five (5) acres (including easements) or more, and no remnant will be less than five (5) acres (including easements). A Lot Line Adjustment (Boundary Adjustment) that does not create a new additional lot is not a Lot Division, and therefore does not require review or approval by the Town Council pursuant to sections 10-9a-523 and 10-9a-524, et seq., UCA. Combining two or more legally platted lots into one legally platted lot requires review and approval from the Town Council and shall not be allowed if it makes a property noncompliant with any Town Land Use Regulations such as the maximum square footage limit per legally platted lot. Property owners are required to give the Town notice after any Boundary Adjustment has occurred along with a copy of any surveys performed.

5.7 ALL BUILDINGS MUST BE PERMITTED

The Building Permit Agent or the Planning and Land Use Commission shall not issue Town Approval for any building permit ~~to for any building,~~ construction, ~~or~~ repair, reconstruct or alter ~~of~~ any building or to move any building onto a lot unless it fully conforms to all Town Land Use Regulations in effect at the time of application.

A. -All buildings constructed in, reconstructed in, altered in, or moved into the Town, whether for dwelling or accessory use, and unless exempted from building permit requirements under the provisions of state statutes related to buildings that are not located in residential areas and which are used solely in conjunction with agriculture use, and not for human occupancy, must have land use approval from the Town Designated Land Use Authority and a permit from the Grand County Building Inspector before commencing the construction or moving process.

B. Grade Reviews by the Building Permit Agent must be completed prior to commencing any human-made cuts, fills, excavation, grading or similar earth-moving process to prepare any building site, septic system and associated plumbing, pad, foundation, driveway or removal of a structure. This includes earth-moving processes to prepare pads (dirt or concrete) used for permanent or temporary structures. Additional Grade Reviews are required prior to each new earth-moving process, even if a previous Grade Review was completed on a different area of the lot.

A Grade Review shall determine and establish existing grade prior to earth-moving processes used to prepare a site for future construction or moving a structure on to a lot. For sites that have never been disturbed, existing grade shall be the same as natural grade which is the elevation of the surface of the ground created through the actions of natural forces that have not resulted from human-made earth-moving processes.

When existing structures or older disturbances to the land make natural grade indistinguishable from existing grade, existing grade shall be the ground level established when the existing structure or disturbance was created. Recent or new earth-moving will not necessarily qualify as existing grade and will require a determination from the Building Permit Agent as part of the Grade Review. If necessary, the Building Permit Agent may require an estimation of pre-development topography prepared by a registered land surveyor or civil engineer to make a determination of existing grade.

C. Drainage Reviews must be completed in order to obtain Town approval for a Building Permit Application. A Drainage Review shall ensure that no changes are made to any wash, drainage or

waterway on the lot in a way that affects the exit point from the lot of the surface water or the concentration of discharge at that point. Drainage Reviews expire in 12 months. If a Drainage Review occurs more than 12 months prior to a complete Building Permit Application being submitted, a new Drainage Review shall be required prior to Town approval.

D. While Grade Reviews and Drainage Reviews are not required prior to earth-moving work performed in landscaping or gardening, property owners are encouraged to have these reviews to establish existing grade. Pursuant to Town Ordinance 95-6, it is not permitted to alter the exit point from the lot of surface water or the concentration of discharge at that point.

EB. -All road easement encroachments must receive written approval by the Town's Roads Manager through the approval of a right of way encroachment permit application prior to commencing any work within a Town road easement.

FC. -All applications for a Town Land Use Decision shall follow the Town Building Permit Process as provided in Ordinance 95-6. Land use approval shall not be issued for a building or other Land Use Application that does not comply with all applicable Town Land Use Regulations.

GD. -A building permit for a permanent structure that is intended, or designed to be built, used, rented, or leased out to be occupied, or that is occupied for living purposes shall be approved provided that the permanent structure contains complete independent living facilities for living, sleeping, eating, cooking, and sanitation.

HE. -Buildings that are exempt from the building permit requirements because they are intended to be used solely in conjunction with agricultural use as provided in Subsection A must still comply with all provisions of Town Land Use Regulations. No such building shall be constructed or moved into the Town until a certificate of land use compliance has been obtained from the Designated Town Land Use Authority.

5.9 CONVERSION OF EXISTING DWELLING TO AN ACCESSORY BUILDING

If a new dwelling is to be constructed on a lot already containing an existing dwelling, a legally binding contract between the property owner and the Town must be signed and recorded guaranteeing that the existing dwelling will be decommissioned thirty (30) days after occupancy of the new dwelling, before a building permit for the new building containing a dwelling can be obtained. Conditions may be placed by the Planning and Land Use Commission through nonroutine decommissioning contracts to ~~aeffect~~ the decommissioning of the existing dwelling and conversion to an accessory building. These conditions may include: removal of some of the fixtures, facilities, and plumbing that are part of what defines a dwelling in this land use ordinance such as the removal and walling over of any 220 receptacles and gas line stubs used for cooking facilities, all the way to the attic or the crawl space; a statement of the intended new use; and guarantee that the building will never be used as a dwelling for human habitation regardless of length of time of occupancy. Decommissioning must occur within thirty (30) days after occupancy of the new dwelling. ~~For the purposes of this section, a Temporary Accessory Dwellings for Medical Purposes (TAD) shall not be considered an existing dwelling~~

CHAPTER 6 NONCOMPLYING BUILDINGS AND NONCOMFORMING ~~STURCTURES~~USES

6.1 NONCOMPLYING BUILDINGS

A building that legally existed before its current Land Use designation, but which does not currently meet the requirements of all applicable national, state and county building, health, or safety codes and the requirements of this land use ordinance, shall be considered noncomplying.

CHAPTER 7 VARIANCES AND APPEALS

All Variance and Appeal Hearing Officer requirements shall follow the provisions as further provided for in Ordinance 2006-3.

7.1 VARIANCE

Variations are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of Town Land Use Regulations that create unreasonable hardships. When such hardships are more appropriately remedied, if at all, pursuant to other provisions of Town Land Use Regulations, the Variance procedure is inappropriate. Property owners considering a Vvariance ~~are encouraged~~shall to consult with the Town prior to such an application in order to clarify the Town's Land Use Ordinances and other possible remedies.

7.1.1 Parties Entitled to Seek Variations

Any person or entity desiring a waiver or modification of the requirements of Town Land Use 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 Variance and Appeal Hearing Officer (Officer)~~ for a Vvariance from the terms of Town Land Use Ordinances.

7.1.2 Authority for Variance

The Variance and Appeal Hearing Officer (the "Officer"), in accordance with the procedures, standards and limitations of this Chapter and as further provided for in Ordinance 2006-3, shall approve, approve with conditions or disapprove an application for a Variance after receiving a recommendation from the Town.

7.1.32 STANDARDS FOR VARIANCESStandards for Variance

1. The Officer may grant a Vvariance only if each of the following conditions are met:
 - a. Literal enforcement of Town Land Use Ordinances would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of Town Land Use Ordinances;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - c. Granting the Vvariance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - d. The Vvariance will not substantially affect the General Plan and will not be contrary to the public interest; and
 - e. The spirit of Town Land Use Ordinances are observed and substantial justice is done.
2. In determining whether or not enforcement of Town Land Use Ordinances would cause unreasonable hardship under this section, the Officer 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 Officer 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 Officer shall not grant a Variance that:
 - a. Is intended as a temporary measure only;
 - b. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; or
 - a.c. Authorizes uses not allowed by law (i.e., a "use variance"). The Officer may not grant use variances.
- 6.7. In granting a Variance, the Officer may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of the Variance; or
 - b. Serve the purpose of the standard or requirement that is waived or modified.
8. The Officer shall decide all Variance Applications and other issues brought before it within a reasonable time. Decision on a Variance Application is final when the Officer 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.

7.1.4 Submittal Requirements for Variance Applications

The Applicant of a Variance shall file a Town Variance Application with the Planning and Land Use Commission Clerk. Variance Applications shall only be accepted after a complete application has been submitted, along with all submittal requirements and all fees paid. The Town Planning and Land Use Clerk shall certify the completeness of the Variance Application or reject the same, in a timely manner. A complete Variance Application shall include the following items and information unless determined inapplicable by the Planning and Land Use Clerk:

1. Written Information:

- a. The property owner's name and address and the owner's signed consent to the filing of the Application;
- b. The Applicant's name and address, if different than the owner, and the Applicant's interest in the subject property;

c. The names and addresses of all professional consultants, if any, advising the Applicant with respect to the Application; and

a.d. Street address and legal description of the subject property.

2. Graphic Information:

a. A site plan drawn to scale identifying all property lines, existing and proposed structures, fences, road easements, setbacks and their respective distances from the property lines;

b. An elevation drawing to scale showing all elevations of proposed structures with existing grade and finished grade shown and labeled;

b.c. A topographical drawing prepared, prior to any earth-moving, by a registered land surveyor or civil engineer identifying all items listed in Subsection 2.a and 2.b of this Section. The existing grade shall be shown in dashed lines at two foot (2') intervals and the proposed finished grade shall be shown in solid lines at two foot (2') intervals; and

d. A Town Grade Review signed by the Building Permit Agent prior to any earth-moving to determine existing grade.

3. Variance Information:

a. The specific feature or features of the proposed use, construction or development that require a Variance;

b. The specific provision of Town Land Use Ordinances from which the Variance is sought and the precise Variance being sought;

c. A statement of the characteristics of the subject property that prevent compliance with the provisions of Town Land Use Ordinances and result in unnecessary hardship;

d. A statement of the minimum variation of the provisions of Town Land Use Ordinances that would be necessary to permit the proposed use, construction or development; and

e. An explanation of how the Variance Application satisfies each standard for Variances set forth in this Chapter; and any other information identified by the Planning and Land Use Commission Clerk to be pertinent to the requested Variance.

4. Fees

A filing fee to cover the cost of review in accordance with the fee schedule adopted by resolution of the Town Council. The Applicant shall also be responsible for payment of all fees established for providing the public notices required by this Chapter.

7.1.5 Procedures for Variance Applications

Noticing and posting requirements shall be met as specified in this Chapter and in accordance with the Utah Open and Public Meetings Act.

1. Town Recommendation

Upon receipt of a complete application for a Variance, the Planning and Land Use Commission (Commission) shall review and make a recommendation to the Town Council who shall review the application and make a recommendation to the Variance and Appeal Hearing Officer (the “Officer”). Variance Applicants, or their representatives, must attend both the Commission and Town Council meetings at which the Variance request will be reviewed.

Upon completion of a Town recommendation, but before a public hearing, the Town Clerk shall forthwith transmit to the Officer the Town recommendation along with the complete Variance Application and all required items and information listed in this section 7.1.4 of this Chapter.

2. Notice of Town Review of Variance Applications to Neighbors

To allow neighbors time to respond to a Variance request, an Applicant must submit the Variance Application to the Town thirty (30) days before the meeting at which the Variance request will first be reviewed by the Commission. The Town shall send notice, including, if practical, a copy of the Variance Application describing the proposal to the Parties of Interest at least fourteen (14) days prior to the Commission’s meeting at which the Variance Application will first be reviewed. Parties of Interest include the lot owner of each parcel of property abutting the property upon which the Variance is to be located and anyone else who has submitted a written request to be notified of the decision.

3. Public Hearing Required for Variance Applications

A public hearing shall be held at the Town Community Building on a Variance Application after a recommendation has been made by the Town as required by this Chapter. At the public hearing the Officer shall consider the Application, the recommendation of the Town, the relevant support materials and the public testimony given at the public hearing. After the close of the public hearing, the Officer shall approve, approve with conditions or disapprove the Application for a Variance within a reasonable time. The Town shall approve procedures and policies that govern the conduct of the public hearing in accordance with Section 5 of Ordinance 2006-3, as amended.

4. Notice of Public Hearing for Variance Applications

Before a public hearing for an Application for a Variance is held by the Officer, the Officer shall give notice to the Town and the Applicant at least fourteen (14) days prior to the hearing stating the time, place and purpose of the hearing. The Town shall send notice, including, if practical, the recommendation made by the Town to the Parties of Interest, at least ten (10) days prior to the Public Hearing stating the time, place and purpose of the hearing. The public hearing shall be noticed to the public in accordance with the Open and Public Meetings Act (Section 52-4-101, *et seq.*, as amended).

7.1.6 Notice of Final Decision for Variance Applications

The Officer shall give written notice of all final decisions and rulings for a Variance to the Town, the Variance Applicant, and other Parties of Interest within ten (10) business days after such a final decision is made.

7.1.7 Records of Proceedings and Final Decision

The Town Clerk shall file a hard copy, marked as final with adoption date, of the final decision along with all other records of meetings or hearings held by the Officer, including written minutes, rulings, and other associated documents, in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, et seq., UCA, as amended.

7.1.8 Variance Less than Requested

A Variance less than or different than that requested may be authorized when the record supports the applicant's right to some relief but not to the relief requested.

7.1.9 Conditions for Variance

The Town may recommend, and the Officer may impose such conditions regarding the location, character and other features of the proposed structure on a Variance Application that are deemed necessary to accomplish the purposes of Town Land Use Ordinances and the Town's General Plan, to prevent or minimize adverse impacts upon the public and neighbors and to ensure compatibility. These conditions shall be expressly set forth in the Variance and Appeal Hearing Officer's motion granting the Variance. Violation of any condition or limitation on the grant of a Variance shall be a violation of this Land Use Ordinance and shall constitute grounds for revocation of the Variance by the Town.

7.1.10 Effect of Variance

Issuance of a Variance shall authorize only the particular variation that is approved in the Variance Decision.

7.1.11 Time Limit for Variance

Subject to an extension of time granted upon application to the Town and unless otherwise specified in the Variance Decision, no variance shall be valid for a period longer than one year unless approval is granted by the Town on a building permit and the Applicant has submitted a complete building permit to the Grand County Building Department within that period. The Town may grant an extension of a Variance for up to one additional year when the Applicant is able to demonstrate no change in circumstance that would result in an unmitigated impact and the permit has yet to be approved by the Grand County Building Department. Extension requests must be submitted prior to the expiration of the Variance. Permitted time frames do not change with successive owners.

7.1.12 Appeal of Variance Decision

Any person adversely affected by a final decision made by the Variance and Appeal Hearing Officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

7.2 ~~3~~ APPEALS OF LAND USE DECISIONS

7.2.1 Scope of Review for Factual Matters on Appeals to the Planning and Land Use Commission

The Planning and Land Use Commission (Commission) shall act as the Appeal Authority from Land Use Decisions by the Building Permit Agent determining whether a Land Use Application, as specified in Ordinance 85-3, as amended is routine. An Appeal shall be filed by the Land Use Applicant, or other adversely affected person or entity, within 15 calendar days of the date of the Building Permit Agent's final Land Use Decision. If, upon appeal, the Commission determines that the Land Use Application is routine, it shall remand the Land Use Application to the Building Permit Agent for processing. If the Commission determines that the Land Use Application is nonroutine, the Designated Land Use Authority may review and issue a Land Use Decision on the nonroutine Land Use Application.

7.2.2 Scope of Review for Factual Matters on Appeals to the Variance and Appeal Hearing Officer of the Assessment of Fees

Any person adversely affected by the assessment of a Land Use Application fee may appeal said fee to the Variance and Appeal Hearing Officer (the "Officer"). Such appeals shall be filed in writing with the Town Clerk setting forth the reasons for the appeal and the error made by the Land Use Authority that assessed the fee, within 15 days from the date a fee is assessed. An appeal fee, as established by Resolution 2013-1 as amended, must accompany the appeal. The appeal fee will be returned to the Appellant if the Appeal of the assessment of fees is upheld.

7.2.34 Scope of Review for Factual Matters on Appeals to the Variance and Appeal Hearing Officer of all Land Use Decisions Except the Assessment of Fees

1. Only those decisions in which a Land Use Authority has applied a Town Land Use Regulation to a particular Land Use Application, person or parcel may be appealed to the Officer. Legislative Decisions related to the enactment or amendment to Town ~~O~~rdinances, Land Use Regulations, General Plans, and Zoning Maps shall be appealed directly to the Grand County District Court pursuant to Section 10-9a-801 (5), *et seq.*, UCA.
2. Except for the assessment of fees as provided for in this Section, aAny person, including any officer or body of the Town, adversely affected by ~~a~~all other Land Use Decisions including the grant or refusal of a building permit, may appeal such a Land Use Decision to the ~~Variance and Appeal Hearing Officer (the "Officer")~~. An appeal must be made within thirty (30) days from the date of the Land Use Decision by filing with the Town Clerk: 1) a written notice of appeal ~~specifying stating~~ in detail the grounds thereof and the error made by the Land Use Authority, specifying the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court; and 2) fees established by Resolution 2013-1, as amended (collectively the "Appeal"). Appeals shall only be accepted in which final action of the Land Use Authority has been made, as evidenced by issuance or denial of a ~~L~~and ~~U~~se ~~A~~pplication ~~P~~ermit or other final written Land Use Decision. The Town Clerk shall certify the completeness and timeliness of the Appeal or reject the same, ~~within ten (10) days in a timely manner of receipt~~. Upon the Town Clerk's certification of the Appeal, the Town Clerk shall forthwith transmit the "Record," as defined below, to the Officer.
3. The Record shall consist of all those documents and papers filed by the Land Use Applicant with the Land Use Authority; all correspondence between the Town and the Land Use Applicant; all

documents, papers, and correspondence received ~~by~~from the public or adversely affected persons or entities; transcripts of all public meetings; the Land Use Regulations; all such Land Use Decisions or transcripts thereof; and the notice of appeal. By mutual agreement of the Parties, the Record may include a “Brief of the Issues,” submitted by the Parties and directed to the Officer. The Record shall not include any documentation, papers, or correspondence from the Town, the Applicant, or an adversely affect person or entity dated or prepared after the date of the Land Use Decision, or any other evidence outside of the Record. In the event there is no written Record, the Officer may call witnesses and take evidence.

4. An appeal is not subject to de novo review, and the Officer shall defer to the Town’s determination of factual matters where the Record includes substantial evidence for each of the Town’s findings of fact.
5. The Officer shall review the Record under the “Clearly Erroneous” standard, and it shall be the appellant’s burden to prove the Land Use Authority erred. If the Land Use Decision is reasonable in light of the entire Record, the Officer may not reverse it, even if the Officer would have weighed the evidence differently.
6. When reviewing the reasonableness of the Land Use Decision, the Officer shall apply the plain meaning of the Land Use Regulations. If the meaning of a Land Use Regulation is ambiguous, it shall be interpreted in the light most favorable to the Land Use Applicant.
7. The Officer, with the mutual agreement of the Parties, may rule on the Record alone or may fix the date and time for a hearing within a reasonable time. In the event the parties proceed to a hearing, the Officer shall give the ~~parties~~Parties and the public notice thereof. All meetings and hearings held by the Officer shall be considered public meetings and shall be properly noticed and held in accordance with the Utah Open and Public Meetings Act, and no later than ten (10) business days prior to the hearing stating the time, place, and purpose of the meeting. All meetings and hearings by the Officer shall be held at the Town Community Building unless the Officer determines that an alternate location better meets the purposes and need of the meeting or hearing. All records of meetings or hearings held by the Officer, including written minutes, final decisions and rulings, and associated documents shall be filed by the Town Clerk in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, et seq., UCA, as amended.
8. Proceedings and hearings before the Officer shall be pursuant to rules adopted by the Town and in conformance with general principles of due process; provided, however, the rules of evidence need not apply. Any party in interest may appear at such hearing in person, by agent, or by an attorney of his/her choice.
9. Appellants may always reapply to the applicable Land Use Authority if they have new information that might change the previously-issued Land Use Decision. Further, appeals shall consider and decide the reasonableness of the Town’s application of a Land Use Regulation to a particular Land Use Application on a case-by-case basis.
10. Appeals may not be used to waive or modify the terms, requirements, or text of the Town’s ordinances or Land Use Regulations.

11. The Officer shall decide all appeals and other issues brought before it within a reasonable time. Decision on an appeal is final when the Officer 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 of Law” based on Town Land Use Regulations or other law, rule or regulation relied on; and the “Ruling” setting forth the Ruling of the Officer.
12. In exercising the above-mentioned powers, the Officer may affirm, wholly or partly, or may modify the order, requirement, decision or determination of a Land Use Authority consistent with Town Land Use Regulations and other applicable laws.
13. In the event the Officer upholds the Land Use Decision, the Applicant shall pay to the Town all of its costs and expenses incurred as a result of the appeal of the Land Use Decision, including reasonable attorneys’ fees and costs. Further, in the event the Applicant appeals the Officer’s Ruling to the Grand County District Court, and if the Court upholds the Officer’s Ruling, the Applicant shall further pay to the Town all of its costs and expenses incurred as a result of the appeal of the Officer’s Ruling, including reasonable attorneys’ fees and costs.

7.2.45 Stay of Final Decision of Land Use Authority Pending -Appeal

An appeal to the Officer hereunder shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the Land Use Authority. An appellant may request a stay by submitting to the Land Use Authority, in writing, an application for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the Land Use Authority shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five (5) days from the date the request is received by the Land Use Authority. The Land Use Authority, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the appellant to post a cash escrow financial guarantee. Within ten (10) days of the Land Use Authority’s decision regarding the grant or denial of a stay, any aggrieved party may appeal the decision to the Officer, whose decision shall be final.

7.2.56 Notice to Council of Meeting or Hearing for ~~Variance or~~ Appeal of a Land Use Application

Before ~~any application for a variance or~~ an appeal of a Land Use Decision is heard by the Officer, the Officer shall give notice to the Town, the Appellant, and as well as other Parties of Interest at least ten (10) business days prior to the meeting or hearing stating the time, place and purpose of the meeting or hearing. Parties of Interest include anyone else who has submitted a written request to be notified of the decision.

7.2.67 Notice of Final Decision for ~~Variance or~~ Appeal of a Land Use Application

The Officer shall give written notice of all final decisions and rulings for an appeal of a Land Use Decision to the Town, the Appellant, and other parties of interest within ten (10) business days after such a final decision is made. The Town Clerk shall file a hard copy, marked as final with adoption date, in the Town Records for review and access by the public subject to the provisions of the Government Records Access Management Act, Section 63G-2-101, et seq., UCA, as amended.

7.2.7 Time Limitation

All appeals not heard within one hundred eighty (180) days of the filing of the appeal because of matters delayed by the Appellant, shall be considered void and withdrawn by the Appellant.

7.38 DISTRICT COURT REVIEW

1. Any person adversely affected by any final decision of the Appeal Authority, including Variance Decisions or legislative decision of the Town Council may Petition for Review with the District Court in accordance with section 10-9a-801, et seq., UCA, as amended.
2. A Petition for Review of a Land Use Decision may be heard by the District Court only after the appellant has exhausted his administrative remedies described above and only if the Petition for Review is filed with the District Court within thirty (30) days of the date of a final decision of the Appeal Authority.
3. A Petition for Review of a legislative decision shall be filed within thirty (30) days of Town Council's enactment of an ordinance, Land Use Regulation, Zoning Map, or General Plan that is compliant with Section 10-9a-205, UCA.
4. Upon receipt of Notice of a Petition for Review, the Appeal Authority or Town Council shall transmit the Record to the District Court which shall include minutes, findings, orders, and transcript of the appeal proceedings, if any. If the proceeding was taped, a transcript of that tape recording shall constitute a true and correct transcript for purposes of this subsection. The cost of preparing the transcript shall be paid by the appellant prior to transmittal of the record to the Court.
5. The District Court's review is limited to the Record provided by the Appeal Authority or Town Council. The Court may not accept or consider any evidence outside the Record unless that evidence was offered to the Appeal Authority or Town Council and the Court determines that it was improperly excluded by the Appeal Authority or Town Council. In the event there is no record, the Court may call witnesses and take evidence.
6. The Court shall presume that a final decision of the Appeal Authority or Town Council is valid and uphold it unless the decision is arbitrary and capricious or illegal. The Court shall affirm the decision if it is supported by substantial evidence in the record and based on a reasonable interpretation of a Land Use Regulation or state or federal law, as applicable.
7. The filing of a Petition for Review does not stay the decision of the Appeal Authority or the Town Council. Either the Appellant or Respondent may petition the Appeal Authority to Stay a Land Use Decision, which petition the Appeal Authority may grant only if the Appeal Authority finds the stay is in the best interest of the Town. Either the Appellant or Respondent may petition the Court to Stay a legislative decision, which the Court may grant only if the Court finds the motioning party will suffer irreparable harm if the stay is not granted.

9.1 ENFORCEMENT

- A. The Town, the Town's Attorney, or any owner of real estate within the Town may, in addition to other remedies provided by law, institute: injunctions, mandamus, abatement, or any other appropriate actions; or proceedings to prevent, enjoin, abate, or remove the unlawful building, use or act. The Town need only establish the violation to obtain the injunction, as required by law.
- B. The Town may enforce the requirements of this land use ordinance and other Town Land Use

Regulations by withholding approval. It is unlawful to erect, reconstruct, alter or change the use of, or move into the Town any structure without approval from the ~~D~~esignated Town Land Use Authority and a permit from the Grand County Building Inspector unless exempted from building permit requirements under the provisions of state statutes related to buildings for agricultural use as provided for in section 5.7 of this land use ordinance. Such exempt buildings, however, shall not be constructed or moved into the Town until a certificate of land use compliance has been obtained from the ~~D~~esignated Town Land Use Authority. The Town may not issue approval for a building unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conforms to the provisions of Town Land Use Regulations then in effect.

- C. No license, building permit, or other Land Use Application Permit shall be issued by any official, employee, or agent vested with the duty and authority to issue licenses or permits which would not be in conformance with the provisions of Town Land Use Regulations in effect at the time of application. It shall be a violation of this land use ordinance for any official, employee, or agent to issue any permit or license in violation of Town Land Use Regulations. Any license or permit not in compliance with Town Land Use Regulations or issued on the basis of false or misleading information shall be void.
- D. The mayor, with the consent of the Town Council may appoint such enforcement personnel as deemed appropriate by the Town Council to administer the provisions herein.
- E. Any person aggrieved by a violation or apparent violation of the provisions of Town Land Use Regulations may file a written complaint with the Town, who shall investigate such complaint and take the appropriate action, in accordance with Ordinance 2008-2, Complaint Process, to have the violation penalized or removed, if such violation is found to exist.
- F. When it is determined that there has been a violation of any provision of Town Land Use Regulations, ~~t~~The Mayor may make initial contact by telephone, in addition to giving written legal notice, if deemed necessary by the Town Council in the following manner:
 - Act on a recommendation of the Town Council to contact the owner, occupant, operator, lessee, agent or other responsible party by telephone.
 - Document all telephone conversations and observations.

Written legal notice of violation shall be served in the following manner:

- As the initial contact if telephone contact has been deemed unnecessary or after telephone contact has been attempted.
- Determine and include a list of Land Use Regulation violations, refer to the section or sections of the land use ordinance violated;
- Determine and specify a time for compliance with relevant Land Use Regulations 30 days from the service of the notice;
- Serve the notice on the owner, occupant, operator, lessee, agent or other responsible party in person, provided that such notice and requirement shall be deemed to be properly served on such responsible party if a copy thereof is delivered to, posted on, or sent by registered or certified mail, postage prepaid, to the last known mailing address on file with the Grand County Assessor; and

- In the event the violation requires more than thirty (30) days to abate, the Town Council or the Complaint Resolution Board (as per Town Ordinance 2008-2) may develop a plan to abate the violation with specific actions and deadlines.

9.2 FEES

- A. Reimbursement of costs and expenses by applicants.** The Town may require the applicant to pay all reasonable expenses incurred by the Town in processing or issuing a Land Use Application; in performing a review of any Land Use Application; in performing an inspection incidental to a Land Use Application; in determining compliance with Town Land Use Regulations; in interpreting Town Land Use Regulations; in processing and responding to appeals to a Land Use Decision, or in processing and responding to ~~V~~variance applications. This list is not inclusive and shall be used by way of illustration of actions required by the Town that may incur fees from additional demands placed on Town services.
- B. Imposition of fees.** The Town Council may by resolution establish the fees to be imposed for, but not limited to, applications for any permit, permit renewal, ~~V~~variance, zoning, lot line adjustment, appeal, other Land Use Decision, or action required by Town Land Use Regulations. The Town Council shall set fees for such applications to recover for the Town the reasonable expenses incurred in processing such applications or in performing any action required by Town Land Use Regulations. Any additional costs and expenses the Town may incur in order to review and report on any aspect of a Land Use Application or any aspect of a required action, Land Use Decision or provision of a Town Land Use Regulation, such as but not limited to, publication costs, recording fees, copying fees, mailing fees, inspection fees, legal fees, plan review costs or similar expenses shall be paid by the ~~Land Use Applicant (A~~applicant) in addition to the fee collected with the application. If requested to do so by the ~~A~~applicant, the Town shall procure an estimate of the cost of such information to the ~~A~~applicant. Any fees collected shall be for the Town's administrative expenses in processing the application or for performing the required action, whether an application is granted or denied.
- C. Payment of expenses for professional services.** An ~~Land Use Applicant (A~~applicant) shall pay for all fees and costs incurred by the Town to review a Land Use Application, including but not limited to professional fees and costs charged by the Town's contract engineers, attorneys, surveyors, inspectors, planners and accountants. The Land Use Authority shall have sole and exclusive authority to determine when the proper evaluation of a Land Use Application under Town Land Use Regulations requires review, advice or other services to the Town by said professional parties (collectively, "Professional Review"). ~~Except for plan review services, in~~ all ~~other~~ instances where Professional Review is deemed necessary by the Land Use Authority, the Applicant shall deposit with the Town \$500.00 to be applied toward the Professional Review. Only those funds remaining after all approved invoices of the Professional Review have been paid shall be returned to the Applicant. If one of the Town's contract professionals notifies the Town that it anticipates its fees or costs to exceed \$500.00, then the Town shall require the Land Use Applicant to enter into a "Cost Reimbursement Agreement" as provided in Subsection D of this Section with the Town wherein the Applicant agrees to pay for all said fees and costs of the Professional Review. These expenses may include but are not limited to, surveying, ~~plan review~~, engineering, inspections, and legal fees. The Applicant shall pay said costs and fees as a condition of approval or the issuance of Land Use Decision.

D. Cost Reimbursement Agreement and financial accounting. The Cost Reimbursement Agreement shall outline the scope of work and include an estimate of costs of the recommended and necessary professional services. The Applicant shall be required to deposit the total estimate of costs to be held in a trust. The Town shall then retain the necessary and recommended professional services and pay for them directly from this account. The Town Council, or Town Designee, shall review each invoice submitted by the professional party prior to approving payment for the same. The Town Clerk shall monitor and make all disbursements from this account based on invoices approved by the Town. Upon written request, the Town Clerk shall provide the Applicant with an accounting of funds dispersed on the Applicants behalf. The Cost Reimbursement Agreement shall further describe the process for the deposit of additional funds by the Applicant if the deposit has been depleted. If additional funds are not deposited, the Town reserves the right to stop all work on the review and/or approval of the application upon written notice to the Applicant, or as otherwise specified in the Cost Reimbursement Agreement. The Agreement shall state that the funds may only be used on Applicant's behalf, and that no funds shall be returned to the Applicant, except those remaining after all approved invoices have been paid.

E. Criteria: The Town Council shall consider the following criteria and make appropriate findings when determining whether the professional services of one or more independent consultants are necessary:

1. The nature, scope, duration and technical complexities of the project being applied for;
2. The overall impact the project being applied for will have to the health, safety and welfare of the Town, including, but not limited to, environmental impact, fiscal impact, social, educational or historical impact, demand impact on Town services, future growth impact, etc.; and
3. The limited resources of the Town, including, but not limited to, personnel, expertise and/or fiscal resources.

F. Fees and costs upon appeal. In the event an Applicant appeals a Land Use Decision of any Town Land Use Authority, whether at the administrative level through the Variance and Appeal Hearing Officer or in Court, the Applicant shall pay all of the Town's costs and expenses incurred as a result of the appeal, including reasonable attorneys' fees and costs, if the Variance and Appeal Hearing Officer or Court upholds the Land Use Decision. The fee for an Appeal of an assessment of a fee shall be returned to the Applicant if the appeal is upheld.

9.3 PENALTIES AND FINES

E. Notices. All notices required in this Section ~~9.2~~ shall be deemed sufficient if mailed by certified or registered mail, postage prepaid, addressed to each violator at the last known address on file with the Grand County Assessor.