

ORDINANCE NO. _____
**AN ORDINANCE OF CANYON COUNTY, IDAHO, AMENDING CHAPTER 1,
ARTICLE 17: LAND USE/LAND DIVISION HEARING PROCEDURES; OF CANYON
COUNTY CODE OF ORDINANCES; AND SEVERABILITY CLAUSES; AND AN
EFFECTIVE DATES.**

BE IT ORDAINED by the Canyon County Board of County Commissioners as follows:

SECTION 1. Chapter 1, Article 17, Section 1 is hereby amended as follows:

01-17-01. TITLE; STRUCTURE, PURPOSE, AUTHORITY:

- (1) Short Title: This ordinance shall be known and cited as the Canyon County Hearing Procedures Update.
- (2) Structure: Titles and subtitles of this ordinance are only used for organization and structure and the language in each paragraph of this ordinance should control with regard to determining the legislative intent and meaning of the Board of County Commissioners,
- (3) Purpose: The purpose of this ordinance is to amend, adopt and update Chapter 1, Article 17, Land Use/Land Division Hearing Procedures, of the Canyon County Code of Ordinances.
- (4) AUTHORITY: This ordinance Chapter 1, Article 17, Land Use/Land Division Hearing Procedures, of the Canyon County Code of Ordinances is enacted pursuant to the authority conferred by Idaho Constitution, Article 12, Section 2, and Idaho Code §§ 39-4116, 31-714, 31-801 and 31-828.

SECTION 3. Chapter 1, Article 17, Section 3 is hereby amended as follows:

01-17-03: DEFINITIONS:

For purposes of this article, words shall have the following meanings:

APPLICANT/APPELLANT: The person or entity seeking a decision from the commission, board or hearing Examiner.

BOARD: The Board of Canyon County Commissioners.

COMMISSION: The Planning and Zoning Commission of Canyon County, Idaho.

DIRECTOR: The Director of the County Development Services Department or his/her designee.

HEARING EXAMINER: The county employee or an independent contractor conducting hearings instead of the planning and zoning commission, pursuant to the authority granted by Idaho Code section 67-6520 of the local land use planning act of 1975 and section 07-03-07: of this code.

INITIAL HEARING BODY: This term refers to the commission, hearing examiner, or director whose decision or recommendation that is before the board for final review.

MATERIALS: This term broadly refers to any written comments, documents, exhibits, visual presentations, or similar items that are to be transmitted to the presiding party as evidence for review, regardless of format.

PRESIDING PARTY: This term includes the board, commission, or hearing examiner.

STAFF: Any Canyon County officer or employee present during the hearing.

SECTION 5. Chapter 1, Article 17, Section 5 is hereby amended as follows:

01-17-05: MINIMUM REQUIREMENTS FOR HEARING CASES:

A. COMPLETE APPLICATIONS

Staff shall perform a completeness review prior to the official acceptance of an application by the County to determine if the application meets the minimum application requirements of the County. In the event that it is determined that an application is incomplete, the applicant will be notified regarding what is necessary to complete the application and the application returned. In the event that an incomplete application is returned more than two (2) times, additional application fees may be required according to the County's fee schedule. All plans, ordinances or processes in place at the time of the application passes its completeness review and application fees are paid, will apply.

B. SCHEDULING APPLICATION FOR HEARING

Once it is determined by the County that an application is complete, the application materials will be reviewed by County staff for technical compliance with applicable code provisions. At a minimum, a case will not be scheduled for hearing until:

1. The application satisfies all application requirements enumerated in the substantive County ordinance(s) governing the application;
2. The application includes all information or documentation the Director deems necessary for the hearing body's review of the application.

C. CLOSURE FOR INACTIVITY

After acceptance of the application, the applicant shall diligently pursue any action or information deemed necessary by the Director to prepare their application for hearing and provide any supplemental information requested by staff. The burden of proof of meeting all applicable approval criteria, as listed in Canyon County Code, Chapter 7 is upon the applicant. An application shall be closed due to inactivity ninety (90) days after the date where a necessary action or information by the applicant is formally requested by staff. The Director, at their discretion, may grant a request for an extension of time to complete a necessary action. If closed for inactivity, any fees paid will not be refunded. If an application is closed for inactivity, a new application and the

applicable fee will be required. All plans, ordinances or processes in place at the time of the new application acceptance date will apply.

D. APPEAL

The Director's determination may be appealed in accordance with section 07-05-07, "Appeal Of Director Administrative Decision."

SECTION 7. Chapter 1, Article 17, Section 7 is hereby amended as follows:

01-17-07: DEADLINES:

A. MINIMUM NOTICE

The County will use the minimum notice procedures required by Idaho state law and local ordinances, but staff is directed to provide additional notice when practical. Internal policies, procedures and timelines related to noticing shall be developed and implemented as the Director determines is needed. Failure to provide additional notice, as required by law and ordinance, shall not have a legal effect.

B. MATERIALS DEADLINE

All materials to be transmitted to Presiding Party to be relied on as part of the record must be received by the materials deadline, which shall be at a minimum of ten (10) days prior to the public hearing. Materials received by the deadline will be automatically made a part of the record. This deadline is to provide ample time for inclusion in the staff report packet, hearing body review, and full transparency and access for the public. The submission of late documents or other materials does not allow all parties time to address the material or allow sufficient time for public review.

After the materials deadline, any input may be verbally provided at the public hearing to become part of the record.

SECTION 9 Chapter 1, Article 17, Section 9 is hereby amended as follows:

01-17-09: CONDUCT OF HEARING:

Hearings before the presiding party shall be conducted in general conformance with the following procedure

- 1) Generally: The presiding party may choose to limit testimony and scope of the hearing as necessary. The presiding party may, at any time, freely inquire of anyone during public testimony. The hearing body may request items of clarification from staff at any time during public testimony or during deliberation.
- 2) Staff Report: At the hearing, the report may be written and/or oral and may be presented at any time in the hearing order at the discretion of the presiding party.
- 3) Applicant/Appellant Presentation: Hearings before the presiding party shall commence with a presentation from the applicant, their representative, or counsel.
- 4) Following the Applicant/Appellant Presentation, those favoring the application shall be allowed an opportunity to testify.

- 5) Following the those in favor of the application, those neutral to the application shall be allowed an opportunity to testify.
- 6) Following the those in neutral to the application, those opposing the application shall be provided an opportunity to testify.
- 7) Applicants/Appellant Rebuttal: After public comment has been received from those in favor, neutral and/or opposed, the applicant/appellant shall be allowed a brief period for rebuttal.
- 8) Exclusive of the staff report and staff presentation, any materials and/or presentations relied upon and to be desired to be admitted into the record, shall be provided by the established materials deadline.

SECTION 11. Chapter 1, Article 17, Section 11 is hereby amended as follows:

01-17-11: RECORD:

A. STAFF MATERIALS

The staff report and any staff presentation shall automatically become part of the record as shall any materials submitted from all parties by the materials deadline(s). All verbal testimony given at the hearing(s) also shall automatically become part of the record.

B. REMAND

The Board may remand an application/appeal back to the initial hearing body for reconsideration of their decision if the Board determines that the official record is incomplete, or that the application has had substantial additions, amendments or modifications from the application presented to the Commission, Hearing Examiner, or Director or that procedural steps required were not followed. The taking of additional testimony and evidence on remand shall be limited to those issues stated by the Board as per its written directive. Additional notice shall be required. Additional remand fees shall be paid by the applicant/appellant according to the County's fee schedule. Appellant/applicant shall not be responsible for remand fees when remand is to rectify procedural efforts of the hearing body and/or staff.

If after hearing the new testimony or evidence as directed by the Board, the Commission, Hearing Examiner or Director's decision or recommendation is changed, new recommendations and/or findings of fact and conclusions of law shall be sent to the Board for further action. If the Commission, Hearing Examiner, or Director's decision or recommendation is not changed, supplemental explanation and/or expanded recommendations and/or findings of fact and conclusions of law shall be sent back to the Board for further action.

A. CLOSING OF THE RECORD

At the conclusion of a hearing, the presiding party shall close the record unless the presiding party determines, in its discretion, additional information and/or materials is required, in which event, it may proceed as follows:

- (1) Continue the hearing to a date certain, or uncertain, and close the record with the exception of allowing the submission of specifically requested information; or

(2) Continue the hearing to a date certain, or uncertain, and leave the entire record open for the submission of additional evidence, at which time it will automatically be closed without further action of the presiding party; or

(3) Continue the hearing to a date certain for the purpose of receiving additional evidence and conducting such further proceedings as may, in its discretion, be advisable.

SECTION 13. Chapter 1, Article 17, Section 13 is hereby amended as follows:

01-17-13: DECISION BY PRESIDING PARTY:

When the record and public testimony has been closed, the presiding party shall take the matter under advisement for the purpose of deliberating toward a decision on the record. After deliberating, the presiding party may then immediately render a decision or recommendation complying with applicable law, or may continue the matter to a date and time certain for further deliberation and decision. The decision or recommendation may be a subsequent and administrative action of the presiding party.

SECTION 15. SEVERABILITY

Should any action or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole or a part thereof other than the part declared to be unconstitutional or invalid.

SECTION 17. Chapter 1, Article 17, Section 17 is hereby repealed as it is duplicative of Chapter 1, Article 1 of the Ordinance.

SECTION 19. Chapter 1, Article 17, Section 13 is hereby amended as follows:

01-17-19 EFFECTIVE DATE:

This ordinance shall be and is hereby declared to be in full force and effect upon its passage, approval and publication as provided by law in one issue of the Idaho Press-Tribune and as provided for in Idaho Code §§ 31-715 and 31-715A.

DATED this _____ day of _____, 2023.

CANYON COUNTY BOARD OF COMMISSIONERS

_____ Motion Carried Unanimously
_____ Motion Carried/Split Vote Below
_____ Motion Defeated/Split Vote Below

Yes No Did Not Vote

Commissioner Leslie Van Beek

**ORDINANCE AMENDING
CHAPTER 1, ARTICLE 17,
LAND USE/LAND DIVISION HEARING PROCEDURES**

Commissioner Brad Holton

Commissioner Zach Brooks

ATTEST: RICK HOGABOAM, CLERK

By: _____
Deputy Clerk