

LINDON CITY CODE

Chapter 17.09 - LAND USE AUTHORITY AND APPEAL AUTHORITY

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Section 17.09.010 Definitions
 "Appeal Authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use authority.
 "De Novo" means anew; afresh; generally a new hearing or a hearing for a section time, contemplating a review in same manner in which matter was originally heard and a review of previous hearing.
 "Land Use Application" means an application required by a municipality's land use ordinance in order to reach a final land use action or land use decision.
 "Land Use Authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application as the final decision maker.
 "Land Use Code" means legislatively adopted land use ordinances, often referred to as the Development Code, City Code, or Code.
 "Land Use Decision" means any final decision of the Planning Director or other official, board, commission, agency, or other body designated by the local legislative body who is responsible for the enforcement and/or approved of land use

code regulation.

Section 17.09.015 Land Use Authority

Land use applications shall be reviewed and acted upon to reach a final decision by the appropriate land use authority as listed in LCC 17.09, Table #1.

17.09.020 Appeal Authority

Appeals regarding a decision made by a land use authority shall be acted upon to read a final decision by the appropriate appeal authority as listed in LCC 17.09, Table #1.

***See Table #1 at end of section**

*in cases where the City Council implements LCC 17.08.090 and becomes the land use authority, the appeal authority becomes the Board of Adjustments.

17.09.030 Appeals

An applicant, a board or officer of Lindon City, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision or determination made by the land use authority in the interpretation and/or application of the land use ordinance.

17.09.040 Time to Appeal

1. Appeals shall only be taken within ten (10) days of the effective date of a final decision of a land use authority by submitting an Appeal Application to the City. IN the event that the final day for the filing of an appeal falls on a Saturday, Sunday or legal holiday, the period for the filing of an appeal shall be extended through the next working day.
2. Such appeal application shall specify the grounds of appeal and circumstances related thereto. An appeal application shall specify the grounds of appeal and circumstances related

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thereto. An appeal shall be accompanied by a written statement of the grounds of appeal and any required filing fees. An application failing to specify grounds of appeal or meet requirements of this chapter may be summarily dismissed by the appeal authority.

3. The land use authority shall forthwith transmit to the appeal authority all papers constituting the record upon which the action appealed from was taken. An appeal hearing shall be held within forty-five (45) calendar days of the appeal application submittal.

Section 17.09.050 Burden of Proof

The applicant has the burden of proving that the land use authority erred.

Section 17.09.060 Review on Record

The appeal authority's review of the decision of the land use authority shall be confined to the record of the proceeding, which shall include;

- 1. All materials, pleading, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered as evidence;
- 2. All materials submitted by the City or other agencies with respect to the application;
- 3. The minutes or recording of the hearing of the land use authority;
- 4. The findings and action of the land use authority; and
- 5. Argument confined to the record by the parties or their legal representatives at the time fo the review before the land use authority.

Section 17.09.070 De Novo Hearing

1. The appeal authority may, at its opinion, by motion of the appeal authority, hold a de novo hearing or admit additional testimony and other evidence, if it is satisfied that the testimony or other evidence could not have been presented upon initial hearing and action. IN deciding this admission, the appeal authority shall consider;

- a. Prejudice to parties;
- b. Convenience of locating the evidence at the time initial

hearing;

- c. Surprise to opposing parties;
- d. When notice was given to other parties as to the attempt to admit;
- e. The competency and relevancy of the proposed testimony and other evidence.

Upon a decision to admit additional testimony or evidence or to hear the entire matter de novo, the presentation of such testimony and evidence shall be processed in the same manner as a new application.

Section 17.09.080 Procedures

- 1. An appeal stays all proceedings in furtherance of the action appealed from unless the land use authority certifies to the appeal authority, after the Appeal Application shall have been filed with the land use authority, that by reason of facts stated in the application, a stay would, in the land use authority's opinion, cause imminent peril to life or property.
- 2. An appeal authority;
 - a. Shall;
 - i. Act in a quasi-judicial manner; and
 - ii. Serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
 - b. May no entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- 3. The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance. IN exercising its powers, if the appeal authority finds that the land use authority erred in its interpretation and application of a land use ordinance, the appeal authority may reverse or affirm, wholly or partly, or may modify the order, requirement, decision of

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determination and may make such order, requirement, decision or determination as acceptable to the appeal authority.

4. The concurring vote of the majority of the appeal authority shall be necessary to reverse any order, requirement, decision or determination of the land use authority, or to decide in favor of the appellant on any matter. Failure of an appeal authority to arrive at a majority vote on an appeal shall constitute a denial of the appeal application.

Section 17.09.090 Final Decision of Land Use Authority

The effective date of a decision of City staff is the date of a letter, permit, or other document notifying the applicant of the staff action. When acting as the Land Use Authority, the effective date of a decision of the Planning Commission, Board of Adjustment, City Council, or any other elected or appointed body is the date in which the written decision issued by the Land Use Authority is approved.

Section 17.09.100 Final Decision of Appeal Authority

The effective date of an Appeal Authority decision is the date the final decision is made (not when written decision is approved). (Ord. 2008-11, adopted 11/18/2008)

LCC 17.09, Table #1		
Land Use Application	Land Use Authority	Appeal Authority
General Plan Amendment	City Council	None
Zone Change & Zoning Ordinance Amendments	City Council	None
Major Subdivisions	City Council	Board of Adjustment
Minor Subdivisions*	Planning Commission	City Council
Plat Amendment*	Planning Commission	City Council
Alteration of Non-Conforming Use	City Council	Board of Adjustment
Reimbursement Agreement	City Council	Board of Adjustment
Property Line Adjustment*	City Staff	Planning Commission
Building Permit*	City Staff	Planning Commission
Temporary Site Plan*	City Staff	Planning Commission
Site Plan*	Planning Commission	City Council
Conditional Use Permit*	Planning Commission	City Council
Temporary Conditional Use Permit*	Planning Commission	City Council
Variances	Board of Adjustment	None
Other Administrative actions as listed in code or performed through department policy*	City Staff, Planning Commission, City Council	Board of Adjustment
Other Legislative actions	City Council	None

*In cases where the City Council implements LCC 17.08.090 and becomes the land use authority, the appeal authority becomes the Board of Adjustment. (Ord. 2013-14, amended 12/3/13)