

**PARK COUNTY
LAND USE REGULATIONS
2005**

**Land Development Procedures
Subdivision Regulations
Zoning Resolution
Building Permit Procedures**

**2004 – 2005 PARK COUNTY
BOARD OF COUNTY COMMISSIONERS**

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**2004 - 2005 PARK COUNTY
PLANNING COMMISSION**

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	ADMINISTRATION, INTERPRETATION, AND FEES 1
DIVISION 1	ADMINISTRATION..... 1
Section 1-100	Title and Short Title..... 1
Section 1-101	Authority..... 1
Section 1-102	Purposes..... 1
Section 1-103	Applicability..... 2
Section 1-104	Reserved..... 2
Section 1-105	Repeal and Effective Date..... 2
Section 1-106	Severability and Savings Clauses..... 3
DIVISION 2	BOARD OF ADJUSTMENT..... 4
Section 1-200	Creation and Appointment..... 4
Section 1-201	Powers and Duties..... 6
Section 1-202	Requirements of Professional Performance..... 6
Section 1-203	Rules of Procedure. 7
Section 1-204	Appeals of Board of Adjustment Decisions..... 10
DIVISION 3	PLANNING COMMISSION..... 11
Section 1-300	Creation and Authority..... 11
Section 1-301	Powers and Duties..... 13
Section 1-302	Requirements of Professional Performance..... 13
Section 1-303	Rules of Procedure..... 14
Section 1-304	Appeals of Planning Commission..... 17
DIVISION 4	FEES..... 18
Section 1-400	Application Fees and Deposit..... 18
Section 1-401	Reimbursement of County Review Costs..... 18
Section 1-402	Waivers and Modification of fees and Costs..... 18
DIVISION 5	AMENDMENT OF LAND USE REGULATIONS..... 20
Section 1-500	Amendment Procedure..... 20

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE II	
VIOLATIONS AND ENFORCEMENTS.....	1
DIVISION 1	
Section 2-100	
DIVISION 2	
Section 2-200	
Section 2-201	
Section 2-202	
Section 2-203	
Section 2-204	
VIOLATIONS.....	1
Violations.....	1
ENFORCEMENT.....	5
Remedies and Penalties.....	5
Enforcement Procedures.....	6
Inspections.....	7
False Information Unlawful and Suspension of Approval.....	8
Non-liability of County.....	8

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE III	VARIANCES AND APPEALS.....	1
DIVISION 1	VARIANCES.....	1
Section 3-100	Variance Authority.....	1
Section 3-301	Appeals of Variance Decisions by Board of Adjustment.....	5
DIVISION 2	ADMINISTRATIVE DECISIONS AND APPEALS.....	6
Section 3-200	General Administrative Interpretations.....	6
Section 3-201	Specific Administrative Decisions.....	6
Section 3-202	Administrative Forms.....	6
Section 3-203	Publication of Land Use Decisions.....	6
Section 3-204	Appeal Authority.....	6
Section 3-205	Appeals of Decisions by the Board of County Commissioners.....	8

ARTICLE I

ADMINISTRATION, INTERPRETATION, AND FEES

DIVISION 1 ADMINISTRATION

Section 1-100 Title and Short Title.

This document shall be known as the Park County Land Use Regulations or "LUR."

Section 1-101 Authority.

These Land Use Regulations are intended to fully exercise all relevant powers conferred by the laws of the State of Colorado, including, but not limited to:

- A. The Constitutions of the United States and the State of Colorado.
- B. Colorado State Statutory Enabling Legislation including but not limited to:
 - 1. Title 30, Article 28, C.R.S. The provisions of the County Planning Act.
 - 2. Title 29, Article 20, C.R.S. The provisions of the Local Government Land Use Control Enabling Act of 1974.
 - 3. Title 24, Article 65.1, C.R.S. The provisions of the Areas and Activities of State Interest Act. (H.B. 1041 Powers).
 - 4. Title 24, Article 67, C.R.S. The provisions of the Planned Unit Development Act of 1972.
 - 5. Title 24, Article 68, C.R.S. The provisions of the Vested Property Rights Act.
- C. All Other Powers Authorized. All other powers authorized by constitutional, statutory, and common law.

Section 1-102 Purposes.

The general purposes of these Land Use Regulations include:

- A. Implementation of the Strategic Master Plan. Conceptually a Master Plan is a guide to develop, rather than an instrument to control land use, thus the Land Use Regulations will recognize and attempt to implement the goals, objectives and policies of Park County as contained in the Park County Strategic Master Plan; the Master Plan is only one source of comprehensive planning, and is by express state law and statute advisory only. See C.R.S. § 30-28-106(3)(a)(f) and *Theobald v BOCC*, 644P.2d 942 (Colo 1982). See Appendix G, Park County Strategic Master Plan Guiding Principles.
- B. Compliance with Law. Implement the powers and authorities granted by the law of the state of Colorado.

- C. Protection of Quality of Life. To provide for protection of the public health, safety, welfare, comfort, convenience, prosperity of the residents and the cultural environment.
- D. Preservation of Orderly Development of the County. To provide for balanced, orderly growth patterns and to provide efficient, phased government services to accommodate existing and future residents.
- E. Preservation of Property Values. To preserve and promote the value of property, to protect the tax base of Park County and to respect the property rights of citizens.

Section 1-103 Applicability.

- A. General Applicability. These Land Use Regulations apply to all use and development of land, buildings, structures, and uses on all private and public property located within all unincorporated areas of Park County, Colorado, to the full extent permitted by Colorado and federal laws, regulations, and policies.
- B. Applicability to Pending Land Use Applications. A completed application for land use approval submitted to and pending before the County prior to the Effective Date of these Land Use Regulations shall be processed in accordance with the land use regulations in effect upon the date of the submission of the completed application. Following a final decision upon such pending application, the provisions of these Land Use Regulations shall apply to subsequent applications submitted for any part or portion of property subject to a previously approved land use application.
- C. Public Property Exemption Following Hearing. The Board of County Commissioners may, following a public hearing preceded by notice published not less than fourteen (14) days before the hearing in any newspaper of general circulation within the County, provide by resolution or by motion for an exemption to all, or to any portion or requirement of, the provisions of these Land Use Regulations. Such exemption may only be made available for property: (a) owned by or leased to Park County, Colorado, and (b) proposed for primary use for one or more public purposes. No exemption may be granted by the Board of County Commissioners for public property concerning applications for the rezoning of property or a Major Subdivision. The Board of County Commissioners shall not exempt public property from these Land Use Regulations unless the Board finds that such exemption is necessary to protect the health and safety of the public.

Section 1-104 Reserved.

Section 1-105 Repeal and Effective Date.

- A. Repealer. Except to the extent such former regulations are necessary to continue processing of applications submitted to and pending before the County prior to the Effective Date of these Land Use Regulations as required by Section 1-103, the 2003 Land Use Regulations of Park County, originally dated August 29, 2003, and thereafter amended by subsequent action of the Board of County Commissioners, are repealed in their entirety as of the Effective Date of these Land Use Regulations.

- B. Effective Date. Following adoption of a resolution approving these Land Use Regulations by the Board of County Commissioners, these Regulations shall be effective at 12:01 A.M., November 1, 2004 (“the Effective Date”).

Section 1-106 Severability and Savings Clauses.

- A. Invalid Provisions Severable. If any provision of this Land Use Regulation is declared invalid by a decision of any court of competent jurisdiction then the effect of such decision shall be limited to that provision which is expressly declared invalid and shall not affect any other provision of these Land Use Regulations.
- B. Invalid Provisions Limited to Specific Property. If the application of any provision of these Land Use Regulations to any specifically identified property is declared to be invalid by a decision of any court of competent jurisdiction then the effect of such decision shall be limited to the specifically identified property. Such decision shall not affect the application of these Land Use Regulations to any other tract of land.
- C. Savings Clause. The amendment or repeal of any resolution or part thereof by these Land Use Regulations shall not release, extinguish, or modify, in whole or in part, any penalty or liability, or any right of the County, incurred or obtained under the amended or repealed land use regulations or part thereof. These Land Use Regulations or part thereof, so amended or repealed, shall be treated and held as remaining in force or effect for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions, for the enforcement of any penalty, liability, or any right of the County, for the purpose of sustaining any judgment, decree, or order which may be rendered in such proceedings, actions, acts, decisions, hearings and appeals pending before the County, and any other decision-making body or officer, and any court.

DIVISION 2 BOARD OF ADJUSTMENT

Section 1-200 Creation and Appointment.

- A. Board of Adjustment Created. Pursuant to C.R.S. § 30-28-117, the Park County Board of Adjustment is hereby created. The Board of Adjustment shall consist of five (5) regular members and other alternate members. All regular and alternate members must be residents of Park County.
- B. Alternate Members. Any number of alternate members may be appointed by the Board of County Commissioners to assist the Board of Adjustment as provided by this Section. The Board of Adjustment Chairperson shall select an alternate member, when present at a meeting, to serve and to vote on the Board of Adjustment during all, or any part of, any meeting in the event that a regular member is temporarily absent or unable to act for any reason or where a opening on the Board of Adjustment exists due to a vacancy. Alternate members in attendance at a meeting when there is no opening due to an absent regular member or vacancy shall be entitled to participate during any meeting to the same extent as a regular member although such alternate member shall not be entitled to vote upon any matter.
- C. Appointment and Term of Members. Regular members and alternate members shall be appointed by majority vote of the Board of County Commissioners. The Board of County Commissioners shall endeavor to appoint members and alternate members will provide representation from each of the Sub areas of Park County. Regular members shall be appointed for a three (3) year term in a manner that permits staggered terms. Alternate members of the Board of Adjustment shall be appointed for a maximum two (2) year term that shall expire at 11:59 p.m. of December 31 on the second year of the alternate member's service . Any regular or alternate member of the Board of Adjustment may be re-appointed to any number of additional terms, as the Board of County Commissioners deems appropriate. In the event that the Board of County Commissioners fails to take affirmative action to re-appoint a regular or alternate member of the Board of Adjustment on or before the expiration of such member's term, the previously appointed member shall be automatically deemed re-appointed for an additional term.
- D. Unexpired Terms. In the event of the death, resignation, or removal of any member or alternate member before the expiration of such member's term, a successor shall be appointed in the manner described above for the unexpired portion of such member's term.
- E. Compensation. All regular members and alternate members of the Board of Adjustment shall be paid a per diem and/or mileage compensation only if, and in such amount, established by resolution of the Board of County Commissioners. Any changes in the amount or benefit of a standard per diem and/or mileage amount of compensation shall be effective only for the term following the effective date of the resolution.
- F. Resignation. Any member of the Board of Adjustment may resign at anytime by delivery of a written statement or letter of resignation to the Chairperson of the Board of Adjustment, to the chief administrative official of the County, or to any County Commissioner. Regardless of the content or form of the statement or letter, all resignations shall be effective upon receipt.

- G. Removal. The Board of County Commissioners may remove a regular or alternate member of the Board of Adjustment for cause by a majority vote pursuant to the following procedure:
1. Grounds for Removal. Grounds for removal shall include, but not be limited to, failure to disclose a real or apparent conflict of interest concerning a particular matter under consideration by the applicable commission or board, documented incompetence or inefficiency, intemperance such as extreme immoderate personal conduct, recurring loss of temper or control or abuse of alcohol or illegal narcotic or dangerous drugs in public meetings, disregard for established County policy (including but not limited to the Requirements for Professional Performance, Section 1-202 of these Land Use Regulations), the unexcused absence of three (3) meetings during any one year period, or other conduct that adversely reflects upon the member's fitness to serve on the Board of Adjustment.
 2. Oral Warning. Whenever grounds for removal are believed to exist, the BOCC in its sole discretion may determine, based upon information and belief or a recommendation of the Planning Director, that removal is not immediately necessary. In such case, the BOCC may communicate, orally or in writing, to the Board of Adjustment member the grounds for removal and provide a time frame not exceeding six (6) months in which said Board of Adjustment member shall correct the alleged deficiency in performance. Failure to correct such deficiency in performance within the prescribed time frame may result in the Board of Adjustment member's removal by the BOCC in accordance with the procedures in this Section.
 3. Written Charge. Notwithstanding the BOCC's discretionary oral warning as described in the preceding paragraph, upon information and belief, the BOCC may remove any Board of Adjustment member for cause by filing a written charge ("Charge") against such Board of Adjustment member. The Charge shall specify the cause(s) for removal and the time, place and date of the hearing at which the member may appear to present evidence on his or her behalf. The hearing shall take place no sooner than fifteen (15) days from the date of the Charge and the Board of Adjustment member may request one continuance of the hearing date not exceeding fifteen (15) days, provided such request is made prior to the scheduled hearing date. Said Charge shall be personally served upon the member or sent certified mail, with return receipt requested, to the member at the member's last known registered address.
 4. Public Hearing. The BOCC shall conduct a public hearing to consider removal of a Board of Adjustment member at the time and place stated in the Charge. The Board of Adjustment member may appear at such hearing to answer, defend or otherwise present mitigating factors concerning the allegations set forth in the Charge. In lieu of appearing at the hearing, the Board of Adjustment member may provide a written statement to the BOCC setting forth any defense or mitigating factors. The BOCC and the Board of Adjustment member may be represented by legal counsel in order to present evidence in support of or in opposition to the allegations specified in the Charge.

5. Decision. At the conclusion of the hearing or within five (5) days of the public hearing, the BOCC shall render a decision based on the evidence and testimony presented at the hearing. If the BOCC determines, by majority vote, that the causes specified in the Charge justify removal, the BOCC shall deem said Board of Adjustment member removed from office effective immediately. The BOCC's decision to remove a member shall be in writing, shall be mailed to the Board of Adjustment member if such member is not present at the time the BOCC renders a decision, and shall be final.

Section 1-201 Powers and Duties.

The Board of Adjustment shall have the following powers and duties:

- A. To authorize and issue variances from the provisions of Article V in accordance with Division 1 of Article III of these Land Use Regulations.
- B. To exercise such other powers and duties as may be specifically referred to the Board of Adjustment by the Board of County Commissioners by resolution, which are not inconsistent with the powers and duties of boards of adjustment as established by C.R.S. §§ 30-28-117 and 30-28-118.

Section 1-202 Requirements of Professional Performance.

Every member of the Board of Adjustment shall abide by the following requirements of professional performance:

- A. A Board of Adjustment Member Shall Seek to Avoid Impropriety and the Appearance of Impropriety in all the Board of Adjustment Member's Activities.
 1. A Board of Adjustment member shall at all times seek to respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Board of Adjustment.
 2. A Board of Adjustment member shall not allow family, social, or other relationships to influence the Board of Adjustment member's quasi-judicial conduct or independent judgment.
 3. A Board of Adjustment member shall not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the member or the member's immediate family member has a substantial financial interest in a competing firm or undertaking.
 4. A Board of Adjustment member shall not lend the prestige of his or her office to advance the private interests of others; nor shall a Board of Adjustment member convey or permit others to convey the impression that they are in a special position to influence him or her.

- B. A Board of Adjustment Member Shall Perform the Duties of His or Her Office Impartially and Diligently. A Board of Adjustment member's duties include all the duties of his or her office prescribed by law. In the performance of these duties, the following standards apply:
1. A Board of Adjustment member shall be faithful to the law and maintain professional competence in the rules and law governing the Board of Adjustment. A Board of Adjustment member shall be unswayed by partisan interest, public clamor, or fear of criticism.
 2. A Board of Adjustment member shall maintain order and decorum in proceedings before him or her.
 3. A Board of Adjustment member shall be patient, dignified, and courteous to applicants, members of the public, consultants, lawyers and representatives, County employees, and others with whom a Board of Adjustment member deals in his or her official capacity, and should require similar conduct of the County employees and others subject to the Board of Adjustment member's direction and control.
- C. A Board of Adjustment Member Shall Not Participate Where Unable to Professionally Perform. In the event that a Board of Adjustment member finds himself or herself unable to perform in accordance with the requirements of this Section, the member shall disclose such inability and the general reasons therefore immediately following the Chairperson's announcement of the opening or commencement of consideration of the matter and the member shall recuse himself or herself from any official action regarding such matter and not participate as a Board of Adjustment member.

Section 1-203 Rules of Procedure.

- A. Rules Authorized. The Board of Adjustment may promulgate rules of procedure not inconsistent with these Land Use Regulations.
- B. Officers. The Board of Adjustment shall annually elect its own Chairperson and Vice-Chairperson at an available meeting on or after January 1 of each year.
- C. Recording Secretary. A recording secretary shall be provided to the Board of Adjustment by the BOCC and such recording secretary shall be present at all regular and special meetings of the Board of Adjustment. The recording secretary shall take the minutes of the meeting. The minutes shall be made a matter of public record within a practical time after the meeting and will be available from the Planning Department. Anyone wishing to have a transcript of the meeting may have a court reporter present at his or her own expense.
- D. Advisor. The Planning Director shall serve as advisor to the Board of Adjustment on all matters brought to the Board of Adjustment's attention, and be responsible for scheduling all Board of Adjustment meetings in accordance with the guidelines established by the Board of Adjustment.
- E. Open Meetings Required. All meetings of the Board of Adjustment shall be open to the public except for lawfully conducted executive sessions authorized by the Colorado

Open Meetings Law. The Board of Adjustment shall meet as often as necessary to hear and act upon applications and other appropriate requests submitted. An agenda shall be made available to the public from the Planning Department prior to or at each meeting.

F. Quorum. The presence of four (4) members shall be necessary to constitute a quorum for all purposes.

G. Voting Requirements:

1. Variations. A vote of at least four (4) Board of Adjustment members shall be necessary to approve a variance. The failure of at least four (4) Board of Adjustment members to vote affirmatively upon a motion to approve a variance shall constitute a denial of the variance. A majority vote of a quorum of the Board of Adjustment upon a motion to deny a variance shall constitute a denial of the variance.

2. Authorization to Impose Conditions. The Board of Adjustment, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to assure compliance with this Land Use Regulation and to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the County. All conditions imposed upon any variance shall be set forth in writing together with the provision of this Land Use Regulation the condition is designed to address.

H. Conduct of Public Hearings. Whenever the Board of Adjustment conducts a public hearing to consider an application for variance or other application for land use approval, the following procedure shall apply in addition to any promulgated rules of procedure adopted by the Board of Adjustment:

1. Opening of Public Hearing. The Chairperson shall formally open and announce the public hearing.

2. Acceptance of Record. The Chairperson shall announce the acceptance of the application, supporting documentation provided by staff, agency referral comments, correspondence delivered to the County prior to the hearing, and announce that any other documentation presented during the hearing shall be made part of the record of the matter.

3. Presentation by Staff. The Planning staff shall, present such preliminary information regarding the application deemed relevant or helpful by the staff. Staff shall seek to provide information to establish that proper notice was provided for the public hearing.

4. Presentation by Applicant. The applicant shall make a presentation to demonstrate that the requirements and criteria of approval of the application are satisfied. The applicant shall be afforded such time as deemed necessary by the applicant for such presentation, subject to the Chairperson's discretion to limit the presentation to avoid duplicative or repetitious information.

5. Public Comment. As directed by the Chairperson, those persons in attendance who wish to speak shall be afforded an opportunity. The Chairperson may establish reasonable time limitations on such opportunity when deemed necessary to conduct an efficient meeting. In no event shall any member of the public be afforded less than three (3) minutes to present their testimony or information.
6. Applicant Rebuttal. The applicant shall be afforded an opportunity to provide additional information in the form of a rebuttal of the public comments.
7. Closing of Public Hearing. Upon the conclusion of all presentations, the Chair should formally announce the closing of the public hearing. Closure of the public hearing shall indicate that no further unsolicited comment from the applicant or public shall be entertained; however, the Board of Adjustment members may pose questions and solicit information from the applicant or members of the public who spoke during the hearing.
8. Deliberation. The Board of Adjustment shall deliberate the evidence of the application and consider whether the evidence presented constituted sufficient and competent evidence to support the requested land use approval.
9. Motion. The Board of Adjustment shall entertain one or more motions to reach a conclusion regarding the application. Such motion(s) may include:
 - a. *Approval* of the application without conditions.
 - b. *Conditional Approval* of the proposal indicating specifically for the record in writing what condition(s) are imposed. No condition shall be imposed unless the Board of Adjustment is authorized by these Land Use Regulations to impose a condition upon the land use approval to be granted.
 - c. *Denial* of the proposal indicating for the record the reason(s) for the recommendation of denial.
 - d. *Continuance* of the hearing to a date and time certain or to an unspecified date in order to obtain more information to help clarify the application.
 - i. Motions to Continue a Matter To A Date Certain. A motion to continue (or to postpone) a matter pending before the Board of Adjustment shall be deemed in order and may be made at any time during consideration of any matter. A motion to continue shall state the date, time, and place for the continued consideration of the matter being continued and the specific reason for the proposed continuance. Approval of a motion to continue shall require only a majority of a quorum present and voting. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the date, time, and place stated in the motion. If the Board of Adjustment properly moves and votes to continue a matter to a specified date, time, and place, no further or additional notice of

the continued matter need be provided. If the applicant or representative is not present for an application, the Board of Adjustment may at its discretion continue the consideration of the application.

- ii Motions to Continue a Matter To An Unspecified Date. A motion to continue (or to postpone) to an indefinite time or without a specified date and time shall only be appropriate if the applicant consents to the proposed continuance. Approval of a motion to continue to an unspecified date shall require only a majority of a quorum present and voting. If the Board of Adjustment properly moves and votes to continue a matter to an indefinite or unspecified date, new public notice of the date, time, and place of the continued meeting or hearing shall be required in accordance with the notice requirements applicable to the application. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the matter is properly brought before the Board of Adjustment at the time and date as stated in the public notice.

Section 1-204 Appeals of Board of Adjustment Decisions.

Final decisions of the Board of Adjustment on quasi-judicial matters shall be appealed in accordance with Rule 106(a)(4) of the Rules of Colorado Civil Procedure. Such appeal shall be limited, as provided by Rule 106(a)(4) to a determination of whether the Board of Adjustment exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer. See Colorado Rules of Civil Procedure, Volume 12 of the Colorado Revised Statutes.

DIVISION 3 PLANNING COMMISSION

Section 1-300 Creation and Authority.

- A. Planning Commission Created. Pursuant to C.R.S. § 30-28-103, the Park County Planning Commission is hereby created. The Planning Commission shall consist of five (5) regular members and other alternate members. All regular and alternate members must be residents of Park County.

- B. Alternate Members. Any number of alternate members may be appointed by the Board of County Commissioners to assist the Planning Commission as provided by this Division. The Planning Commission Chairperson shall select an alternate member, when present, to serve and to vote on the Planning Commission during all, or any part of, any meeting in the event that a regular member is temporarily absent or unable to act for any reason or where a opening on the Planning Commission exists due to a vacancy. Associate members in attendance at a meeting or hearing when there is no opening due to an absent regular member or vacancy shall be entitled to participate during any hearing or meeting to the same extent as a regular member although such alternate member shall not be entitled to vote upon any matter.

- C. Appointment and Term of Members. Regular members and alternate members shall be appointed by majority vote of the Board of County Commissioners. The Board of County Commissioners shall endeavor to appoint members and alternate members will provide representation from each of the Sub areas of Park County. Regular members shall be appointed for a three (3) year term. Alternate members of the Planning Commission shall be appointed for a two (2) year term that shall expire at 11:59 p.m. of December 31 in the second year of the alternate member's service.. Any regular or alternate member of the Planning Commission may be re-appointed to any number of additional terms, as the Board of County Commissioners deems appropriate. In the event that the Board of County Commissioners fails to take affirmative action to re-appoint any regular or alternate member of the Planning Commission on or before the expiration of such member's term, the previously appointed member shall be automatically deemed re-appointed for an additional term.

- D. Unexpired Terms. In the event of the death, resignation, or removal of any member or alternate member before the expiration of such member's term, a successor shall be appointed in the manner described above for the unexpired portion of such member's term.

- E. Compensation. All members and alternate members of the Planning Commission shall be paid a per diem and/or mileage compensation only if, and in such amount, established by resolution of the Board of County Commissioners. Any changes in the amount or benefit of a standard per diem and/or mileage amount of compensation shall be effective only for the term following the effective date of the resolution.

- F. Resignation. Any member of the Planning Commission may resign at anytime by delivery of a written statement or letter of resignation to the Chairperson of the Commission, to the chief administrative official of the County, or to any County Commissioner. Regardless of the content or form of the statement or letter, all resignations shall be effective upon receipt.

G. Removal. The Board of County Commissioners may remove a regular or alternate member of the Planning Commission for cause by a majority vote pursuant to the following procedure:

1. Grounds for Removal. Grounds for removal shall include, but not be limited to, failure to disclose a real or apparent conflict of interest concerning a particular matter under consideration by the applicable commission or board, documented incompetence or inefficiency, intemperance such as extreme immoderate personal conduct, recurring loss of temper or control or abuse of alcohol or illegal narcotic or dangerous drugs in public meetings, disregard for established County policy (including but not limited to the Requirements for Professional Conduct, Section 1-302 of these Land Use Regulations), the unexcused absence of three (3) meetings during one year period, or other conduct that adversely reflects upon the Member's fitness to serve on the Planning Commission.
2. Oral Warning. Whenever grounds for removal are believed to exist, the Board of County Commissioners in its sole discretion may determine, based upon information and belief or a recommendation of the Planning Director, that removal is not immediately necessary. In such case, the BOCC may communicate, orally or in writing, to the Planning Commission member the grounds for removal and provide a time frame not exceeding six (6) months in which said Planning Commission member shall correct the alleged deficiency in performance. Failure to correct such deficiency in performance within the prescribed time frame may result in the Planning Commission member's removal by the BOCC in accordance with the procedures in this Section.
3. Written Charge. Notwithstanding the BOCC's discretionary oral warning as described in the preceding paragraph, upon information and belief, the BOCC may remove any Planning Commission member for cause by filing a written charge ("Charge") against such Planning Commission member. The Charge shall specify the cause(s) for removal and the time, place and date of the hearing at which the member may appear to present evidence on his or her behalf. The hearing shall take place no sooner than fifteen (15) days from the date of the Charge and the Planning Commission member may request one continuance of the hearing date not exceeding fifteen (15) days, provided such request is made prior to the scheduled hearing date. Said Charge shall be personally served upon the member or sent certified mail, with return receipt requested, to the member at the member's last known registered address.
4. Public Hearing. The BOCC shall conduct a public hearing to consider removal of a Planning Commission member at the time and place stated in the Charge. The Planning Commission member may appear at such hearing to answer, defend or otherwise present mitigating factors concerning the allegations set forth in the Charge. In lieu of appearing at the hearing, the Planning Commission member may provide a written statement to the BOCC setting forth any defense or mitigating factors. The BOCC and the Planning Commission member may be represented by legal counsel in order to present evidence in support of their respective positions.
5. Decision. At the conclusion of the hearing or within five (5) days of the public hearing, the BOCC shall render a decision based on the evidence and testimony

presented at the hearing. If the BOCC determines, by majority vote, that the causes specified in the Charge justify removal, the BOCC shall deem said Planning Commission member removed from office effective immediately. The BOCC's decision to remove a Member shall be in writing, shall be mailed to the Planning Commission member if such member is not present at the time the BOCC renders a decision, and shall be final.

Section 1-301 Powers and Duties.

The Planning Commission shall have the following powers and duties:

- A. To review all land use applications and make formal recommendations to the Board of County Commissioners, in accordance with these Land Use Regulations and state law.
- B. When instructed by the BOCC, to make and adopt a County Comprehensive Plan or Master Plan, or elements of such plan.
- C. To review and make recommendations to the BOCC for amendments to these Land Use Regulations.
- D. To review and make recommendations to the BOCC regarding zoning and subdivision matters.
- E. To provide other assistance to the BOCC on any matter referred to the Planning Commission.

Section 1-302 Requirements of Professional Performance.

Every member of the Planning Commission shall abide by the following requirements of professional performance:

- A. A Planning Commission Member Shall Seek to Avoid Impropriety and the Appearance of Impropriety in all the Planning Commission Member's Activities.
 - 1. A Planning Commission member shall at all times seek to respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Planning Commission.
 - 2. A Planning Commission member shall not allow family, social, or other relationships to influence the Planning Commission member's quasi-judicial conduct or independent judgment.
 - 3. A Planning Commission member shall not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the member or the member's immediate family member has a substantial financial interest in a competing firm or undertaking.
 - 4. A Planning Commission member shall not lend the prestige of his or her office to advance the private interests of others; nor shall a Planning Commission

member convey or permit others to convey the impression that they are in a special position to influence him or her.

- B. A Planning Commission Member Shall Perform the Duties of His or Her Office Impartially and Diligently. A Planning Commission member's duties include all the duties of his or her office prescribed by law. In the performance of these duties, the following standards apply:
1. A Planning Commission member shall be faithful to the law and maintain professional competence in the rules and law governing the Planning Commission. A Planning Commission member shall be unswayed by partisan interest, public clamor, or fear of criticism.
 2. A Planning Commission member shall maintain order and decorum in proceedings before him or her.
 3. A Planning Commission member shall be patient, dignified, and courteous to applicants, members of the public, consultants, lawyers and representatives, County employees, and others with whom a Planning Commission member deals in his or her official capacity, and should require similar conduct of the County employees and others subject to the Planning Commission member's direction and control.
- C. A Planning Commission Member Shall Not Participate Where Unable to Professionally Perform. In the event that a Planning Commission member finds himself or herself unable to perform in accordance with the requirements of this Section, the member shall disclose such inability and the general reasons therefore immediately following the Chairperson's announcement of the opening or commencement of consideration of the matter and the member shall recuse himself or herself from any official action regarding such matter and not participate as a Planning Commission member.

Section 1-303 Rules of Procedure.

- A. Rules Authorized. The Planning Commission may promulgate rules of procedure not inconsistent with these Land Use Regulations.
- B. Officers. The Planning Commission shall annually elect or appoint its own Chairperson and Vice-Chairperson at an available meeting on or after January 1 of each year.
- C. Recording Secretary. A recording secretary shall be provided to the Planning Commission by the BOCC and such recording secretary shall be present at all regular and special meetings of the Planning Commission. The recording secretary shall take the minutes of the meeting. The minutes shall be made a matter of public record within a practical time after the meeting and will be available from the Planning Department. Anyone wishing to have a transcript of the meeting may have a court reporter present at his or her own expense.
- D. Advisor. The Planning Director shall serve as advisor to the Planning Commission on all planning and zoning matters brought to the Commission's attention, and be responsible for scheduling all Planning Commission meetings in accordance with the guidelines established by the Planning Commission. The Planning Director, or authorized

representative, shall represent the Planning Commission at official meetings at which the Planning Commission recommendation or opinion is so solicited, inclusive of, but not limited to, meetings before the Board of County Commissioners and at such other times as approved by the Planning Commission.

- E. Meetings. All meetings of the Planning Commission shall be open to the public except for lawfully conducted executive sessions authorized by the Colorado Open Meetings Law. The Planning Commission shall meet as often as necessary to hear and act upon applications and other appropriate requests submitted. Whenever possible, an agenda shall be made available to the public from the Planning Department prior to or at each meeting.
- F. Quorum. The presence of four (4) members shall be necessary to constitute a quorum.
- G. Voting Requirements. Unless otherwise required by law, the approval, acceptance, or other action on any motion, resolution, or proposition before the Planning Commission shall require a majority of a quorum present.
- H. Conduct of Public Hearings. Whenever the Planning Commission conducts a public hearing to consider an application for variance or other application for land use approval, the following procedure shall apply in addition to any promulgated rules of procedure adopted by the Planning Commission:
 - 1. Opening of Public Hearing. The Chairperson shall formally open and announce the public hearing.
 - 2. Acceptance of Record. The Chairperson shall announce the acceptance of the application, supporting documentation provided by staff, agency referral comments, correspondence delivered to the County prior to the hearing, and announce that any other documentation presented during the hearing shall be made part of the record of the matter.
 - 3. Presentation by Staff. The Planning staff may, at its option, present such preliminary information regarding the application deemed relevant or helpful by the staff. Staff should seek to provide information to establish that proper notice was provided for the public hearing.
 - 4. Presentation by Applicant. The applicant shall make a presentation to demonstrate that the requirements and criteria of approval of the application are satisfied. The applicant shall be afforded such time as deemed necessary by the applicant for such presentation, subject to the Chairperson's discretion to limit the presentation to avoid duplicative or repetitious information.
 - 5. Public Comment. As directed by the Chairperson, those persons in attendance who wish to speak shall be afforded an opportunity. The Chairperson may establish reasonable time limitations on such opportunity when deemed necessary to conduct an efficient meeting. In no event shall any member of the public be afforded less than three (3) minutes to present their testimony or information.

6. Applicant Rebuttal. The applicant shall be afforded an opportunity to provide additional information in the form of a rebuttal of the public comments.
7. Closing of Public Hearing. Upon the conclusion of all presentations, the Chair should formally announce the closing of the public hearing. Closure of the public hearing shall indicate that no further unsolicited comment from the applicant or public shall be entertained; however, the Planning Commission members may pose questions and solicit information from the applicant or members of the public who spoke during the hearing.
8. Deliberation. The Planning Commission shall deliberate the evidence of the application and consider whether the evidence presented constituted sufficient and competent evidence to support the requested land use approval.
9. Motion. The Planning Commission shall entertain one or more motions to reach a conclusion regarding the application. Such motion(s) may include:
 - a. *Recommend Approval* of the application without conditions.
 - b. *Recommend Conditional Approval* of the proposal indicating specifically for the record what condition(s) are imposed. No condition shall be imposed unless the Planning Commission is authorized by these Land Use Regulations to impose a condition upon the land use approval to be granted.
 - c. *Recommend Denial* of the proposal indicating for the record the reason(s) for the recommendation of denial.
 - d. *Continuance* of the hearing until a date and time certain or to an unspecified date in order to obtain more information to help clarify the application.
 - i. Motions to Continue a Matter To A Date Certain. A motion to continue (or to postpone) a matter pending before the Planning Commission shall be deemed in order and may be made at any time during consideration of any matter. A motion to continue shall state the date, time, and place for the continued consideration of the matter being continued and the specific reason for the proposed continuance. Approval of a motion to continue shall require only a majority of a quorum present and voting. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the date, time, and place stated in the motion. If the Planning Commission properly moves and votes to continue a matter to a specified date, time, and place, no further or additional notice of the continued matter need be provided. If the applicant or representative is not present for an application, the Planning Commission may at its discretion continue the consideration of the application.

- ii Motions to Continue a Matter To An Unspecified Date. A motion to continue (or to postpone) to an indefinite time or without a specified date and time shall only be appropriate if the applicant consents to the proposed continuance. Approval of a motion to continue to an unspecified date shall require only a majority of a quorum present and voting. If the Planning Commission properly moves and votes to continue a matter to an indefinite or unspecified date, new public notice of the date, time, and place of the continued meeting or hearing shall be required in accordance with the notice requirements applicable to the application. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the matter is properly brought before the Planning Commission at the time and date as stated in the public notice.
- I. Mandatory Recommendation Deadline. Unless the deadline is waived by the applicant, the Planning Commission shall render a recommendation to approve, conditionally approve, or deny an application within ninety (90) days of the opening of the public hearing or public meeting on any matter formally presented to the Planning Commission for review and action. In the event that the Planning Commission fails to render such a recommendation on or prior to such ninety (90) day deadline, the application shall be deemed recommended for approval by the Planning Commission.

Section 1-304 Appeals of Planning Commission Recommendations.

Because recommendations and actions of the Planning Commission are advisory only and are not final decisions on legislative, quasi-judicial, or administrative matters, such recommendations shall not be subject to appeal pursuant to Rule 106(a)(4) of the Rules of Colorado Civil Procedure.

DIVISION 4 FEES

Section 1-400 Application Fees and Deposit.

At the time of submission of any application for any type of land use approval described in these Land Use Regulations, the applicant shall pay to the County the established fees and deposits for the purpose of the County's review and processing of the application. The Board of County Commissioners may, by resolution with or without referral to or recommendation from the Planning Commission, adopt and amend from time to time a fee and deposit schedule for all applications and proceedings under these Land Use Regulations. The Board of County Commissioners may exempt specific classes or types of applications from fees and/or deposits where such exemption would encourage applicants to pursue land use approvals deemed by the Board of County Commissioners to advance important goals or policies of Park County.

Section 1-401 Reimbursement of County Review Costs.

- A. Reimbursement Agreement Required. Where required as part of any application for land use approval described in these Land Use Regulations, the applicant shall execute an *Agreement for Payment of Development Review Expenses* ("Agreement") in a form substantially similar to that included in Appendix C of these Regulations. The terms, conditions, and obligations of the Agreement contained in Appendix C are incorporated as requirements of applications for land use approval as if set forth in full in this section. In the event that an applicant proposes any change or revision to the Agreement, the Planning Director shall postpone the processing of the application until such time that the proposed change or revision is presented to the County Attorney and the Board of County Commissioners. The Board of County Commissioners may, at its discretion after reviewing the advice of the County Attorney, approve, reject, or modify the proposed change or revision of the Agreement. Such consideration and decision by the Board of County Commissioners shall be conducted as an administrative matter. The Planning Director may, at his or her discretion, execute the Agreement (in its standard form or as approved by the Board of County Commissioners) on behalf of the County or forward such Agreement to the Board of County Commissioners for the Board's consideration and approval as an administrative matter. No application shall be deemed complete unless accompanied by a properly and fully executed Agreement for Payment of Development Review Expenses.
- B. Reimbursement of Unpaid Expenses. In the event the County incurs expenses for the review of the applicant's request greater than the monies on deposit or collected from the applicant, the applicant shall reimburse the County for the additional expenses. The applicant shall make reimbursement within ten (10) days of the date of the County's submission of a written invoice or a written statement to the applicant for payment of the additional expenses. Failure by the applicant to pay the invoice in full within the specified time shall be cause for the County to cease processing the application and/or deny approval of the application.

Section 1-402 Waivers and Modification of Fees and Costs.

- A. Waivers and Modification of Fees and Expenses. Upon written request by an applicant, the Board of County Commissioners may at its discretion administratively waive, modify, adjust, or refund any fee or expense associated with the processing of any application where the Board determines that any one or more of the following exist:

1. The project proposed by the application will be restricted to providing residential housing opportunities not generally available within the County or its surrounding area, such as, but not limited to: (a) housing designed and priced to provide ownership opportunities to individuals with incomes below the median annual income for Park County; (b) housing for elderly individuals; (c) housing for handicapped individuals, as defined by the Fair Housing Amendments Act, 42 U.S.C. § 3602 *et seq.*; and/or (d) group homes for elderly, disadvantaged, or handicapped individuals.
 2. The project proposed by the application will be restricted to a land use that will directly and substantially advance one or more significant goals and policies of the Park County Strategic Master Plan.
 3. The project proposed by the application will significantly or substantially exceed applicable requirements for dedication of desirable public open space or useable public park area or provides a significant and substantial public benefit to the County not otherwise required by these Land Use Regulations.
 4. The project proposed by the application is requested by a federal, state, or local governmental or quasi-governmental entity and the Board of County Commissioners has determined that the project will substantially advance the health, safety, and welfare of the County.
 5. The application was delayed in its timely processing due to an error by County staff through no fault of the applicant and a waiver or other relief is justified to remedy an unfairness or harm caused to the applicant as the result of such error.
- B. County Exempt from Fees and Deposit Requirements. Applications, for which the applicant is Park County, or its offices, boards, commissions, or departments, shall be exempt from payment of any application fee or review deposit.

DIVISION 5

AMENDMENT OF LAND USE REGULATIONS

Section 1-500

Amendment Procedure.

- A. Amendment by Resolution of Board. These Land Use Regulations may be amended, revised, or altered from time to time by resolution adopted by the Board of County Commissioners following review by the Planning Commission in accordance with this Division. Unless otherwise provided by such resolution, any amending resolution shall be effective immediately upon adoption by the BOCC.
- B. Initiation and Application for LUR Amendment. An amendment to the text of these Land Use Regulations may be initiated by the Administrator, the Planning and Zoning Commission, The Board of County Commissioners, a resident of the County or any person who holds a recognized interest in real property in the County.
- C. Planning Commission Review. Prior to approval of any proposed amendment of these Land Use Regulations, a draft resolution containing the text of the proposed amendment shall be submitted to the Planning Commission for review and consideration. For purpose of this section, the "date of submission" shall be the date of the presentation of the draft resolution to the Commission at a regular or special meeting of the Commission. Within thirty (30) days of the date of submission of the amendment to the Commission, the Commission shall endeavor to render its approval, disapproval, or recommendation to the BOCC. The Planning Commission's failure to render its approval, disapproval, or provide any recommendation to the BOCC within thirty (30) days of the date of submission of the proposed amendment to the Commission may be deemed by the BOCC as approval of the proposed amendment by the Planning Commission.
- D. Board of County Commissioners Public Hearing. Before final adoption of a proposed amendment to these Land Use Regulations, the Board of County Commissioners shall hold at least one public hearing on the proposed amendment.
- E. Notice of Public Hearing. Notice of the public hearing shall be provided as follows:
 1. Content of Notice. The notice of public hearing shall include the date, time, place, and general purpose of the hearing, a general description of the topic of the proposed amendment of the Land Use Regulations. The Planning Department may include other information deemed appropriate by the Department to apprise the public of the general nature of the action proposed.
 2. Form of Notice. In accordance with C.R.S. § 30-28-116, notice of public hearing shall be published in the official County newspaper or in a newspaper of general circulation within Park County at least fourteen (14) days before the date of the hearing.
- F. Standard for Approval of Amendment. As a legislative act, the amendment of these Land Use Regulations shall be subject to the discretion of the BOCC. Any approval of an amendment to these Land Use Regulations shall constitute a finding by the BOCC that the amendment advances the health, safety, or welfare of the County.

DIVISION 6 BOARD OF COUNTY COMMISSIONERS

Section 1-600, Rules of Procedure for Hearing of Development Applications

- A. Rules Authorized. The Board of County Commissioners may promulgate rules of procedure not inconsistent with these Land Use Regulations.
- B. Conduct of Public Hearings. Whenever the Board of County Commissioners conducts a public hearing to consider a development application, the following procedure shall apply in addition to any promulgated rules of procedure adopted by the Planning Commission:
1. Opening of Public Hearing. The Chairperson shall formally open and announce the public hearing.
 2. Acceptance of Record. The Chairperson shall announce the acceptance of the application, supporting documentation provided by staff, agency referral comments, correspondence delivered to the County prior to the hearing, and announce that no other documentation presented during the hearing shall be made part of the record of the matter.
 3. Presentation by Staff. The Planning staff may, at its option, present such preliminary information deemed relevant or helpful by the staff. Staff should seek to provide information to establish that proper notice was provided for the public hearing.
 4. Presentation by Applicant. The applicant shall make a presentation to demonstrate that the requirements and criteria of approval of the application are satisfied. The applicant shall be afforded such time as deemed necessary by the Board of County Commissioners for such presentation, subject to the Chairperson's discretion to limit the presentation to avoid repetitious information.
 5. Public Comment. As directed by the Chairperson, those persons in attendance who wish to speak shall be afforded an opportunity. The Chairperson may establish reasonable time limitations on such opportunity when deemed necessary to conduct an efficient meeting.
 6. Applicant Rebuttal. The applicant shall be afforded an opportunity to provide additional information in the form of a rebuttal of the public comments.
 7. Closing of Public Hearing. Upon the conclusion of all presentations, the Chairperson should formally announce the closing of the public hearing. Closure of the public hearing shall indicate that no further unsolicited comment from the applicant or public shall be entertained; however, the Board members may pose questions and solicit information from the applicant.
 8. Deliberation. The Board of County Commissioners shall deliberate the evidence of the application and consider whether the evidence presented constituted sufficient and competent evidence to support the requested application approval.
 9. Motion. The Board of County Commissioners shall entertain one or more motions to reach a conclusion regarding the application. Such motion(s) may include:

- a. *Approval* of the application without conditions.
- b. *Conditional Approval* of the application indicating specifically for the record what condition(s) are imposed.
- c. *Denial* of the application indicating for the record the reasons for the recommendation of denial.
- d. *Continuance* of the hearing until a date and time certain or to an unspecified date in order to obtain more information to help clarify the application.
 - i. Motions to Continue a Matter to a Date Certain. A motion to continue (or to postpone) a matter pending before the Board of County Commissioners shall be deemed in order and may be made at any time during consideration of any matter. A motion to continue shall state the date, time, and place for the continued consideration of the matter being continued and the specific reason for the proposed continuance. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the date, time, and place stated in the motion. If the Board of County Commissioners properly moves and votes to continue a matter to a specified time, date, and place, no further or additional notice of the continued matter need be provided. If the applicant or representative is not present for an application, the Board of County Commissioners may at its discretion continue the consideration of the application.
 - ii. Motions to Continue a Matter to an Unspecified Date. A motion to continue (or to postpone) to an indefinite time or without a specified date and time shall only be appropriate if the applicant consents to the proposed continuance. If the Board of County Commissioners properly moves and votes to continue a matter to an indefinite or unspecified time, date, and place, new public notice of the date time, and place shall be required in accordance with the notice requirements applicable to the application. Upon approval of such motion, no further discussion or deliberation on such continued matter shall be entertained until the matter is properly brought before the Board of County Commissioners at the time and date as stated in the public notice.
- e. *Remand* of the application to the Planning Commission for further consideration of information that was not available at the time of the hearing of the application by the Planning Commission. Such a motion shall state the specific information that was not available for Planning Commission review and the relationship between that information and the standards for approval of the application in the Land Use Regulations.

ARTICLE II

VIOLATIONS AND ENFORCEMENT

DIVISION 1 VIOLATIONS

Section 2-100 Violations.

- A. Compliance with LUR Required. It is unlawful to use real property or improvements thereon to develop real property; to erect, construct, reconstruct, remodel, restore or improve a building or structure; to excavate land; or to alter or change the use of any real property or improvements thereon in any way not in accordance with this Code or without first obtaining all land use approvals and permits required by this Code.
- B. Building Permit Required. It is unlawful to erect a structure without first obtaining the required County permits. The Building Department administers permits according to the Uniform Building Code.

Exemptions: A building permit is not required for the following:

1. Buildings or structures used for the sole purpose of providing shelter for agricultural implements, farm products, livestock, or poultry (for example, barns and equipment sheds) located within zone districts that permit ranching, farming, or the keeping of livestock and poultry. Such buildings and structures must conform to all other requirements of the zone district in which the property is located, such as but not limited to setbacks and building heights. Owners are encouraged to contact the Park County Planning Department for information regarding other applicable requirements for buildings and structures. Buildings that are used exclusively for non-agricultural uses are not exempt. (See definition of Agriculture; Article IV)
2. Soil preparation, irrigation, planting, harvesting, or grazing associated with agricultural use of property located within an agricultural zone district.
3. Skid mounted buildings or portable buildings less than 201 square feet.
4. One-story detached accessory buildings used as a tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed one hundred twenty (120) square feet.
5. Fences not over six (6) feet.
6. Oil derricks.
7. Movable cases, counters and partitions not over five (5) feet nine (9) inches high.
8. Retaining walls that are not over four (4) feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III-A liquids.

9. Water tanks supported directly upon grade if the capacity does not exceed five thousand (5,000) gallons and the ration of height to diameter or width does not exceed 2:1.
 10. Platforms, walks or decks not more than thirty (30) inches above grade and not over any basement or story below.
 11. Painting, papering, and similar finish work.
 12. Temporary motion picture, television and theater stage sets and scenery.
 13. Window awnings supported by an exterior wall of a single family residence or garage when projecting not more than fifty-four (54) inches.
 14. Prefabricated swimming pools accessory to a single family residence in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed five thousand (5,000) gallons.
- C. Unlawful Construction. It is unlawful to erect, construct, reconstruct, or alter any building or structure in violation of any provision of these Land Use Regulations or any amendment thereof, enacted or adopted by the Board of County Commissioners.
- D. Unlawful Use. It is unlawful to use any building, structure, or land in violation of any provision of these Land Use Regulations or any amendment thereto, enacted or adopted by the Board of County Commissioners.
- E. Cease and Desist Order. The Planning Director is authorized to issue administrative orders to the owner and/or occupant of any property directing the owner, occupant, and any other person to cease and desist from violation of these Land Use Regulations. Any cease and desist order shall be made in writing and shall cite the specific provision of these Land Use Regulations and the action, activity, construction, or use found to violate such provision. Such order shall state the name and telephone number of the person issuing the order.
- F. Violation of Cease and Desist Order. It is unlawful to fail to fully conform and comply with any cease and desist or stop work order issued by Park County in accordance with these Land Use Regulations. Any such order shall command that no work shall proceed on any building or other structure or tract of land covered by such order, except work necessary to correct such violation or to ensure the safety or security to adjacent, surrounding, or neighboring properties.
- G. Compliance with Terms and Conditions. It is unlawful to use real property or the improvements thereon to develop real property; to erect, construct, or reconstruct a building structure; to excavate land; or to alter or change the use of any real property or improvements thereon in a way that is inconsistent with the terms and conditions of any land use approval or building permit granted under this Code.
- H. Unlawful Divisions of Property.
1. No Divisions Below Minimum Lot Size: Except as may be expressly permitted by state law (see (3) below), it shall be unlawful for any person to sell, convey,

transfer, dispose of, or otherwise divide any property subject to these Land Use Regulations where such sale, conveyance, transfer, disposition, or other division would result in, create, or leave a lot or parcel of land that fails to meet the minimum lot area established for such property by the applicable zone district. This Section shall not apply to the sale, conveyance, transfer, disposition, division, or dedication of property to the County, provided that the County accept such sale or conveyance, for the purpose of providing land to the County or another governmental agency for a public use such as, but not limited to, park, open space, trail, right-of-way, utility access, and drainage management.

2. No Transfer Without Approved Subdivision: Except as may be expressly permitted by state law (see (3) below), it shall be unlawful for any person to sell, convey, plat, transfer, dispose of, or otherwise divide any interest in property subject to these Land Use Regulations except where such sale, conveyance, plat, transfer, disposition, or division is approved by Park County in accordance with these Land Use Regulations and, in particular, the Subdivision Regulations of Article VI.
3. State Law Exemptions. The following exemptions from the definition of subdivision (for which the County does not have authority to require County approval) are provided by C.R.S. § 30-28-101(10):
 - a. Any division of land which creates parcels of land each of which comprises thirty-five or more acres of land and none of which is intended for use by multiple owners.
 - b. Unless the method of disposition is adopted for the purpose of evading state or county subdivision requirements, any division of land:
 - i Which creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five or more acres per interest;
 - ii Which could be created by any court in this state pursuant to the law of eminent domain, or by operation of law, or by order of any court in this state if the board of county commissioners of the county in which the property is situated is given timely notice of any such pending action by the court and given opportunity to join as a party in interest in such proceeding for the purpose of raising the issue of evasion of part 1, article 28, title 30, C.R.S. prior to entry of the court order; and, if the board does not file an appropriate pleading within twenty days after receipt of such notice by the court, then such action may proceed before the court;
 - iii Which is created by a lien, mortgage, deed of trust, or any other security instrument;
 - iv Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;

- v Which creates cemetery lots;
- vi Which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property;
- vii Which is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common, and any such interest shall be deemed for purposes of C.R.S. § 30-28-101(10) as only one interest;
- viii Which is created by the combination of contiguous parcels of land into one larger parcel. If the resulting parcel is less than thirty-five acres in land area, only one interest in said land shall be allowed. If the resulting parcel is greater than thirty-five acres in land area, such land area, divided by the number of interests in the resulting parcel, must result in thirty-five or more acres per interest. Easements and rights-of-way shall not be considered interests for purposes of C.R.S. § 30-28-101(10)(VIII);
- ix Which is created by a contract concerning the sale of land which is contingent upon the purchaser's obtaining approval to subdivide, pursuant to this article and any applicable county regulations, the land which he is to acquire pursuant to the contract; or
- x Which creates a cluster development pursuant to part 4, article 28, title 30, C.R.S. if such type of development is implemented by regulations of the County.

- I. Continuing Violation. Each day during which a violation exists, occurs, continues, or otherwise fails to fully conform with the requirements of these Land Use Regulations shall constitute a separate offense and violation.

DIVISION 2 ENFORCEMENT

Section 2-200 Remedies and Penalties.

- A. Enforcement Philosophy. The County recognizes free will, personal responsibility and the rights of individuals to be accountable for their own actions, and that generally; people do not want to be overly protected from themselves. In contemplating the enforcement of these Land Use Regulations, it is the intent of the County to balance protecting the health, safety, welfare, comfort, convenience, and prosperity of the public versus protecting the public from over zealous enforcement and keeping the County out of personal, private disputes. The County is not concerned with minor, trivial matters. Prior to initiating any criminal or civil court enforcement proceeding, the Board of County Commissioners must authorize such action by motion or resolution with a specific finding that the violation is substantial and not de minimus.
- B. General Criminal Penalty for Violation. Pursuant to C.R.S. § 30-28-124, any person, firm, or corporation violating any provision of these Land Use Regulations or any provision of C.R.S. §§ 30-28-101 through 30-28-138, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Prior to pursuing any criminal remedy pursuant to this section, the Board of County Commissioners must authorize such action by motion or resolution, which contains specific findings that the violation was (1) substantial and (2) willful, wanton, extreme or habitual. The BOCC may, at its discretion, authorize criminal prosecution of any violation by the County Attorney or an attorney appointed by the BOCC to act as a special prosecutor.
- C. General Civil Penalty for Violation. Pursuant to C.R.S. § 30-28-124.5, any person, firm, or corporation violating any provision of these Land Use Regulations or any provision of C.R.S. §§ 30-28-101 through 30-28-138, may be found civilly liable for such violation and, upon such finding, shall be subject to the imposition, by order of the county court, of a civil penalty in an amount of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00). Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall be the subject of a continuing penalty in an amount not to exceed fifty dollars (\$50.00) for each such day. Prior to pursuing any civil remedy pursuant to this section, the Board of County Commissioners must authorize such action by motion or resolution which contains specific findings that the violation was (1) substantial and (2) willful, wanton, extreme or habitual.
- D. Both Criminal and Civil Penalties Available. Pursuant to C.R.S. § 30-28-124.5, it is within the discretion of the Board Of County Commissioners to determine in willful, wanton, extreme or habitual cases whether to pursue civil penalties, criminal penalties, or both.
- E. Additional Remedies Authorized. All provisions of these Land Use Regulations may be enforced by any legal or equitable means recognized by the Colorado Revised Statutes and Colorado Court Rules, as amended. In addition to any other remedies that may be recognized in law or equity, for any violation of these Land Use Regulations Park County may use any of the following methods of enforcement either individually or in combination:

1. Withhold construction or building permit(s) for all or any improvement within the development or the property;
2. Withhold certificate(s) of occupancy for any structure within the development or the property;
3. To the greatest extent permitted by law, revoke or suspend any license, permit, or certificate issued to the development, property, or violator;
4. Inspect and order the removal or abatement of violations;
5. Issue a cease and desist or stop work order mandating the temporary suspension of any development activity within or associated with the violation or the property in which the violation is located;
6. Assess the costs and expenses (including but not limited to costs and expenses for administrative actions, publication, attorneys fees, and court costs) incurred by the County in the enforcement of these Land Use Regulations and the imposition of a lien for such costs and expenses against all or any portion of the property subject or related to the violation as may be permitted by law;
7. Enforce in a court of competent jurisdiction any contractual agreement executed by the violator or the owner or applicant associated with the property; and/or
8. Demand payment, receipt, and County use of funds held by any person or financial institution, which was deposited to secure the performance of the obligation or duty the County, seeks to enforce.

Section 2-201 Enforcement Procedures.

- A. Notice and Opportunity to Cure Required. Prior to commencement of criminal or civil enforcement proceedings as authorized by C.R.S. §§ 30-28-124 or 30-28-124.5, the County shall first pursue the following process in an attempt to remedy the violation:
1. Notification of Violation. The Planning Director shall send to the occupant (if the property is occupied) and to the owner of record a Notice of Violation of the Land Use Regulation by certified, registered United States Mail. The County may, but shall not be required to, provide an additional courtesy posting of the notice at the site of the violation.
 2. Form of Notice. The mailed notice shall contain the following information at a minimum:
 - a. A list or description of the violation(s) with a citation or reference to the section of the Land Use Regulations Code violated;
 - b. An order or demand that the notice recipient cease and correct all violation(s) within not less than thirty (30) days from the date of the notice; and

- c. The County address and business telephone number of the County official issuing the Notice of Violation.
 - d. If the Notice of Violation is in the form of a complaint received from a person not employed by the County or governmental entities with relevant interests; then the complaint must be in writing, must be signed by the complaining party, who is either a Park County resident or property owner, and must contain the residential address of the complaining party. A copy of the complaint must be attached to the Notice of Violation.
- B. Response to Notice. Any person who receives Notice of Violation of the Land Use Regulation shall, prior to or within the time period for compliance stated in the Notice of Violation:
 - 1. Restore the property to compliance with the Land Use Regulations; or
 - 2. Deliver to the address of the County official issuing the Notice of Violation a written request for an extension of time to achieve compliance with the Land Use Regulations. The Planning Director shall mail a written response to any timely request for extension and, where the Planning Director deems an extension appropriate, may grant an extension not to exceed a maximum of sixty (60) days. Failure of the Planning Director to respond to a timely request within seven (7) business days of the date of the response shall constitute approval of the requested extension or a thirty (30) day extension, whichever is shorter in duration.

Section 2-202 Inspections.

- A. Entry to Inspect. The Planning Director, Chief Building Official, County Engineer or other authorized representative ("the enforcing official") is authorized to enter or inspect any building, structure, premises or real property to ensure compliance with this Code. These inspections will be carried out during normal business hours except in emergency situations described in Subsection C below. Entry onto private property for inspection will be made only after contact with the owner or occupant of the premises, whose permission for the inspection must be obtained.
- B. Court Order. If the owner or occupant of the premises cannot be located or permission to enter cannot be obtained, the enforcing official may seek an administrative warrant or court order allowing entry by submitting a sworn affidavit to an appropriate court detailing facts to support a reasonable belief that a violation is likely to exist and that further investigation of the premises is warranted. Any subsequent entry and inspection must be conducted in accordance with the administrative warrant or order issued by the court. Inspections may be conducted from public property or right-of-way, or from adjacent private property with the permission of the owner of the private property from which the inspection is being conducted.
- C. Emergency Entry. Notwithstanding the provisions of subsection (A) above, permission to enter or a court order is not required in emergency situations in which the enforcing official has reason to believe public health or safety is in imminent danger and could be jeopardized by any delay in obtaining permission to enter or a court order. An emergency does not mean expedience, convenience or best interest.

Section 2-203 False Information Unlawful and Suspension of Approval.

- A. False Information Unlawful. It shall be unlawful for any person to make, offer, represent, provide, or state in writing or verbally to Park County, its boards, commissions, and employees any false, incorrect, or inaccurate information as part of any application for land use approval when such person knows or reasonably should have known of the falseness, incorrectness, or inaccuracy of the information. Without limiting the scope of applicability of this subsection (A), the provisions of this subsection (A) apply to statements, representations, and information made or offered to the Board of County Commissioners, Planning Commission, and Board of Adjustment by members of the public during hearings and meetings. The Board of County Commissioners may suspend any approval, when such approval was based on false, incorrect or inaccurate information in accordance with the subsequent paragraph.

- B. Suspension of Approval. In addition to any other remedy available to the County, Board in accordance with these Land Use Regulations or may impose a subsequent condition of approval upon the applicant following a determination by the Board that the information provided by the applicant or the applicant's agents or representatives upon which such approval was based was substantially false or wholly inaccurate and that correct or accurate information would have reasonably resulted in a basis for denial of the application. Any decision to suspend approval shall be made only at a regular or special meeting of the Board. Prior to the meeting, a written notice from the County shall be mailed via regular U.S. Mail (or a comparable service) or hand-delivered to the applicant, setting forth a clear and concise statement of alleged facts and directing the applicant to appear at a specific date and time at a meeting to be held not less than five (5) days, nor more than fifteen (15) days from the date of mailing or hand delivery of notice to the applicant. The Board shall determine at the meeting the nature and extent of any alleged false or inaccurate information and shall have the authority, upon good cause being shown, to revoke or suspend approval or impose a subsequent condition of approval necessary to bring the development into conformance with these Land Use Regulations and to correct the false or inaccurate information. Any suspension of approval shall be for a period not greater than thirty (30) days. During any period of suspension, the County may pursue other remedies provided by these Land Use Regulations or other applicable law.

Section 2-204 Non-Liability of County.

- A. This Code shall not be construed to hold Park County or any of its employees or officials, acting within the scope of their employment in any manner, responsible or liable for any damages to persons or property resulting from any inspection, enforcement or review as herein authorized.

- B. The County and its employees are also not liable for damages resulting from any failure to inspect or enforce, or resulting from the issuance or denial of any building permit or the institution or failure to institute any court action as herein authorized or required. In enacting this Code, the Board of County Commissioners intends to preserve all rights of the County, its agencies and departments, its elected and appointed officials and employees to immunity from liability as described in the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through 24-10-119, as amended.

ARTICLE III

VARIANCES AND APPEALS

DIVISION 1 VARIANCES

Section 3-100 Variance Authority.

- A. Authority for Variances. The Board of Adjustment is authorized to provide relief in accordance with this Division when a strict application of this Resolution would cause peculiar and exceptional practical difficulties or exceptional and undue hardship. The Board of Adjustment's authority shall be limited to the following requirements imposed by these Land Use Regulations:
1. Maximum height of a building, structure, or fence.
 2. Any setback.
 3. Any off-street parking requirement.
 4. Restrictions imposed on the keeping of Livestock.
 5. Restrictions that are expressly made subject to a variance from the Board of Adjustment, e.g., Floodplain, Wetlands/Floodplain Variances pursuant to Division 9 of Article VII.
- B. Board of Adjustment Without Authority. The Board of Adjustment shall have no authority regarding the following:
1. To permit a variance from those uses specifically authorized in a zone district (a use variance).
 2. To permit, allow, or legitimize an existing zoning violation.
 3. To vary the minimum required area of a lot.
- C. Variance – Approval Criteria.
1. A variance shall be granted only upon a finding by the Board of Adjustment that each of the following criteria are met:
 - a. A strict application of this Resolution causes peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness, or shape of a specific piece of land or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the land; and
 - b. The applicant provided reasonable and adequate evidence that the variance request is not a self-imposed hardship that can be rectified by means other than relief through a variance; and

- c. There exists no substantial detriment to any neighbor or to the public by the granting of the variance; and
- d. The intent and purpose of the regulation being varied is not substantially impaired or defeated by the granting of the variance.

D. Procedure for Application for Variance.

1. Pre-submittal Meeting Required. The applicant shall informally consult with the Planning Department to discuss the need for the variance with the Staff and to identify the procedures applicable to any application for a variance.
2. Application for Variance – Contents. All applications shall be submitted by an owner of the property affected on forms prepared by and available from the Planning Department. The application shall contain the following information:
 - a. A completed application in the form approved by the Planning Director;
 - b. Payment of all required application fees and any review fee deposit;
 - c. Evidence of Ownership and Encumbrances as defined by Article IV of these Land Use Regulations;
 - d. A legal description of the property subject to the proposed variance;
 - e. A list of the names and mailing addresses, as this information appears of record with the Park County Assessor's Office, of all owners of adjacent property¹ to the property subject to the proposed variance;
 - f. A written description identifying the specific provision of these Land Use Regulations that the owner seeks to vary and the extent to which the provision is proposed to be varied or modified;
 - g. A written description of the reasons justifying the variance detailing how the standards or criteria for approval of the variance provided by Section 3-100(C) are met or satisfied; and
 - h. A site plan indicating how the variance relates to the affected land drawn to scale including the height and setbacks of all existing and proposed structures and any other information requested by Planning Staff.
 - i. Evidence that property taxes have paid current.
3. Planning Director's Completeness Determination. All applications for variance shall be delivered to the Planning Director. No application shall be processed or scheduled for processing before the Board of Adjustment unless the application is deemed complete by the Planning Director and all required information and documentation is submitted to the Planning Director.

¹ See Article IV, Definitions, "Adjacent Property"

4. Board of Adjustment Public Hearing. The Board of Adjustment shall hold a public hearing on the application for variance in accordance with the Board's Rules of Procedure (see Section 1-203). Notice of the public hearing shall be provided as follows:
- a. Content of Notice. The notice of public hearing shall include the date, time, place, and general purpose of the hearing, and a general description of the property affected. The general description may be stated by: (a) a metes and bounds description the boundaries of which include the property subject to the proposed variance; or (b) by lot and block of a recorded subdivision plat; or (c) by a reference to intersecting roads, compass directions relating the property to the intersection, and a statement of the approximate acreage involved. The Planning Department may include other information deemed appropriate by the Department to apprise the public of the general nature of the action proposed.
 - b. Form of Notice.
 - i. Required Notice. Notice of public hearing shall be published in the official County newspaper or in a newspaper of general circulation within Park County at least fourteen (14) days before the date of the hearing.
 - ii. Additional Notice. The County shall provide additional notice of the proposed variance by mailing and posting in accordance with this section.
 - (1) Mailing. A notice by mail should be deposited in the United States Mail; first class postage prepaid or shall be delivered by another comparable service, including hand-delivery to the address. The deposit in the U.S. Mail or delivery to another comparable service should be made at least (14) days before the date of the hearing. Failure of the addressee to receive a mailed notice shall not be deemed sufficient cause to require a postponement, re-mailing of notice, or invalidation of the hearing. Mailed notice shall be addressed to owners of adjacent property as their names appear in the real property records of the Park County Assessor. For purposes of determining addressees for mailed notice, the County may rely upon the ownership information provided by the Applicant as part of the Application.
 - (2) Posting. A notice by posting shall be made by the Planning Department's posting of a sign approved by the Planning Director/County Designee on or reasonably near the property that is subject to the hearing in a location that is reasonably determined by the Planning Director/County Designee to provide the greatest degree of visibility to members of the public. In most instances, the posting

shall be made along the primary traveled public right-of-way adjacent to the property. Posting should be initially made at least fourteen (14) days before the date of the hearing. Failure of the posted notice to remain in place and visible during the entire posting period prior to the hearing shall not be deemed sufficient cause to require a postponement, re-posting, or invalidation of the hearing. At the outset of each hearing, the applicant should provide evidence of posting in accordance with this section to the Planning Commission or the Board of County Commissioners. Such evidence should be in the form of photographs showing the posted sign and a "posting log" or other written document evidencing the time, date, and location of the posting and the time and date of the applicant's maintenance of the posted sign during the posting period prior to the hearing.

5. Public Hearing and Vote. The Board of Adjustment shall conduct the public hearing and vote in accordance with the Rules of Procedure, Section 1-203 of these Land Use Regulations.
 6. Conditions of Approval. The Board of Adjustment, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to assure compliance with this Land Use Regulation and to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the County. All conditions imposed upon any variance shall be set forth in writing together with the provision of this Land Use Regulation the condition is designed to address.
- E. Post Approval Action. Construction pursuant to approval of a variance shall be completed within five (5) years from the date the variance was granted, unless otherwise specified by the Board of Adjustment. Failure to complete construction within five (5) years shall cause the variance granted to expire and be void. The Board of Adjustment may grant an extension of time, for good cause shown, upon a written request by the owner of the property subject to the variance following a properly noticed public hearing.
- F. Post Denial Application. If denied by the Board of Adjustment, the re-submittal of the same or substantially same variance application shall not be accepted within one year from the date of denial by the Board of Adjustment, or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the Board showing that there has been a substantial change in physical conditions or circumstances, the Board of Adjustment may reconsider the variance. A new application and processing fee shall be required.
- G. No Amendment. Variances may not be amended following approval. Modifications or other changes to an approved variance shall require a new application for variance.

Section 3-101 Appeals of Variance Decisions by Board of Adjustment.

Final decisions of the Board of Adjustment on variance applications shall be subject to appeal in accordance with Rule 106(a)(4) of the Rules of Colorado Civil Procedure. Such appeal shall be limited, as provided by Rule 106(a)(4) to a determination of whether the Board of Adjustment exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

DIVISION 2 ADMINISTRATIVE DECISIONS AND APPEALS

Section 3-200 General Administrative Interpretations.

The Planning Director is authorized to issue, amend and repeal general administrative interpretations concerning the requirements and applications of these Land Use Regulations, which apply to properties that are similarly situated. These interpretations shall be collected and retained by the Planning Director and made available for public inspection during normal business hours. A copy of each interpretation shall be provided to each member of the Planning Commission, Board of Adjustment and the Board of County Commissioners. Administrative interpretations are intended to facilitate the uniform and supporting the administrative action necessary to implement these Land Use Regulations.

Section 3-201 Specific Administrative Decisions.

Upon request by any owner of property or any applicant for land use approval, the Planning Director is authorized to issue written administrative interpretations or decisions concerning the proper or intended application of these Land Use Regulations to a specific circumstance associated with a pending application for land use approval or to a specific property. An administrative decision issued pursuant to this section may be appealed as provided by Section 3-204 of these Land Use Regulations.

Section 3-202 Administrative Forms.

The Planning Director is authorized to promulgate and require the use of standardized application forms and other written materials deemed by the Planning Director as necessary or helpful to the administration of these Land Use Regulations.

Section 3-203 Publication of Land Use Decisions

The Board of County Commissioners shall post on the County website (www.parkco.us) administrative decisions and minutes from all land use meetings.

Section 3-204 Appeal Authority.

- A. Authority for Appeal. The Board of County Commissioners is authorized to hear and decide appeals where it is alleged there is error in any written administrative interpretations or decisions made by the Planning Director or any other administrative reviewing agency or body in the enforcement or administration of these Land Use Regulations. No appeal pursuant to this Division shall be available for:
1. Determination of a building code violation that may be prosecuted in accordance with the uniform building code and/or C.R.S. § 30-28-124(1)(b);
 2. Determination of a use violation that may be prosecuted in accordance with C.R.S. § 30-28-124; or
 3. Any determination for which another right of appeal is provided by these Land Use Regulations, e.g., appeals of administrative lot consolidations that are subject to an appeal process specified by Section 6-905.

- B. Deadline for Appeal. An appeal shall be filed in accordance with this Division within ten (10) days after the date of the written administrative interpretations or decisions.
- C. Appeal – Approval Criteria. The Board of County Commissioners shall overturn or reverse administrative interpretations or decisions where the Board finds that the administrative interpretations or decisions is unreasonable and is unsupported by these Land Use Regulations.
- D. Procedure for Application for Appeal.
1. Application for Appeal - Contents. All applications for appeal shall be submitted by the owner of the property subject to the administrative interpretations or decisions on forms prepared by and available from the Planning Department. Such application shall contain the following information:
 - a. A completed application in the standard form approved by the Planning Director;
 - b. Payment of all required application fees and any review fee deposit;
 - c. A copy of the written administrative interpretations or decisions being appealed;
 - d. A written description of the reasons justifying the appeal detailing how the standard for approval of the appeal provided in Section 3-100(C) (1) (a.b.c.d.); and
 - e. Any other documentation deemed appropriate by the Applicant.
 2. Delivery and Completeness Determination. The Applicant shall deliver one (1) original and ten (10) copies of all application materials required by this Section to the Chief Administrative Assistant to the Board of County Commissioners. No application shall be processed or scheduled for processing before the Board of County Commissioners unless the Chief Administrative Assistant deems the application complete and all required information and documentation is submitted to the Chief Administrative Assistant.
 3. Board of County Commissioners Public Hearing. The Board of County Commissioners shall hold a public hearing on the application for appeal in accordance with the Board's Rules of Procedure. Notice of the public hearing shall be provided as follows:
 - a. Content of Notice. The notice of public hearing shall include the date, time, place, and general purpose of the hearing. The Planning Department may include other information deemed appropriate by the Department to apprise the public of the general nature of the action proposed.

b. Form of Notice – Required.

- i Notice of public hearing shall be published in the official County newspaper or in a newspaper of general circulation within Park County at least fourteen (14) days before the date of the hearing.
- ii Notice by mail to the applicant for the appeal shall be deposited in the United States Mail; first class postage prepaid or shall be delivered by another comparable service, including hand-delivery to the address. The deposit in the U.S. Mail or delivery to another comparable service shall be made at least fourteen (14) days before the date of the hearing. Failure of the applicant to receive notice shall not be deemed sufficient cause to require a postponement, re-mailing of notice, or invalidation of the hearing.

E. Post Denial Application. If denied by the Board of County Commissioners, the resubmittal of the same or substantially same appeal application shall not be accepted within one year from the date of denial by the Board of County Commissioners, or in the event of litigation, from the date of the entry of the final judgment. However, if evidence is presented to the Board showing that there has been a substantial change in physical conditions or circumstances, the Board of County Commissioners may reconsider an application for appeal. A new application and processing fee shall be required.

Section 3-205 Appeals of Decisions by the Board of County Commissioners

Final decisions of the Board of County Commissioners on decisions regarding administrative interpretations or decisions shall be appealed in accordance with Rule 106(a)(4) of the Rules of Colorado Civil Procedure. Such appeal shall be limited, as provided by Rule 106(a)(4) to a determination of whether the Board of County Commissioners exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.