

LAND USE ORDINANCE 2008-04

CHAPTER 3

BOARD OF ADJUSTMENTS (APPEAL AUTHORITY)

3.1. CREATION OF THE BOARD OF ADJUSTMENT (APPEAL AUTHORITY), NUMBER OF MEMBERS, APPOINTMENT.

The Leeds Appeal Authority shall consist of five (5) members, each to be appointed by the Leeds Mayor with approval and consent of the Leeds Town Council for the term of five (5) years provided that the term of one (1) member shall expire at the end of June each year. The Mayor shall recommend, and with advice and consent of the Town Council, a new member shall be appointed to the Appeal Authority to fill the vacancy of the member whose term expires the end of June that year. The appointed member's term of office shall start at the beginning of July. All members of the Leeds Appeal Authority shall be full time residents of the Town of Leeds, and shall remain full time residents during their term of office. Members moving out of the Town of Leeds during their term of office will result in an automatic resignation. Members of the Appeal Authority shall hold no other public office or position within the Town of Leeds. Up to three (3) alternates may be appointed to the Board. Vacancies by members and alternates shall be appointed by the Leeds Mayor with approval and consent of Leeds Town Council for the unexpired term of any member or alternate whose term becomes vacant. The alternate members not sitting on the Board as a replacement member shall not be voting members. No more than two (2) alternates may sit as part of the Board at any one time. When an alternate member is sitting on the Board due to an absent member, the alternate member has voting rights on all issues brought before the Appeal Authority. All other conditions applying to members shall apply to the alternate members.

3.2. TERMS OF OFFICE

The terms of office for the five (5) Leeds Appeal Authority members and alternates shall be for five (5) years. The Leeds Appeal Authority members' terms shall be staggered so that only one (1) member's term shall expire June 30 of the year. The alternate members' term of office shall expire June 30 of the year. All three alternate members' terms of office shall expire in different years, under certain conditions that may prevent some members from being appointed for a full five (5) years.

3.3. DUTIES AND POWERS OF BOARD OF ADJUSTMENTS.

The Leeds Appeal Authority shall have the following powers as defined in Utah State Code Section 10-9a-701 through 10-9a-708:

- 3.3.1.** To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrative official(s) in the enforcement of this article or of any ordinance adopted pursuant thereto.
 - 3.3.1.1.** The Appeal Authority shall act in a quasi-judicial manner and serve as final arbiter of issues involving the interpretation of applications of Land Use Ordinances.
 - 3.3.1.2.** The Appeal Authority may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- 3.3.2.** To hear and decide interpretations to the terms of this Ordinance upon which such Board is required to pass under the provisions of this Ordinance.
- 3.3.3.** To authorize such variance from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, providing the hardship was not self-imposed; provided, that the spirit of this Ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that all the following conditions exist:
 - 3.3.3.1.** Literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinance.
 - 3.3.3.2.** There are special circumstances attached to the property that do not generally apply to other properties in the same district.
 - 3.3.3.3.** Granting the variance is essential to the enjoyment of a substantial property right possessed by other property owners in the same district.
 - 3.3.3.4.** The variance will not substantially affect the general plan and will not be contrary to the health, safety, and welfare of the citizens of Leeds.
 - 3.3.3.5.** The spirit of the Land Use Ordinance is observed and substantial justice done.
 - 3.3.3.6.** In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under State Code section 10-9a-

702(2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship: (a) is located on or associated with the property for which the variance is sought; and (b) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

3.4 VACANCIES AND REMOVALS FOR CAUSE.

Vacancies of appointed members occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired term by appointment of the Leeds Town Council. The Leeds Town Council shall have the right to remove any Appeals Authority member for misconduct and may remove any member for cause. Cause shall include but not be limited to such things as misconduct, non-performance of duty, failure to attend fifty percent (50%) of scheduled meeting over any four (4) month period. Members moving out of the Town of Leeds automatically resign from the Appeals Authority.

3.5 COMPENSATION

The Leeds Appeals Authority shall serve without compensation, except that the Leeds Town Council shall provide for reimbursement of the Leeds Appeals Authority for actual expenses incurred, upon presentation of proper receipts and vouchers when approved by the Leeds Town Council prior to incurring the expense and upon written request to the Leeds Town Council by the Leeds Appeals Authority Chair.

3.6 OFFICERS

The Leeds Appeals Authority shall elect a Chair and a Chair Pro-tem from among its members, whose terms shall be for one (1) year or until term of office expires whichever occurs first. New elections shall be held the first meeting in July each year. If the Chair or Chair Pro-tem leave the Appeals Authority or resign as Chair or Chair Pro-tem, then a special election will take place with the term of office expiring at the next following end of June.

3.7 RULES AND PROCEDURES

The Leeds Appeals Authority may adopt such rules and procedures, as it may deem necessary for the proper conduct of its business with approval of the Leeds Town Council. The Leeds Appeals Authority shall keep a record of its proceedings; such record shall be open to inspection by the public at all reasonable times. Copies of the Appeals Authority proceedings and minutes shall be provided to the Leeds Town Council after each Leeds Appeals Authority meeting.

3.8 EMPLOYEES; EXPENDITURES.

The Leeds Appeals Authority may, upon the approval of the Leeds Town Council, employ experts and staff, including consultants and a secretary, and pay such expenses, exclusive of gifts, as may be reasonable and necessary for carrying out the duties defined in this Ordinance, providing that such expenditures may not exceed the amount appropriated for the operation of the Leeds Appeals Authority by the Leeds Town Council.

3.9. APPEAL PROCESS.

3.9.1. As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision by the following process. Only those decisions in which a land use authority had applied a Land Use Ordinance to a particular application, person, or parcel may be appealed to an Appeal Authority.

3.9.1.1. The appeal shall be presented in writing within thirty (30) days of when the land use decision was made. The appeal shall include a detailed description of the land use being appealed, along with references to all Ordinances that the applicant feels applies to this decision. The appeal should include the justification that the applicant feels has not been interpreted properly. The minutes of the Planning Commission and/or Town Council meetings, as applicable, shall establish the date the land use decision was made.

3.9.1.2. The affected party is required to present to the Appeal Authority every theory of relief that he/she can raise in district court.

3.9.1.3. The affected party shall attend all hearings and meetings associated with his/her appeal.

3.9.1.4. The Appeal Authority shall not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.

3.9.1.5. The decision of the Appeal Authority takes effect on the date when the appeal authority issues a written decision and this written decision constitutes a final decision.

3.10. MEETINGS.

3.10.1. Meetings of the Leeds Appeal Authority shall be held at the call of the Chair, and at such other times as the Board may determine. The Board shall meet during July of each year to elect a Chair and establish/change any of their procedure rules. The Chair may administer oaths and compel the attendance of witnesses. All meetings of the Leeds Appeal Authority shall be open to the

public, and held at the Leeds Town Hall unless it is determined by the Chair that an alternate location is required and appropriately posted.

3.10.2. The Appeal Authority shall notify each of its members of any meeting or hearing of the Board.

3.10.3. The Appeal Authority shall provide each of its members with the same information and access to municipal resources as any other member.

3.10.4. The Leeds Appeal Authority shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failure to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be filed with the Leeds Town Clerk and shall be public record.

3.11. QUORUM.

A quorum shall be considered three (3) members and shall consist of no more than one (1) alternate. No evidence shall be presented to the Board unless a quorum is present.

3.12. ACTION TO BE TAKEN.

Approval or disapproval, rejection, or modified approval of an appeal shall be based upon written findings which shall be made a part of the official record.

3.13. VOTE NECESSARY FOR REVERSAL AND GRANTING OF A VARIANCE.

The concurring vote of three (3) members of the Leeds Appeal Authority shall be necessary to reverse any order, requirement or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under this Ordinance or to affect any variation in the provisions of this Ordinance. To Grant a variance the concurring vote of three (3) members of the Leeds Appeal Authority shall be necessary.

3.14. DECISION ON APPEAL.

In exercising the above-mentioned powers, the Leeds Appeal Authority may in conformity with the provisions of this Ordinance reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such other requirement, decision, or determination as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken.

3.15. BURDEN OF PROOF.

The burden of proof is on the appellant. The Appeal Authority shall consider all factual matters related to the land use decision being appealed. The Appeal Authority shall

determine the correctness of a decision of the land use authority in its interpretation of the Land Use Ordinance.

3.16. RULES.

The Leeds Appeal Authority shall adopt rules for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this Ordinance or of the State law. Such rules, to become effective, shall be first approved by the Leeds Town Council.

3.17. JUDICIAL REVIEW OF BOARD'S DECISION – TIME LIMITATIONS.

The Town of Leeds or any person aggrieved by any decision of the Leeds Appeal Authority may have and maintain a plenary action for relief there from in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such written decision with the Town Clerk. Appellant will not be allowed to raise any issues on judicial review that are not raised before the Appeal Authority.