



Planning Commission Hearing Staff Report Hearing Date: April 10, 2019

***ITEM 8** The Provo City Community Development Department is requesting a technical update to Section 14.05.010 Board of Adjustment Created, to bring the Section into compliance with State Code by eliminating Subsection 14.05.010(4). City-wide application. Brian Maxfield (801) 852-6429 PLOTA20190097

<p><u>Applicant:</u> Community Development</p> <p><u>Staff Coordinator:</u> Brian Maxfield</p> <p><u>Property Owner:</u> N/A <u>Parcel ID#:</u> City-Wide <u>Acreage:</u> N/A <u>Number of Properties:</u> N/A</p> <p><u>Current Zoning:</u> NA</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is April 24, 2019 at 6:00 P.M.</i></p> <p>2. Recommend denial. <i>This action <u>would not be consistent with the recommendation of the Staff Report.</u> The Planning Commission should <u>state new findings.</u></i></p>	<p><u>Relevant History:</u> None</p> <p><u>Neighborhood Issues:</u> This is a City-Wide issue. Several Neighborhood Chairs have inquired about the proposed amendment, but no issues have been raised.</p> <p><u>Summary of Key Issues:</u> Compliance with State Code</p> <p><u>Related Items:</u> None</p> <p><u>Staff Recommendation:</u> Recommend Approval of the proposed Ordinance Amendment to eliminate Subsection 14.05.010(4). <i>This action <u>would be consistent with the recommendations of the Staff Report.</u></i></p>
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OVERVIEW

This item is an Ordinance Amendment to eliminate Subsection (4) from Section 14.05.010 Board of Adjustment Created. The proposed change is as follows:

14.05.010 Board of Adjustment Created

(1) There is hereby created a Board of Adjustment which shall consist of five (5) members, each to be appointed by the Mayor with the advice and consent of the Municipal Council for a term of five (5) years, provided that

the terms of the members of the first Board so appointed shall be such that the term of one (1) member shall expire each year.

(2) Any member may be removed for cause by the Mayor upon written charges and after public hearings, if such public hearing is requested.

(3) The Mayor with the advice and consent of the Municipal Council shall fill any vacancy for the unexpired term of any member whose term becomes vacant.

~~(4) One (1) member, but only one (1), of the Planning Commission shall be a member of the Board of Adjustment.~~

~~(5)~~(4) The Mayor may appoint up to two (2) alternate members to the board with the advice and consent of the Municipal Council.

~~(6)~~ (5) No more than two (2) alternates may sit at any meeting of the Board of Adjustment at one (1) time.

At issue is a conflict with the State Code, specifically Section 10.91-701(3)(b), as highlighted below in Section 10-91-701 of the State Statutes:

10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

- (a) requests for variances from the terms of the land use ordinances;
- (b) appeals from decisions applying the land use ordinances; and
- (c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

- (i) act in a quasi-judicial manner; and
- (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances, except as provided in Title 11, Chapter 58, Part 4, Appeals to Appeals Panel, for an appeal of an inland port use appeal decision, as defined in Section 11-58-401; and

(b) 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.

The conflict that is obvious would be where a Board Member would act as part of the Appeal Authority over a decision made by them in their capacity as a Planning Commission member.

CONCLUSIONS

Staff supports the change to bring the City's regulations regarding the Board of Adjustment, into compliance with the State Code.

RECOMMENDATION

Recommend Approval of the proposed Ordinance Amendment to eliminate Subsection 14.05.0101(4).