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RESOLUTION NO. 18 - 389

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO APPROVE/REINSTATE AN INTERIM PROCEDURE FOR
THE APPEAL OF CERTAIN ADMINISTRATIVE ACTIONS UNDER THE EL
PASO COUNTY LAND DEVELOPMENT CODE**

WHEREAS, in accordance with its authority in Article 28 of Title 30, Colorado Revised Statutes, on October 12, 2006 the Board of County Commissioners of El Paso County, Colorado ("Board") adopted a revised Land Development Code ("revised Code") pursuant to Resolution No. 06-365, which became effective upon further Board action on April 25, 2007 and was recorded at Reception No. 207056053 in the records of the El Paso County Clerk and Recorder's Office ("Code Resolution"); and

WHEREAS, while the previous Land Development Code had contained various procedures, including appeals procedures, the revised Code did not include such procedures, the intent being to create a separate Procedures Manual; and

WHEREAS, the Code Resolution stated that the Executive Director of the then Development Services Department ("Executive Director") (now known as the Planning and Community Development Department) is "authorized to create for development permit review and department administration the procedures . . . department policies, and implementation tools necessary to fully utilize the Land Development Code"; and

WHEREAS, the Board, by Resolution No. 09-164, dated April 28, 2009, and recorded at Reception No. 209057220 in the records of the El Paso County Clerk and Recorder's Office ("Direction Resolution"), approved certain Administrative Authorities, including that set forth above, "with the condition that the Authorities approved by this Resolution will thereafter be incorporated into the Procedures Manual, and with the further condition that the Procedures Manual, when finalized, requires DSD Director approval and may be endorsed by the El Paso County Planning Commission and the Board" (emphasis added); and

WHEREAS, the Planning and Community Development Department is preparing but has not yet completed the Procedures Manual; and

WHEREAS, the revised Code provides rights to appeal certain administrative actions of the Executive Director of the Planning and Community Development Department, but does not set forth the procedures for such appeals; and

WHEREAS, the Board has identified a need to adopt procedures for the appeal of Executive Director applications or interpretations of the use provisions of the

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revised Code and of Executive Director action on site plans and site development plans in the interim before the Procedures Manual is completed; and

WHEREAS, since 2006, El Paso County has continued the practice of using the appeal procedures set forth in the previous Land Development Code; and

WHEREAS, pursuant to his authority under both the Code Resolution and the Direction Resolution, the Executive Director in conjunction with the County Attorney's Office has developed interim appeals procedures consistent with prior appeals procedures, which he approves and recommends to the Board for endorsement and approval; and

WHEREAS, the Board desires to formally adopt/reinstate those appeal procedures as an interim measure until such time as such procedures are reviewed and updated.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of El Paso County, Colorado that the following procedures are hereby adopted/reinstated for the appeal of Executive Director application or interpretation of the use provisions of the El Paso County Land Development Code and of Executive Director action on site plans and site development plans.

- I. Appeal of interpretations or applications of the use provisions of the El Paso County Land Development Code by the Executive Director of the Planning and Community Development Department to the Board of County Commissioners
 - A. The aggrieved party may appeal within thirty (30) days following the specific interpretation or application of the Code use provisions by the Executive Director. In no event is an appeal to be made after a decision by the Board of County Commissioners on a zoning, rezoning, special use or use variance application which decides or addresses the disputed matter. An appeal may be filed concurrently with a zoning, rezoning, special use or use variance application which might, through a decision of the Board on the application, resolve the dispute otherwise.
 - B. Any appeal shall be initiated by the filing of a written notice of appeal to the Planning and Community Development Department setting forth in detail the name and interest of the appealing party, the nature of the appeal, the legal description of the property affected, the reasons and any written or photographic documentation supporting the appeal, along with the applicable fee, and any other information or documentation as may be required by the Department for the adequate review of the appeal.

- C. Upon receipt of an appeal, the Department shall refer such appeal to the appropriate County departments and agencies for their review and recommendations, and shall schedule the appeal to be heard before the Board within thirty-five (35) days. Written notice of the date, time and place of the appeal hearing shall be given no later than ten (10) days prior to the hearing to the appellant, appropriate County departments or agencies, and any other person or entity expressing an interest therein.
 - D. The appellant shall have the burden of proof to establish that the interpretation or application made by the Executive Director was erroneous or inapplicable.
 - E. The Board shall consider the relevant evidence submitted in support of or opposition to the appeal, the recommendations of the appropriate County departments and agencies, and any additional evidence which it deems relevant and appropriate. The Board shall either approve or disapprove the appeal.
 - F. No Board action on any zoning, rezoning, special use or use variance which may be dispositive on the disputed issue may be taken until there is a final determination of the appeal. Likewise, the Board's negative decision on an appeal is not a final action for judicial review purposes if the disputed matter could be resolved in favor of the impacted property owner by an action of the Board on a zoning, rezoning, special use or use variance application by the property owner.
- II. Appeal of a denied site plan or site development plan to the Board of Adjustment
- A. An applicant whose site plan or site development plan has been denied by the Executive Director of the Planning and Community Development Department may appeal such denial to the Board of Adjustment within thirty (30) days of such denial. No appeal of an approved site plan or site development plan may be taken by any party.
 - B. Any appeal shall be made by submitting a complete petition form provided by the Department, along with the applicable fee and any information or documentation required by the Department for the adequate review of the appeal. The completed petition, applicable fee and required supporting documentation must be provided at least twenty-two (22) days prior to the Board of Adjustment hearing at which the appeal is to be presented.

- C. Copies of the petition may be sent by the Department to appropriate federal, state and local agencies for review and comment. These comments, along with the Department's comments, recommendations, and proposed conditions and restrictions, will be presented to the Board of Adjustment. Copies of these comments and recommendations will be available to the applicant and any other interested party by the date of the hearing.
- D. Any interested party may appear before the Board of Adjustment in person, by agent or attorney, or by written comment. The applicant or his/her representative must be present at the hearing and willing to answer questions from the Board of Adjustment in order for the applicant to receive a favorable action.
- E. The applicant on appeal shall have the burden of 1) providing all information necessary for an adequate evaluation and review of the petition, and 2) demonstrating that the petition addresses and satisfies the applicable standards and findings set forth below.
- F. In order to grant an appeal of the denial of a site plan or site development plan, the Board of Adjustment must find, based on adequate evidence presented to it by the applicant, that all of the following exist:
1. There was a clear and harmful error in the denial of the site plan or site development plan.
 2. Granting the appeal will permit only those uses specifically enumerated as permitted uses for the zoning district in which the property is located.
 3. Granting the appeal will not substantially alter the character or development pattern of the zoning district nor significantly impair the intent and purpose of County's zoning regulations.
 4. Granting the appeal will not violate any applicable federal, state or other local laws or regulations.

Done this 11th day of October, 2018 at Colorado Springs, Colorado.

ATTEST
By: Charles D Broerman
E. Chuck Broerman
County Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: Darryl Glenn
Darryl Glenn, President