



## CHAPTER 8: REVIEW AND DECISION-MAKING ENTITIES

### 10.8.1 PURPOSE

This Chapter identifies the roles, duties, and responsibilities of the Board of Adjustment and Town staff in the administration of this UDC.

### 10.8.2 BOARD OF ADJUSTMENT

#### A. Established

The Board of Adjustment is hereby established.

#### B. Review and Decision-Making Responsibilities

The Board of Adjustment shall have the review and decision-making responsibilities set forth in Table 7.1-1.

#### C. Appointments, Membership, and Rules

##### 1. Members and Appointment of Members

- a. The Board of Adjustment shall consist of 5 regular members who shall be appointed by the Board of Trustees.
- b. In addition to the regular members of the board, the Board of Trustees may appoint 2 alternate members. In the event that any regular member is temporarily unable to act owing to absence from the Town, illness, interest in a case before the Board or any other cause, his place may be taken during such temporary disability by an alternate member who shall then enjoy full voting privileges.

##### 2. Terms

- a. Appointments to the Board of Adjustment shall be for staggered 3 year terms, except that, when vacancies occur prior to the expiration of a regular term, they shall be filled in the same manner as regular appointments but shall serve only until the expiration of the term in which the vacancy occurred.
- b. Alternate members, if appointed, shall be for staggered 3-year terms.

##### 3. Chairman and Vice-Chairman

Members of the Board of Adjustment shall elect from among their members by a majority vote a chairman and vice-chairman, each to serve for a term of 1 year.

##### 4. Removal from Office

The Board of Trustees shall have the power to remove any member from the Board of Adjustment for just cause after a public hearing.

##### 5. Number of Votes Required for Case Approvals

The concurring vote of 4 members of the Board of Adjustment shall be required to approve variances and to overturn decisions made by the ~~Community Development Director~~Director or other Town staff presented to the Board. Any other matters shall require a majority vote of the members present at the time of the vote.

##### 6. Rules of Conduct

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this UDC. Hearings shall be held at the call of the chairman, vice-chairman, or ~~Community Development Director~~Director and at such other times as the Board of Adjustment may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All hearings shall be open to the public.

**Commented [ML1]:** This Section on Board of Adjustment to be moved to Title 3 of the Erie Municipal Code

## 7. Records

The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each decision; or, if absent or failing to vote, indicating that. It shall keep records of its examinations and other official actions, all of which shall be a public record maintained in the office of the Town Clerk.

### 10.8.3 BOARD OF ADJUSTMENT PROCEDURES

#### A. Appointment and Confirmation

Appointments to Board of Adjustment within the scope of this UDC shall be made and confirmed by the Board of Trustees in accordance with the rules adopted by the Board of Trustees.

#### B. Conduct

This Section sets forth procedures that are common to the Board of Adjustment.

##### 1. Absence of Member

Any member of the board under this Chapter anticipating an absence from a meeting of the board shall so advise the chair or secretary prior to the hearing.

##### 2. Agenda

The agenda for each regular hearing of the appointed board under this Chapter shall be prepared by the secretary and shall be distributed to each member at least 24 hours prior to the hearing, except for special hearings.

##### 3. Quorum – Official Action

- a. A majority of the full membership of the board shall constitute a quorum for the transaction of business.
- b. Action by the board shall require the favorable vote of a majority of the fully constituted board. The fully constituted board shall include all appointed members not excused for conflict of interest in the board action.

##### 4. Meetings Open to Public

- a. All hearings of the appointed board under this Chapter shall be open to the public except as otherwise provided in paragraph b. below. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This Section does not apply to any votes required to be taken to organize a board.
- b. A board may at any time go into executive session from which the general public may be excluded by a vote of the majority of the members taken at a public hearing. No subjects may be considered at the executive session except for those mentioned in the motion calling for an executive session unless auxiliary to the main question. No action may be taken at the executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations. Only the following subjects may be discussed at an executive session:
  - i. Matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
  - ii. Subjects that tend to prejudice the reputation and the character of any person, provided the person may request a public discussion;
  - iii. Matters that by law are required to be confidential; and
  - iv. Matters involving consideration of government records that by law are not subject to public disclosure.

**Commented [ML2]:** This Section on Board of Adjustment Procedures to be moved to Title 3 of the Erie Municipal Code

**5. Reconsideration or Rehearing of Decisions**

Decisions of any appointed board under this Chapter may be brought up for reconsideration or rehearing only if:

- a. There was substantial procedural error in the original proceeding;
- b. The board acted without jurisdiction in the original proceeding; or
- c. The original decision was based upon fraud or misrepresentation.

Any person seeking reconsideration or a rehearing must file a request with the Town Clerk, together with materials supporting 1 or more of the grounds stated in this Subsection, within 15 days of the original decision. The board, by majority vote, may schedule a rehearing only if it finds the allegations to be correct. A rehearing shall be conducted in the same manner as the original proceedings before the board.

**6. Removal of Member**

A member of any appointed board under this Chapter may be removed from office in the following circumstances:

- a. If the member is found to have participated in any matter with a conflict of interest therein;
- b. If the member fails to meet the attendance requirements set forth in the adopted rules and regulations for the applicable body; If the office becomes vacant; or
- c. If the Board of Trustees finds that a member's conduct is contrary to the intent or duty of that position; a member's conduct and/or action is contrary to goals and objectives of the Board; or a member's conduct may jeopardize the finances of the Town.

**7. Representatives**

Persons appearing before the board may appear in person or through a representative, agent, or attorney. The representative shall provide satisfactory proof of his or -her -authority upon the request of the board.

**8. Secretary**

A secretary shall be appointed for the board in this Chapter. The secretary shall have a record kept of all meetings of the board and shall keep such files as may be required.

**9. Applicability of Other Provisions**

The provisions of this Chapter shall not be a limitation on more restrictive rules regarding the conduct of the board set forth elsewhere in the Town Municipal Code.

~~10.8.4 TOWN STAFF~~

~~A. Review and Decision-Making Responsibilities~~

~~Town departments shall have the review and decision-making responsibilities set forth in Table 7.1-1, to be carried out in accordance with the terms of this UDC.~~

~~B. Other Powers and Duties~~

~~The departments also shall have such additional powers and duties as may be set forth elsewhere in this UDC and other ordinances of the Town. The following departments have the general responsibilities set forth below.~~

~~1. Community Development Department~~

~~The Community Development Department consists of the Planning Division and the Building Division. Both Divisions serve under the Community Development Director. The staff of the Community Development Department shall act in an advisory and support~~

Chapter 12: REGULATIONS FOR OIL AND GAS OPERATIONS

capacity to the Board of Trustees and the boards and commissions listed in this Chapter and within the Town's Municipal Code.

**a. ~~Planning Division—Community Development Director~~**

~~The Community Development Director shall have the following specific responsibilities under this UDC:~~

- ~~i. Review of all applications under this UDC in coordination with Town staff and departments.~~
- ~~ii. Interpretation and enforcement of this UDC. Appeals from a decision of the Community Development Director shall be presented in writing by the Appellant to the Community Development Director who shall forward such appeal with all pertinent information to the Board of Adjustment for hearing.~~
- ~~iii. The Community Development Director is not permitted to make changes, vary, or grant an exception to the actual meaning of any clause, order or regulation contained in this UDC to any person making application to construct, move, alter or use a building, a structure, or land, unless specifically authorized under Section 7.8.~~

**b. ~~Building Division—Chief Building Official~~**

~~The Chief Building Official shall have the following specific responsibilities under this UDC:~~

- ~~i. The power to make inspections of buildings and premises to carry out the duties of the enforcement of this UDC, subject to special provisions where stipulated in this UDC.~~
- ~~ii. The issuance of building permits and certificates of occupancy.~~

**2. ~~Public Works Department~~**

~~The Public Works Department consists of the 5 major divisions; Engineering & Inspection Division, Operations and Maintenance Division, Water Division, Wastewater Division, and Airport Division. All Divisions serve under the Director of Public Works. The Staff of Public Works shall act in an advisory and support capacity to the Board of Trustees.~~

**a. ~~Public Works Director~~**

~~The Public Works Director or designee shall have the following specific responsibilities under this UDC:~~

- ~~i. Review of all applications under this UDC in coordination with Town staff and departments.~~
- ~~ii. Review and coordination of all application under Town of Erie Standards and Specification for Design and Construction of Public Improvements; Flood Plain Regulations; and Airport Standards and Specifications.~~
- ~~iii. Review and coordination of all applications for Water Acquisition, the Water Treatment Plant, the Wastewater Plant, and the Re-Use Plant.~~
- ~~iv.i. The power to inspect public improvements and carry out the duties of the UDC.~~