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## ARTICLE IX

### Variance Procedure

#### Sec. 30-9-10. General.

The Division may set fees for processing an ISDS permit with a variance in accordance with the provisions of Section 25-10-107 of the Individual Sewage Disposal Systems Act. This permit fee may be the standard ISDS permit fee or may be a separate fee based upon the cost of processing a permit with a variance. (Weld County Code Ordinance 2005-5)

#### Sec. 30-9-20. Requirements for variance consideration.

A. The Board of Public Health must hear variance cases, and approval of a variance requires a majority vote.

B. Prior to the rendering of a decision on a variance request, a public hearing must be held. The hearing shall be the subject of a public notice or notice shall be sent via certified mail, with a minimum twenty-day reply time from the date of mailing, to all adjacent property owners. The applicant may submit a signed and dated statement of acknowledgment of variance from all adjacent property owners in lieu of posting or mailing.

C. Requests must be accompanied by:

1. Site specific request identifying the specific criteria from which a variance is being requested.

2. Technical justification by a Colorado-professional engineer or professional geologist which indicates the specific conditions which exist and/or the measures which will be taken to result in no greater risk than that associated with compliance with the requirements of the regulation. Examples of conditions which exist, or measures which might be taken, include but are not limited to the following: evidence of a natural or physical barrier to the movement of effluent to or towards the feature from which the variance is requested; placement of a man-made physical barrier to the movement of effluent to or toward the feature from which the variance is requested; soil amendment or replacement to reduce the infiltration rate of the effluent such that the travel time of the effluent from the absorption field to the physical feature is no less than the travel time through the native soils at the prescribed setback; and treatment equivalent to that required to meet National Sanitation Foundation (NSF) Standard 40 be provided.

3. A discussion of alternatives considered in lieu of the requested variance.

4. Technical support for a selected alternative, which may include a testing program, which confirms that the variance does not increase the risk to public health and to the environment.

5. A statement of the hardship which creates the necessity for the variance. No variance will be allowed solely for economic gain.

D. The applicant has the burden of proof that the variance is justified and will pose no greater risk to the public health and the environment than would a system meeting the requirements of the regulations.

E. The Division has the ability to impose requirements and conditions on any variance granted. (Weld County Code Ordinance 2005-5)

**Sec. 30-9-30. Outcome of variance proceeding.**

The applicant shall be notified, in writing, of the decision regarding the request for a variance. The notice of a denial of a variance shall include those reasons which form the basis for the denial. The notice of an approval of a variance shall include any conditions of the approval. The variance and any conditions thereof shall be recorded on the deed to the property, and any expenses associated with that recording shall be the responsibility of the party obtaining the variance. (Weld County Code Ordinance 2005-5)

**Sec. 30-9-40. Right to appeal.**

Should the Board of Public Health deny an appeal under this Article, the applicant shall have the right to appeal such decision to the Board of County Commissioners pursuant to Section 3-8(4)(n) of the Home Rule Charter and the procedures promulgated thereunder. (Weld County Code Ordinance 2005-5)

**Sec. 30-9-50. Prohibitions on granting of variance requests.**

A. No variance will be issued to mitigate an error in construction involving any element of property improvements.

B. No variance will be issued where the property can accommodate a conforming ISDS.

C. No variance will be issued which will result in setbacks to an off-site physical feature which do not conform to the minimum setbacks defined in Appendix 30-B to this Chapter.

D. No variance will be issued which reduces the four-foot separation to groundwater or bedrock.

E. No variance from the horizontal setback from a well shall be given which does not also meet the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors. (Weld County Code Ordinance 2005-5)

**Sec. 30-9-60. Findings on appeal.**

A. Any applicant whose permit or variance application has been denied by the Division may request review of the application by the Board of Public Health.

B. A request for review shall be made within sixty (60) days after denial.

C. The applicant shall bear the burden of supplying the Board of Public Health with sufficient evidence to document that the denied system will be constructed and used in such a manner as to comply

with the declaration and intent of these guidelines and all applicable state and local rules and regulations and required terms and conditions in any permit pursuant thereto.

D. Such review shall be conducted pursuant to the requirements of Section 24-4-105, C.R.S. (Weld County Code Ordinance 2005-5)