

ARTICLE XIII. APPEALS

SECTION 1301. GENERAL PROVISIONS -- Any Affected Person shall have the right to appeal any final action taken on behalf of Clearwater County using the procedure established herein. An appeal shall be considered a request for rehearing, and shall not be construed as placing any burden upon the body hearing said appeal to rule in favor of any party;

1. An Affected Person shall mean any person having an interest in real property which may be adversely affected by the granting or denial of any zoning permit;
2. Any action by the Administrator, Commission, or Board which violates any provision of this Ordinance, or any State or Federal Law may be appealed by an Affected Person, using the procedures established herein;
3. Appeals shall only be initiated by receipt, in writing, of a notice of appeal by the bodies prescribed hereafter. Every notice of appeal shall enumerate the specific grounds for initiation of the appeal. Written notice may include electronic transmission of text, provided that such text can be printed or otherwise converted to paper based format by County employees using reasonable means;
4. Following a notice of appeal, the Board may stay all proceedings in furtherance of the action taken unless the Administrator certifies that a stay would, in the opinion of the Administrator, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by restraining order or injunction granted by a Court of competent jurisdiction;
 - a. Upon issuance of a stay, any time limits placed upon the permit, whether ordained herein, or imposed as a condition of the decision being appealed, shall be tolled subsequent to the effective date of the stay, until such time as the appeal is decided.
5. Any person signatory to a notice of appeal may utilize each type of appeal provided for herein only once with regard to the same application, regardless of the disposition of the application, at which time all remedies provided by this Ordinance shall be considered exhausted. The affected person(s) may then seek judicial review under the procedures provided in Idaho Statute Title 67, Section 52.

SECTION 1302. ADMINISTRATIVE APPEALS -- Any person or organization affected by the interpretation or administration of this Ordinance by the Administrator may appeal the decision of the Administrator to the Commission using the following procedure:

1. The Affected Person shall transmit a notice of appeal to the Administrator and the Chair of the Commission within twenty (20) days of the action of the Administrator;
2. The Administrator shall transmit to the Commission all papers constituting the record upon which the appeal is based, as well as a reasoned statement supporting the decision being appealed, and shall no less than fifteen (15) days prior to the hearing date established, notify affected persons as provided in Article XV;
3. Within thirty (30) days of the receipt of the notice of appeal by the Chair, the Commission shall hold a public hearing, as provided in Article XV;
4. Within thirty (30) days of the close of public hearing, the Commission shall by majority vote either uphold or overturn the decision of the Administrator;
5. Within ten (10) days of the Commission action, the Commission shall notify the applicant and all affected property owners of the decision in writing, specifying:

- a. The Ordinance provisions and standards used in evaluating the appeal;
- b. The reasons for the decision; and
- c. The action aggrieved parties may take to seek remedy.

SECTION 1303. BOARD APPEALS -- Any person or organization affected by a decision of the Commission may appeal the decision of the Commission to the Board using the following procedure:

1. The Affected Person shall transmit a notice of appeal to the Administrator and the Chair of the Board within twenty (20) days of the action of the Commission;
2. The Administrator shall transmit to the Board all papers and other material (including recordings of the Commission proceedings) constituting the record upon which the appeal is based, and shall no less than fifteen (15) days prior to the date established by the Board for consideration of the appeal, notify affected persons of the pending appeal as provided in Article XV. The Board may request such clarification, information, or recommendations from the Administrator as are necessary to the Board's deliberation;
3. A transcript of the Commission's consideration of the request shall be provided by the County at the expense of the appellant. The Board of County Commissioners shall determine an estimated fee per page to be charged for transcripts. The appellant shall pay the estimated cost of the transcript to the County in advance, and be refunded money or owe additional money when the transcript has been prepared, and the actual cost determined. The transcript shall be a complete transcript of the entirety of any and all meetings at which the application is considered by the Commission;
4. Not more than thirty (30) days from receipt of the prepared transcripts, the Board shall consider the appeal. When meeting to consider the appeal, the meeting shall be open to the public, but shall not be a public hearing, unless:
 - a. A public hearing has been requested in accordance with Section 1101 of this Ordinance; or,
 - b. A public hearing has been called by a motion of a Board member, and by majority vote or unanimous consent of the full board, at which time the Board shall observe the hearing and notification procedures provided in Article XV of this Ordinance.
5. When meeting to consider the appeal, the Board may compel County staff to be available to present information and answer such questions as the Board may have;
6. The Board may choose to uphold, conditionally uphold, overturn, or postpone a decision pending further consideration. The Board shall overturn the decision of the Commission only by majority vote of the full Board;
7. Should the Board choose to overturn the decision of the Commission, the Board may refer the application back to the Commission for rehearing, and may provide such instructions to the Commission as are necessary to resolution;
8. Should the Board choose to uphold or conditionally uphold the decision of the Commission, all remedies shall be considered exhausted under local ordinance;
9. Within fifteen (15) days of the Board's decision, the Board shall notify the applicant and all affected property owners of the decision in writing, specifying:
 - a. The Ordinance provisions and standards used in evaluating the appeal;

- b. The reasons for the action taken; and
 - c. The action aggrieved parties may take to seek remedy.
10. On its own motion, the Board may, within fourteen (14) days of issuance of its written decision, reconsider that decision.

SECTION 1304. JUDICIAL APPEALS -- An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by Chapter 52, Title 67, Idaho Code.

SECTION 1305. REGULATORY TAKINGS ACTIONS -- The owner of real property which is subject to an action may request a takings analysis within 28 days of a final decision by the Board or Commission. If a request is made by the property owner, the Administrator shall provide a written takings analysis which complies with the checklist developed by the Idaho Attorney General for Board approval. The Board may, by majority vote of the full Board, approve said analysis. The approved analysis shall be provided to the property owner within 42 days of the receipt of the request by the Administrator.

1. During preparation of the takings analysis, all time limitations required by regulatory or administrative actions shall be tolled until such time as said analysis is provided to the owner;
2. Notice of a property owner's right to a regulatory takings analysis shall be provided within ten (10) days of final action by the Board or Commission.

SECTION 1306. MEDIATION – At any time during the processing of an application, the applicant, an affected party, or the Board of County Commissioners may request mediation in an effort to resolve contentious issues specific to the application. Upon agreement or order to mediate, processing of the application shall immediately be suspended and all hearings, in progress or pending, shall be canceled.

1. The applicant or affected party may request mediation by submitting written request to the administrator. If both the applicant and the affected party agree to mediation, a mediation date shall be set, not to exceed twenty-eight (28) days from the date the agreement to mediate is reached.
2. Upon agreement, a mediator certified by the State of Idaho shall be selected to administer mediation sessions. If the parties cannot agree upon a mediator, each party shall submit two names of mediators and the mediator will be drawn at random. The mediator so drawn shall mediate the session.
3. All expenses relating to mediation shall be borne by the party requesting mediation.
4. The Board may order mediation by simple majority vote, and the applicant and affected parties as identified shall participate in at least one (1) mediation session. When so ordered, a mediator certified by the State of Idaho shall be selected to serve as mediator for the first mediation session at county expense, and the date of mediation shall be set within twenty-eight (28) days, though the mediation session itself may be held later than twenty-eight (28) days by agreement or for good cause shown. Should continued mediation appear necessary or should the parties object to the chosen mediator, a mediator agreeable to both parties and an agreement reached between all parties, including the Board, for compensation of the mediator shall be decided at the first session.
5. The mediation process shall not be part of the official record regarding the application.

6. If, after at least one (1) mediation session, any party chooses not to proceed with mediation, they shall notify the zoning administrator in writing and processing of the application shall resume following proper public notice.
7. Upon conclusion of mediation, the applicant shall submit written notice to the zoning administrator, along with supplements to the application reflecting any agreements reached for inclusion in the official application record. Processing of the application shall proceed as follows:
 - a. If mediation was initiated prior to a recommendation by the Planning and Zoning Commission, a public hearing shall be scheduled before the Planning and Zoning Commission.
 - b. If mediation occurs subsequent to a recommendation by the Planning and Zoning Commission, a public hearing shall be scheduled before the Board of County Commissioners.
 - c. If mediation occurs subsequent to a final decision by the authorizing body, any resolution reached through mediation shall be included with the application and be the subject of another public hearing before the Board.