

CHAPTER 20

APPEALS

8-20-1: Purpose

The purpose of this chapter is to establish standards and procedures for appeals of land use decisions made by the Planning and Zoning Commission (“Commission”) and the Community Development Services Director (“Director”).

8-20-2: DECISIONS THAT MAY BE APPEALED:

- A. Community Development Services Director Decisions: A final written determination or decision by the Director on the issuance of a permit or certificate, or on the interpretation of any provision of this Title may be appealed to the Board of County Commissioners (“Board”).
- B. Planning and Zoning Commission Decisions: A final decision of the Commission including, but not limited to, an animal feeding operation, variance, preliminary subdivision plat, conditional or special use permit may be appealed to the Board.

8-20-3: WHO MAY FILE APPEALS:

- A. A determination or decision of the Director may be appealed by the applicant or by any other affected person(s) as defined in Idaho Code Section 67-6521(1)(a).
- B. A final decision of the Commission may be appealed by the applicant or any other affected person.
- C. For purposes of the Chapter, a County employee acting in their official capacity is not an affected person.
- D. Appeals based on allegations or grounds not regulated by this code shall not be considered.

8-20-4: RECORD ON APPEAL:

The Community Development Services Department shall be responsible for compiling the record on appeal.

- A. The record on appeal shall be comprised of, where applicable, the following documents:
 - 1. Complete Application;
 - 2. CDS Staff Documents and Report;
 - 3. P&Z Commission Written Decision;
 - 4. Sign In Sheet and any exhibit and/or attachments;
 - 5. Notice of Appeal;
 - 6. Appellants proof of mailing;
 - 7. Transcript of Planning and Zoning Hearing
 - 8. Appellants statement;
 - 9. Respondents statement
- B. The Community Development Services Department shall provide a copy of the record on appeal to the Board within fourteen (14) calendar days after the appellant files the written statement in support of the appeal or upon preparation of the transcript, whichever is later.

- C. The Community Development Services Department shall not be required to compile the record on appeal until after the appellant has paid the transcript deposit.

8-20-5: NOTICE OF APPEAL:

- A. Notice of appeal must be filed with Community Development Services Department on a form provided by that office, along with the required fees, within fourteen (14) calendar days after the date of the Director's final determination or written decision; or within fourteen (14) calendar days after the Commission's final written decision.
- B. Upon the filing of the notice of appeal, Community Development Services shall send a copy of the notice of appeal to the Board.
- C. The filing of a notice of appeal shall automatically suspend the effect of the decision appealed, pending the final decision on the appeal.
- D. No development on the property shall take place or any permit for construction or use be issued until after the fourteen (14) calendar day period for filing a notice of appeal has lapsed.

8-20-6: PROCEDURE FOR APPEAL OF THE COMMUNITY DEVELOPMENT SERVICES DIRECTOR'S DECISION:

- A. Within fourteen (14) days of filing the notice of appeal, the appellant shall file a written statement with Community Development Services explaining the basis for the appeal and reasons for the board to reverse the decision of the Director. Upon receipt, the Community Development Services will forward the written statement, statement of reasons for the appeal, and the record on appeal to the Board for review.
- B. The Board will review the appellant's statement of reasons, and may uphold, reverse, or amend the decision, or may remand the decision to the Director with instructions for further consideration.
- C. No public hearing is required for an appeal of the decision of the Director, but the Board must make its decision at a regularly noticed meeting of the Board, at which the Board shall consider the decision of the Director and any additional evidence that may be offered by the applicant, appellant, or Director at the meeting.

8-20-7: PROCEDURE FOR AN APPEAL OF THE PLANNING AND ZONING COMMISSION'S DECISION:

- A. A transcript of the Commission's proceedings on the appealed decision is required. Community Development Services shall copy the recording of the Commission proceedings, arrange to have the recording transcribed. The Appellant shall pay the cost of preparing the Commission meeting transcript. Payment for the transcript must be made before the Board schedules a hearing on the appeal.
- B. Within fourteen (14) calendar days of filing the notice of appeal, the appellant shall file a written statement with the Community Development Services Department explaining the basis for the appeal and reasons for the Board to reverse the decision of the Commission. The statement must be in writing. If the appellant requests an extension of time due to a delay in the transcript preparation, that request must be submitted to the Community Development

Services Department in writing, and in no case shall be granted to extend beyond fourteen (14) calendar days from the time the transcript is completed.

- C. Within fourteen (14) calendar days after filing the notice of appeal, the appellant shall file with the Community Development Services Department proof of personal or mailed service of the notice of appeal on the applicant (if applicable), applicable political subdivisions, all property owners who received mailed notice of the Commission hearing at which the decision was made, and all affected persons who personally appeared or filed a written comment at the Commission hearing at which the decision was made. Failure to comply with this requirement may result in dismissal of the appeal by the Board.
- D. The appellant shall pay a transcript deposit at the time of filing the statement of reasons for the appeal. The transcript shall be paid for by the appellant at the current market rate. If the cost for preparation of the transcript exceeds the deposit, the appellant shall pay the difference before the appeal is scheduled for hearing before the Board. If the cost of preparing the transcript is not paid within thirty (30) calendar days from the completion of the transcript, the appeal shall be deemed dismissed. If the transcript cost is less than the deposit, the county will reimburse the appellant the difference within thirty (30) calendar days.
- E. The transcript will be provided to the Board and the Director upon completion. The applicant and respondents, if any, may obtain a copy of the transcript from the Director when the transcript fee is paid in full by the appellant.

8-20-8: BOARD REVIEW ON APPEAL:

- A. The Board's consideration of the Director's decision or a decision of the Commission shall be made at a regularly noticed meeting of the Board unless otherwise required by law. Only affected persons, as defined herein, may present information and/or argument at the appeal hearing.
- B. Upon hearing the appeal, the Board may consider the ordinance, permit, decision, or determination of the Commission or Director, and any attached conditions thereto. The Board may also consider the record on appeal and any additional evidence that may be offered by affected persons, applicant, Director, and/or Commission.
- C. After considering the record on appeal and the evidence presented before them, the Board may affirm, reverse, or modify, in whole or in part, the order, requirement, permit, decision, or determinations appealed or make any additional conditions which in its deliberations it may find warranted under the provisions of this code; or may remand the decision to the Commission or Director for further consideration.
- D. Unless the Board remands the decision to the Commission or Director, the decision of the Board shall constitute a final decision concerning such matter.
- E. Every final decision concerning a site-specific land use request shall be accompanied by a notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003 of the Idaho Code.
- F. Any action to grant a conditional or special use permit, either through affirmation, modification, or reversal of the planning and zoning Commission's decision, must include required findings for a conditional or special use permit as provided in this code and otherwise by law.

8-20-9: RECONSIDERATION:

- A.** Any applicant or affected person seeking judicial review of compliance or noncompliance of express approval standards or relevant decision criteria of permit applications as outlined in Idaho Code § 67-6535 must first seek reconsideration of the final decision within fourteen (14) days of the final written decision on appeal.
- B.** Applications for reconsideration must be submitted to the Community Development Services Department. Such written request must identify specific deficiencies in the decision for which reconsideration is sought.
- C.** Reconsideration of the final decision on appeal shall be made at a regularly noticed meeting of the Board. Such meeting shall be held within fourteen (14) calendar days of receipt of the request for reconsideration. Only the Applicant, Appellant, and/or the party seeking reconsideration shall be given the opportunity to make arguments before the Board.
- D.** During the reconsideration, the Board will evaluate whether the written decision contained a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles, and factual information contained in the record. The Board's review will be limited to the record on appeal and no new information will be considered.
- E.** Upon reconsideration, the Board of County Commissioners may affirm, reverse, or modify the decision after compliance with applicable procedural standards as listed in Twin Falls County Code Title 8, Chapter 20.
- F.** A written decision on reconsideration shall be provided to the applicant or affected person within twenty-eight (28) calendar days of the request for reconsideration meeting. A decision shall not be deemed final for the purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration.
- G.** Every final decision concerning a site-specific land use request shall be accompanied by a notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003 of the Idaho Code.