

2.4.14. APPEALS

A. Purpose. This Section sets forth the process for appealing final decisions made under this Land Use Code.

B. Definitions.

1. Appellant shall mean a party-in-interest who has taken an appeal from the original decision-maker to the appellate decision-maker, or from the appellate decision-maker to the Town Council by the timely filing of a notice of appeal.

2. Appellate decision-maker shall mean the board or commission to which a decision made under this Land Use Code has been appealed.

3. Applicant shall mean the person who or organization which submitted the original application to the original decision-maker.

4. Final decision shall mean the action of the Director, or a board, commission, Town Council or other decision-maker by a vote of a majority of its members when no further rehearing is available before such board, commission, or other decision-maker; provided, however, that a recommendation to the Town Council from a board, commission or other decision-maker shall not be considered as a final decision of that board, commission, or other decision-maker.

5. Original decision-maker shall mean the Director or other administrator, Board, or commission that made an initial decision on an application pursuant to this Land Use Code.

6. Party-in-interest shall mean a person who or organization which has standing to appeal the final decision of the original decision-maker or appellate decision-maker. Such standing to appeal shall be limited to the following:

a. The applicant;

b. Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision being appealed;

c. Any person to whom or organization to which the Town mailed notice of either the hearing of the original decision-maker or the appeal hearing before the appellate decision-maker; and

d. Any person who appeared and submitted testimony or evidence before the original decision-maker's hearing or the appeal hearing before the appellate decision-maker.

7.

Town Council shall mean the Town Council of the Town of Pagosa Springs serving in its role as decision-maker for an appeal of the appellate decision-maker's final decision.

C. Appeals. Appeals of land use decisions are available at each step of review and decision-making. Administrative decisions may be appealed to the appropriate board or the Planning Commission, and decisions of any board or the Planning Commission may be appealed to the Town Council, as further set forth in this Section 2.4.14.C.

1. First level of appeal—Appeals of administrative decisions.

a. General. A denial by the Director of a permit or other approval sought pursuant to this Land Use Code may be appealed by the applicant to the Board of Adjustments, except that decisions regarding sign regulations and administrative design review may be appealed to the Design Review Board and decisions regarding minor subdivision final plat applications, conditional use permits, and floodplain development permits may be appealed to the Planning Commission.

b. Appeals of floodplain administrator decisions. Decisions of the Floodplain Administrator may be appealed by the applicant to the Planning Commission.

2. Second level of appeal—Appeals to Town Council. Decisions made by the Board of Adjustments, the Design Review Board, the Planning Commission, or any other board or commission pursuant to this Land Use Code may be appealed to the Town Council by a party-in-interest.

3. Judicial appeals of Town Council Decisions. Any party-in-interest may appeal a final decision of the Town Council made pursuant to this Land Use Code to the court of jurisdiction.

D. Grounds for appeal. The permissible grounds for appeal shall be limited to allegations that the original or appellate decision-maker committed one (1) or more of the following errors:

1. Failed to properly interpret and apply relevant provisions of the Town Code or Charter.

2. Failed to conduct a fair hearing in that:

a. The original or appellate decision-maker abused its discretion as contained in the Town Code or Charter;

b. The original or appellate decision-maker substantially ignored its formally established rules of procedure resulting in a denial of procedural due process; or

c. The original or appellate decision-maker based its decision on evidence which was substantially false or grossly misleading.

E. Notice of appeal.

1. Appeals shall be made within ten (10) days of the final decision which is the subject of the appeal. All appeals shall be filed in writing with the Town Clerk and shall include the following:

a. If the appeal is filed by the applicant and the original application was filed by multiple individuals or entities, all of the original applicants must sign the appeal;

b. The final decision of the original decision-maker; or if the appeal is to the Town Council, the final decision of both the original decision-maker and appellate decision-maker, and identifying which decision(s) is(are) the subject of the appeal;

c. The date(s) of such final decision(s);

d. The name, address, telephone number and relationship of each appellant to the subject of action of the original decision-maker; or if the appeal is to the Town Council, the name, address, telephone

number and relationship of each appellant to the subject of action of the original decision-maker and appellate decision-maker;

e. The grounds for the appeal, including specific allegations of error and a summary of the facts contained in the record on appeal which support those allegations;

f. In the case of an appeal alleging under Section 2.4.14.D.2.c, that the original decision-maker or appellate decision-maker based its decision on evidence that was substantially false or grossly misleading, references to the record in support of this allegation;

g. In the case of an appeal filed by more than one (1) appellant, the name, address and telephone number of one (1) such appellant who shall be authorized to receive, on behalf of all appellants, any notice required to be sent by the Town; and

h. Any other information required by the Town Clerk.

2. Review of notice of appeal. The Town Clerk shall review the notice of appeal for any defects in form or substance. The Town Clerk shall notify the appellant in writing of any such defect in the notice of appeal, which notice shall be mailed no more than seven (7) days from the date of filing of the notice of appeal.

3. Amended notice of appeal. If the Town Clerk discovers any defects in the notice of appeal, the appellant may file an amended notice of appeal within five (5) days of the date of the notice of default. An amended notice of appeal shall correct those defects identified by the Town Clerk and shall include all information required under Section 2.4.14.E.1 of this Land Use Code.

F. Cost of appeal. The appellant shall pay a fee of one hundred dollars (\$100.00) at the time the notice of appeal is submitted.

G. Appeals process.

1. Briefs. The appellant and the Town shall have an opportunity to file briefs for consideration by the appellate decision-maker, or Town Council, as applicable, as follows:

a. The appellant may file an opening brief no later than fourteen (14) days after filing the notice of appeal; or, within seven (7) days of filing an amended notice of appeal.

b. Town staff, on behalf of either the original decision-maker or appellate decision-maker, if the appeal is before the Town Council, may file a response brief no later than fourteen (14) days following the date that the appellant's opening brief is filed.

c. Appellant may file a reply brief within seven (7) days of the date the Town filed its response brief.

d. If the applicant is not the appellant, the applicant may request in writing permission from the appellate decision-maker or Town Council to file a brief. Such request shall be granted if the appellate decision-maker or town council believes the applicant's interest will be furthered. If such request is granted, the applicant shall file a response brief on the same schedule as the Town staff.

2. Record on appeal. Any appeal under this Section 2.4.14. shall be an appeal on the record of the hearing before the original decision-maker, or the appellate decision-maker if the appeal is before the

Town Council. The record provided to the appellate decision-maker or Town Council, as applicable, shall include the following:

- a. All exhibits, including without limitation, all writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed by the original decision-maker and, if the appeal is before the Town Council, any items received or viewed by the appellate decision-maker; and
- b. A recording or verbatim transcript of such proceedings before the original decision-maker, and if the appeal is before the Town Council, the appellate decision-maker.

3. Burden of proof. Any final decisions of the original decision-maker and appellate decision-maker shall be presumed to be correct. The appellant has the burden of proof to show that a preponderance of the evidence introduced before the original decision-maker or appellate decision-maker supports the conclusion that the decision should be overturned based on the criteria set forth in Section 2.4.14.H.

4. Appeal hearing.

- a. The Director shall schedule a public hearing on the appeal no later than sixty (60) days after the date the appeal was filed with the Town Clerk. The appeal hearing may be extended up to ninety (90) days after the filing of the appeal if agreed to by both the Director and the appellant.
- b. Notice of the public hearing shall be published on the Town's official website no fewer than fifteen (15) days prior to the scheduled hearing date. Written notice of the appeal hearing shall also be mailed to the appellant, the applicant, and all property owners and mineral estate owners and lessees required to receive notice pursuant to Sections 2.3.6.D and E. All such notices shall meet the requirements of Section 2.3.6.A. of this Land Use Code.

5. Pre-hearing procedures.

- a. Procedural issues. Prior to the date of the appeal hearing, the appellate decision-maker or Town Council, as applicable, may establish any procedural rules related to the appeal hearing, including, but not limited to, the possible introduction or exclusion of certain evidence, the period of time to be allowed for presentation of arguments on the merits of the appeal and any concerns or objections related to the record on appeal. On its own initiative or for good cause shown by any party to an appeal, the appellate decision-maker or Town Council may order the modification of any procedural requirements of this Section 2.4.14. so long as such modification does not shorten a time period, or eliminate or reduce a party's ability to file a notice, brief, or appeal, or present or defend an appeal.
- b. Consolidation of multiple appeals. In the event of multiple appeals involving the same final decision, prior to the appeal hearing, the appellate decision-maker or Town Council, as applicable, may consolidate the appeal or otherwise modify the procedures contained in Section 2.4.14.G.6 as necessary.

6. Order of proceedings at appeal hearing. The order of the proceedings at the appeal hearing shall be as follows:

- a. Director overview. The Director shall have fifteen (15) minutes to provide an overview of the original application.

b. Appellant presentation. The appellant shall have a total of thirty (30) minutes to present information in support of the appeal, subject to the determination of the appellate decision-maker or Town Council as to relevance. Copies of all portions of the record that the appellant wishes the appellate decision-maker or Town Council to consider must be submitted to the Director no fewer than five (5) working days before the public hearing.

c. Staff report presented. The Director and Town staff shall have a total of thirty (30) minutes in which to present a response to the appeal and appellant's presentation, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code applicable to the original application.

d. Appellant response. The appellant shall have a total of fifteen (15) minutes to rebut any presentation by the Town.

e. Questions. Following the presentations and rebuttals, the arguments will be closed and the appellate decision-maker or Town Council, as applicable, may ask questions of the Town staff, the appellant, and any parties-in-interest.

7. Conduct of public hearing.

a. Presentation time periods. The time periods set forth in Section 2.4.14.G.6 herein may be extended by the appellate decision-maker or Town Council, as applicable, based on the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of parties-in-interest who wish to address the appellate decision-maker or Town Council with regard to the merits of the appeal.

b. Exclusion of new evidence. The appellate decision-maker may exclude arguments based on testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious. The appellate decision-maker or Town Council shall not consider arguments not raised in the notice of appeal and new evidence shall not be considered on appeal except upon a showing that such evidence could not have reasonably been presented to the original decision-maker or, if the appeal is before the Town Council, the original or appellate decision-maker, and is not repetitive of evidence already within the record.

c. Continuance of public hearing. The appellate decision-maker or Town Council, as applicable, may, either on its own motion or at the request of any party-in-interest, continue the appeal hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the appellate decision-maker or Town Council, as applicable.

8. Decision. Following the public hearing, the appellate decision-maker or Town Council may, in whole or in part, affirm, reverse, or amend the decision being appealed based on the appeal criteria set forth in Section 2.4.14.H herein, and to that end the appellate decision-maker or Town Council shall have all the powers of the original decision-maker. The appellate decision-maker may also remand the matter back to the original decision-maker and the Town Council may remand the matter back to either the original decision-maker or appellate decision-maker, as deemed appropriate, for further proceedings consistent with the Land Use Code. The final decision shall be stated in writing in the body's minutes

as well as in a written order to be delivered to the appellant and shall include specific findings of fact with specific reference to relevant standards as set forth in this Land Use Code.

9. Notification to applicant. Notification of the appellate decision-maker's or Town Council's final decision shall be provided by the Director to the parties in the appeal within ten (10) days of the decision and shall be published on the Town's official website for a period of not less than ten (10) days after the final decision.

10. Record of appeal proceedings.

a. Record of appeal hearing. The appellate decision-maker or Town Council shall record the public hearing by any appropriate means. A copy of the record of the appeal may be acquired by any person upon application to the Director and payment of a fee to cover the cost of duplication of the record.

b. The record. The record of the appeal shall consist of the following:

(1) The record of the original decision-maker which was appealed;

(2) Any supplemental evidence approved by the appellate decision-maker or Town Council, including any exhibits, writings, drawings, maps, charts, graphs, photographs, and other tangible items received or viewed at the proceedings by the appellate decision-maker, or the Town Council if the appeal is before the Town Council;

(3) Any briefs submitted by the parties;

(4) All minutes of the proceedings;

(5) If appealed to the Town Council, the recording or a verbatim transcript of the proceedings before the appellate decision-maker. The cost of the transcript shall be borne by the party appealing the decision.

H. Appeal criteria. The appellate decision-maker or Town Council shall reverse, amend, or remand a decision upon a finding that the at least one (1) of the grounds for appeal set forth in Section 2.4.14.D occurred, and that the final decision being appealed was materially affected thereby.