

# ARTICLE 7

## APPEALS

**SECTION 7.010, PURPOSE:** The purpose of this Article is to establish uniform procedures for the appeal of land use decisions and actions provided for in this ordinance.

**SECTION 7.015, APPEAL AUTHORITY:**

01. Decisions by the Planning Director shall be subject to appeal to the Planning Commission.
02. Decisions by the Planning Commission shall be subject to appeal to the Wallowa Board of Commissioners.
03. Decisions reached by the Planning Commission in its capacity as an appellate body shall be subject to appeal to the Wallowa County Board of Commissioners.
04. Nothing in this ordinance shall prevent appeal to the State Land Use Board of Appeals (LUBA), as provided by ORS Chapter 197.
05. Appeal of a decision to the Land Use Board of Appeals (LUBA) shall follow the requirements of ORS 197.805 through 197.860.

**SECTION 7.020, INITIATION OF APPEAL:**

01. A decision of a review authority pursuant to this ordinance may be appealed by parties with standing to appeal (WCOA 1.065(101)) for noticed decisions, and by parties who are adversely affected (WCOA 1.065(005)) for decisions which are not noticed. Appeals must be received within the prescribed time limits:

A. For decisions which are noticed the appeal period shall be no less than 12 days from the date of decision and the final date to accept appeals shall be part of the notification. The appeal period may be extended to the end of the next business day if the 12 day period ends on a weekend or holiday.

B. For decisions which are not noticed an appeal must be received:

- (01) Within 21 days of the date of action specified on the permit ; or

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(02) Within 21 days of the date a person knew or should have known of the decision.

02. The filing of an appeal shall be accompanied by the fee prescribed by resolution of the Wallowa County Board of Commissioners.

03. The appeal document which is filed shall list at least the following information.

A. An identification of the decision sought to be reviewed including the date of the decision.

B. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.

C. The specific grounds for appeal as they relate to relevant review criteria.

**SECTION 7.025, SCOPE OF REVIEW ON APPEAL:** The scope of review on appeal shall be restricted to the record made on the decision being appealed, unless the appeal authority issues an order stating the scope to be one of the following:

01. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.

02. A De Novo hearing on the merits with new evidence allowed.

**SECTION 7.030, REVIEW OF THE RECORD:**

01. Unless otherwise provided for by the appeal authority, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:

A. An oral or written factual report prepared by the Planning Director.

B. All exhibits, materials, pleading, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.

C. The minutes of the hearing below and a detailed summary of the evidence.

02. The appeal authority shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to any party who has

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filed a notice of appeal.

**SECTION 7.035, NOTICE OF APPEAL HEARING:** Notice of the hearing held by an appeal authority to consider an appeal shall be mailed at least twelve days prior to the hearing to the appellant and all persons who have standing in the proceeding of the issue on appeal.

**SECTION 7.040, DE NOVO REVIEW:** The appeal authority may decide to hear the entire matter De Novo as defined in Section 1.065. The appeal authority shall consider all of the following in making such a decision.

01. Prejudice to the parties.
02. Convenience or availability of proposed new evidence at the time of the initial hearing.
03. Surprise to opposing parties.
04. The competency, relevancy, and materiality of the proposed new testimony or other evidence.

**SECTION 7.045, APPEAL AUTHORITY DECISION:**

01. Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses a decision of the hearing body, the appeal authority, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order.

When the appeal authority elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

02. Action by the appeal authority shall be decided by a quorum of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The appeal authority shall render its decision no later than 30 days from the date at which review was made unless otherwise agreed to by the parties and shall file that decision with the County Clerk within twelve days after it is rendered.

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