

PROCEDURE FOR PUBLIC HEARING FOR LAND USE APPEALS
[MAYOR TO READ ALOUD ALL HIGHLIGHTED IN YELLOW
COUNCIL ACTION IN RED
FOLLOW THE STEPS AND ASK EACH QUESTION IN FULL]

1. CALL TO ORDER

The Public Hearing is now open. This is a hearing for City Council to listen to and consider an appeal “*on the record*” of the Planning Commission’s approval of a request for Site Design Review to construct a 60-unit multi-family affordable housing development on Engle and Villard Streets.

This is an appeal “*on the record*” of a Type II land use decision, a quasi-judicial hearing which requires the observance of some stringent procedural formalities. We’ll take a few moments to cover some preliminary matters and required statements.

Please note that the only persons permitted to make presentations to the Council at this hearing are staff, the applicant, the appellant, and persons who participated in the Planning Commission hearing process AND who submitted written arguments prior to this hearing.

For those parties qualified to participate, your oral arguments tonight are confined to the substance of your previously submitted written arguments. If you intend to speak, you must fill out the yellow speaker request form located at the back of the room and give it to the City Recorder. Within about 10 minutes we will begin the hearing, and I will call you when it is your turn to present your argument. Now, if you have not done so already, this is your time to provide your request forms to the City Recorder.

This appeal “on the record” will be processed according to AMC 18.5.1.060.I. That means a speaker’s testimony must be limited to “the permissible grounds for appeal.” The only “permissible grounds for appeal” are specific points or arguments (1) which were raised and addressed in the existing record developed before the Planning Commission; AND (2) which were set forth in a timely-filed Notice of Appeal that also included a statement of the purported applicable criteria or procedural irregularity. The Council’s consideration of the appeal likewise must be limited to such “permissible grounds for appeal.”

There are two conceivably permissible grounds for the appeal in this matter. They are shown on the screen now and will be read aloud by the City Recorder.

[City Reorder reads appeal grounds: 1) The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts; 2) The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030.]

In the staff report you will hear staff’s conclusion that the second alleged error just read by the City Recorder and shown on the screen fails to qualify as a “permissible ground for appeal” because it was not raised as part of the Planning Commission decision process and is therefore not in the record for this matter. After the staff report, the Council will be asked to rule on whether the subject of that second alleged error was or was not addressed as part of the Planning Commission decision process and accordingly should or should not be deemed “permissible ground for appeal.” More on that after the staff report and before proceeding to hear testimony from the applicant and appellant.

For now, it’s sufficient to keep in mind the general rule that a speaker’s testimony must be limited to points already addressed in the existing record and must relate only to matters determined to be the permissible grounds for appeal. If you get off track or your testimony does not relate to the permissible grounds for

appeal, I will stop you in order to avoid confusion and wasting time. Any questions from the Council will not count against a speaker's allotted time.

In your testimony or evidence, if you fail to raise an issue that is within the scope of the permissible grounds for appeal, then you cannot argue that issue later on in an appeal of the Council's decision.

The remainder of this hearing process will consist of the following elements

1. I will ask Council members for applicable preliminary disclosures.
2. Persons permitted to make presentations to the Council at this hearing may submit to the City Recorder any challenges to Council members for bias, prejudice or conflict of interest.
3. Planning staff will present the staff report.
4. The applicant and the appellant will each have ten minutes to present their arguments.
5. Parties who participated in the Planning Commission hearing process AND submitted written arguments in advance of this hearing have three minutes to summarize their arguments.
6. The applicant will have 5 minutes for rebuttal, if requested.
7. I will then close the appeal hearing, and, after any advice from Legal Counsel or City staff, the Council will deliberate to a decision.

2. ABSTENTIONS, CONFLICTS, EX PARTE CONTACTS

This is the time for any members of the Council to declare any conflict of interest or bias and to report any ex parte contact on this matter. If you declare a bias, conflict or ex parte contact, you may still participate in the hearing provided your conflict or bias is not so material or deeply held that you cannot make a decision based solely on the applicable decision criteria and the facts and evidence in the record because of that conflict, bias, or prior contract. If, however, you feel you cannot make a decision based solely on the applicable decision criteria and the facts and evidence in the record, you may choose to abstain by stating that it is your choice and stepping down from your chair. However, if your presence is required for a quorum, you should stay but not participate or vote. Do any members of the Council wish to declare a personal bias or conflict of interest or report any ex parte contact on this matter?

IF contacts are reported, consider the following:

- a. *Ex-parte communications:* If a member has had ex parte communication the substance of the contact must be disclosed. The presiding officer should question the member if the disclosure of the written or oral communication is not complete. If the presiding officer fails to do so, a member may request a more full disclosure (point of order). Legal counsel will also monitor the disclosure.
- b. *Conflict of Interest:* If a member has an actual or potential Conflict of Interest, the member must both announce the conflict and explain the nature of the conflict. If the Conflict is only a potential conflict the member may participate and vote after making an affirmative statement of impartiality (see below). If the Conflict is an actual conflict, the member must then announce that the member will not be participating or voting.
- c. *Actual personal bias, prejudice:* If a member is actually personally biased, (that is, the member cannot make the decision based upon applying the relevant Code standards to the evidence and argument presented), the member must announce the nature of the bias and also announce that he/she will not be participating or voting. The member should leave the room to avoid accusations of non-verbal communication. (See also "Challenges" below.)

d. *After disclosure of an ex parte contact, (or potential conflict of interest or after a challenge for bias (see below) the member should either abstain or make the following affirmative statement of impartiality:*

“I have not prejudged this application and I am not prejudged or biased by my prior contacts or involvement; I will make this decision based solely on the application of the relevant Code standards to the facts and evidence in the record of this proceeding.”

After disclosure of any ex parte a contact or potential conflict of interest and any affirmative statement of impartiality, the presiding officer must make the following announcement:

Any person has the right to rebut the substance of the evidence or information disclosed. Please present your rebuttal evidence on the substance of any ex parte contacts, bias, or actual conflict of interest during the normal time allowed for testimony which has been established for this proceeding. Please reduce any bias, conflict of interest, and prejudgment challenges to writing with supporting evidence and provide these to the City Recorder.]

2. CHALLENGES

City Recorder, do we have any challenges to members of this hearing body for bias, prejudgment or conflict of interest?

IF a challenge is made, the challenge needs to be entered into the record and summarized by the presiding officer.

If a member is challenged for bias, the member should make the above statement of impartiality or abstain and not participate further.

3. STAFF REPORT

At this time, I call for the staff to summarize the applicant’s proposal and summarize the grounds for appeal and staff’s evaluation of them. Bill and Derek...

[Bill’s brief remarks... 1) Brief statement on on-the-record appeals. 2) The appellant, Russell Ellis Dale, requested in his written argument that the record be reopened tonight. AMC 18.5.1.060.I.4.b requires that requests to reopen the record be provided to the City Administrator with the notice of appeal. Because Mr. Dale’s request was not timely filed and came in with his written argument submittals roughly three weeks after his notice of appeal, the City Administrator has determined that the record will not be re-opened.]

[Derek’s staff report... ... Powerpoint, then conclude with: The “*Scope of Appeal Deliberations*” in AMC 18.5.1.060.I.5.b is clear that “*No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.*” Staff has determined that the second ground for appeal dealing with the parking management strategy was not raised before the Planning Commission during the original hearing. As such, staff made note in the Public Hearing notice that the Council would determine tonight whether the second ground for appeal should be excluded from the appeal hearing. Staff recommends that the Council exclude the second ground for appeal as falling outside the allowed Scope of Appeal Deliberations. This would strike materials related to this ground for appeal from the record and from consideration in the decision tonight, and all speakers would be directed to limit their testimony strictly to the first ground for appeal.

Should the Council concur with staff's recommendation, a motion "**I move to exclude the second ground for appeal dealing with the parking management strategy from the hearing tonight as it falls outside the allowed "Scope of Appeal Deliberations" because it was not previously raised before the Planning Commission**" would be appropriate.

(If the Council votes to exclude the second ground...) With that, all oral arguments tonight should be confined to the first ground for appeal dealing with the Planning Commission's decision relative to a locked gate restricting access to McCall Drive. Arguments with regard to the approved parking management strategy our outside the scope of the Council's deliberations and will not be considered here tonight.

4. APPLICANT'S ORAL ARGUMENT PRESENTATION

Would the applicant **the Housing Authority of Jackson County** or the applicant's representative please come to the podium. You will have 10 minutes to make any comments you may have regarding the application; at 9 minutes you will be asked to conclude your remarks. Please state your name and address and proceed.

5. APPELLANT'S ORAL ARGUMENT PRESENTATION

Would the appellant **Russell Ellis Dale** please come to the podium? You will have 10 minutes to make any comments you may have regarding the application; at 9 minutes you will be asked to conclude your remarks. Please state your name and address and proceed.

6. PARTIES' ORAL ARGUMENTS

Would **Bob Alessandrelli**, the only party to submit written arguments, please come to the podium, state your name, address and make any comments you may have for the Council regarding the application? You will have 3 minutes to make any comments you may have regarding the application; when the 3 minutes are up, you will be asked to conclude your remarks.

7. REBUTTAL BY APPLICANT

If the applicant has any rebuttal to the evidence presented by those questioning or opposing the application, you will have five minutes for your rebuttal.

8. CLOSE PUBLIC HEARING

At this time, I close the public hearing. The record is now closed.

9. ADVICE FROM LEGAL COUNSEL AND STAFF

Does the Council have any questions of Legal Counsel or Planning staff, or does the staff have any matters they wish to address?

10. COUNCIL DELIBERATION AND DECISION

How would the Council like to proceed?

(DECISION)

(If the decision is consistent with the staff recommendations to exclude the second ground and reject the appeal with regard to the first ground ...) **Would the Council like to adopt the draft Findings included in your packets tonight?**

GROUNDS FOR APPEAL

1. The Planning Commission erred in approving the application without a permanent locked gate restricting access to McCall Drive to avoid pedestrian conflicts.
2. The Planning Commission erred in approving a parking management strategy which is counter to the General Automobile Parking Requirements and Exceptions in AMC 18.4.3.030.