

PROCEDURE FOR PUBLIC HEARING FOR LAND USE HEARINGS

[READ ALOUD ALL HIGHLIGHTED IN YELLOW

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 approval to construct a 72-unit studio apartment development at 188 Garfield Street. The application includes requests for a Tree Removal Permit to remove 15 trees that are more than six-inches in diameter at breast height (d.b.h.); an Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions ponds rather than in landscaped parking lot medians and swales; and for Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property and for the location of the driveway curb cut on Quincy Street, which is proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments. *(All of the proposed units are studio units that are less than 500 square feet in gross habitable floor area and each counts as ¾ of a unit for purposes of density calculation; density bonuses are requested for conservation housing, outdoor recreation space and major recreation facilities.)*

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

Rules for the conduct of the hearing are in the Public Hearing Format for Land Use Hearings – A Guide for Participants and Citizens -- and are available on the wall in the back of this room. 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 submitted written arguments prior to this hearing.

For those of you who intend to participate, your evidence must be in written or spoken testimony. 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 evidence. Now, if you have not done so already, this is your time to provide your request forms and any written evidence to the City Recorder.

This appeal “on the record” will be processed according to AMC 18.5.1.060.I. The identified grounds for the appeal is shown on the screen now and will be read aloud by the City Recorder.

[City Recorder reads appeal grounds.]

The Council’s consideration of the appeal is limited to these 12 grounds. A speaker’s testimony or evidence must be limited to points already addressed in the existing record and must relate to these 12 appeal grounds. If you get off track or your testimony does not relate to those 12 appeal grounds, 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 those 12 appeal grounds, 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 on the law 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 12 appeal grounds and staff's evaluation of them. Bill and Derek...

4. APPLICANT'S PRESENTATION

Would the applicant 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 PRESENTATION

Would the appellants Devin Huseby and Michael Hitsky 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 the following parties please come to the podium. , state your name, address and make any comments you may have for the Council regarding the application?

- Lyn Godsey
- Michael Gutman
- Susan Leroy
- Jesse Longhurst
- Sheila Smith
- Gregory Zentner

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. When it is your turn to speak, state your name and address and proceed.

7. REBUTTAL BY APPLICANT

If the applicant has any rebuttal to the evidence presented by those questioning or opposing the application, you will 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?