

# **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 for a 12-unit Cottage Housing development and a Performance Standards Subdivision Outline Plan for a 13-lot subdivision located at 476 North Laurel St. The application includes a request for an Exception to the Street Standards to allow reduction of the required parkrow width to 3.7 feet on the Mountain View Dr. frontage of 478 North Laurel St., a request for a Tree Removal Permit to remove a 12-inch diameter apple tree and a 12-inch diameter walnut tree, and the demolition of the existing home and two accessory buildings.

This is an appeal “on the record” of a Type II land use decision. 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 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 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 are shown on the screen now and will be read aloud by the City Recorder.

[City Recorder reads appeal grounds – see page 4.]

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

**4. APPLICANT'S PRESENTATION**

Would the applicant KDA Homes, LLC 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 Patricia Potter and Gregory A. Clevenger 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...

- Kerry Hofsess
- Robert N. Lane

... 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. 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 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?

## GROUNDNS FOR APPEAL

- 1) The Planning Commission erred in dismissing concerns submitted by residents of the 'established neighborhood' who contend that on-street parking and traffic would result in Mountain View Drive becoming a queuing lane that would compromise the purpose and intent of the Cottage Housing ordinance (AMC 18.2.3.090.A), which seeks to ensure compatibility with established neighborhoods;
- 2) The Planning Commission erred in approving the proposed development according to AMC Table 18.4.3.060 (Parking Management Strategies) and AMC Table 18.5.2.050.E. Parking bays have been requested and are considered of great importance by neighbors, who contend that parking bays comply with street standards and do not widen the street as a whole, as maintained by the Planning Commission;
- 3) The Planning Commission erred in approving the proposed development because subdivisions in Wildfire Hazard Areas require a Fire Prevention & Control Plan be submitted and none was submitted here. Appellants further contend that the proposal would create a new and inadequate traffic pattern for Mountain View Drive so as to slow traffic during a wildfire evacuation and at all times;
- 4) The Planning Commission erred in approving a project that did not follow procedural requirements in that the applicants held one meeting with a minimum number of neighbors and the neighborhood's traffic concerns have not been addressed; and
- 5) The private traffic study presented by the applicant should not have been accepted by the Planning Commission because it is flawed and incomplete in that it fails to show what the impacts of slowing traffic will be on residents and neighbors, especially during a wildfire evacuation; and fails to address or evaluate the increased street patterns and traffic coming with the development of the Reynolds property. Further, the Planning Commission erred in approving the application without asking Public Works/Engineering Department to require a TIA (Traffic Impact Analysis).