



Appeal on the Record

Frequently Asked Questions

A recent land use decision of the Planning Commission has been appealed to the City Council. The appeal of a Planning Commission decision is handled according to the procedures found in AMC 18.5.1.060.I as “An Appeal on the Record.”

What is “An Appeal on the Record”?

An “Appeal on the Record” is an appeal of a land use decision where the City Council must consider the same facts and information (i.e. “the record”) that the Planning Commission saw. The City Council may not consider new facts or information.

Prior to 2008, City Council appeals were handled through a *de novo* hearing process and the City Council was able to consider new information during an appeal that was not previously included in the record upon which the Planning Commission based their decision. Since 2008, City Council appeals have been handled through an appeal on the record.

What are the steps to appeal?

Once the Planning Commission makes a decision on a land use matter, a party to the original decision may appeal that decision to the City Council. The appellant must identify, in writing, specific areas where they think the Planning Commission made a mistake. The mistake has to be an error in interpretation of a fact, an interpretation of a rule or regulation, or in procedure. The City Council will review only those specific issues raised as “errors.”

The Council will decide: 1) whether there is substantial evidence to support the decision of the Planning Commission, and 2) if the Planning Commission committed an error.

What will happen at the hearing?

At the City Council meeting, the only people who will be allowed to talk directly to the Council will be the City staff; the applicant; people who have filed the written appeal; and participants who provided oral or written testimony during the original Planning Commission hearing and who submit written arguments at least 10 days in advance of the City Council meeting. The applicant will be allowed 10 minutes and the people who have filed the written appeal will be allowed 10 minutes. Participants who have filed written arguments will be allowed 3 minutes to summarize their argument for the City Council. No one can introduce new information or facts.

What may the Council consider in reaching a decision?

Except when limited reopening of the record is allowed as provided in AMC 18.5.1.060.I.4.b., the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. City Council review is limited to the issues clearly and distinctly set forth in the notice of appeal. No issue may be raised on appeal to the Council that was not raised before the Planning Commission with sufficient specificity to enable the Planning Commission and the parties to respond.

Ultimately, the Council may:

- Affirm the decision of the Planning Commission and reject the appeal;
- Reverse the decision of the Planning Commission and support the written appeal;
- Modify the decision of the Planning Commission; or
- Send the decision back to the Planning Commission with instructions for further proceedings. In this case, subsequent actions by the Planning Commission will be the final decision of the City.

The final decision of the City can be appealed to the State Land Use Board of Appeals (LUBA).