

Public Outreach – Municipal Code Changes Regarding the Appeals Process

General Community Meeting – June 12, 2019

(Advertised in weekly Development Review Newsletter, posted on City's Facebook page, posted on the Development Review and City Clerk Website Pages)

City Staff: Delynn Coldiron, City Clerk
Present: Sylvia Tatman-Burruss, Development Review Liaison

Participants: Three Attendees

Meeting
Specifics: Wednesday, June 12th, 6:00 P.M. 281 North College Ave.

Discussion:

Combined Appeals:

- If there are appeals that are different, are they heard together? If heard together, that could either strengthen or diminish each point.
 - This is the current practice. Each appellant would have the opportunity to present their evidence to Council. Mayor decides how much time the appellants would get; the time would need to be shared.
- In cases where there are multiple appellants, they should be given more time than the applicant for more fairness.
- Equal time should be given to applicants as well as each appellant to allow them to respond to testimony and questions.
- In cases where appeals are combined, appellants have not been a coordinated group until the appeal is heard. The applicant, however, does have time to coordinate among teams and already have their presentations together. This could cause some issues.

Council Appeals:

- Does Council have to stick to the same appeals timeframe?
 - Yes
- If a Councilmember appeals a project, is that Councilmember still allowed to make decisions on that appeal?
 - Yes

General:

- Why were these code changes initiated?
 - Changes were initiated by staff to clarify procedures based on questions that have been received by those involved in the appeals process, as well as staff. Some of the changes also document current practices that are occurring. Concerns about due dates for materials and not having enough time to pull things together has been expressed to staff on multiple occasions.

- If someone wants to bring in an expert witness, would you need to have them known at the time of appeal and the time of evidence submission?
 - Will need to share time given at Council and is a good idea to warn Council that an appellant is planning to call on a witness.
- Do not have City staff give a presentation on the project during the appeals process. Staff has already given the presentation to a decision-making body and it is in the record already. Councilmembers could watch the video of the presentation. Staff has already made a recommendation on the project to either support or deny. They shouldn't be given a second chance to present.
- Who decides what a frivolous appeal is? Could the Ethics Review Board hear the project and decide if there will be grounds for appeal?
 - That is for Council to decide under current provisions; they are the hearing body.
- Perhaps some criteria can be developed to help ensure appeals are not frivolous and a waste of everyone's time.

New Evidence:

- In making the proposed changes related to new evidence, are you looking to forestall technical glitches or other problems?
 - Staff is simply trying to get new evidence to Council and all parties involved ahead of the appeal hearing.
- New evidence can only be submitted at the deadline?
 - Yes and is only allowed, under these provisions, if there is a fair hearing issue as described in Section 2-49:
 1. information considered was false or grossly misleading; or
 2. the hearing body failed to receive all relevant information; or
 3. the hearing body was biased.
- If a deadline changes the structure of an appeal, staff will be able to build counterarguments into the presentation with time for Council to see that evidence. The presentation would then cover those new items in the appeal. This seems unfair to others who have already had to submit their information.

Notification:

- How would I know that an appeal has been filed?
 - Currently, the general public would know if they are reviewing Council agendas as they are posted. The City Clerk's Office is considering adding a section on the Clerk's webpage that would provide this information as soon as an appeal request is submitted. Staff is also considering a kind of subscription for notification of appeals similar to what is available for Council agendas. Another idea is to add this information, at least for

appeals related to development projects, to the weekly Development Review newsletter.

Remanding to Another Board:

- Q: What would prevent the Council from remanding the decision to a board that isn't quasi-judicial?
 - Anticipate that Council would send to a board that was somehow related to the type of project being appealed; most likely would be quasi-judicial for development projects. For example, there may be an instance where the Landmark Preservation Commission or Zoning Board of Appeals might be able to take a look at a decision made by the Planning and Zoning Board. The most likely instance is if a Type 1 hearing officer makes a decision and Council decides to remand the decision to the Planning and Zoning Board. This gives Council additional flexibility to do this.

Site Visit:

- Does the site visit allow questions to be asked of staff from Councilmembers? If so, this seems unfair because during the site visit, appellants are instructed not to talk to Councilmembers.
 - This is a question for the City Attorney's office. One option may be to have the site visits facilitated by a third party, such as another City staff member from Neighborhood Services.
- Appellants need to receive clarification on procedures prior to the site visit so they can come prepared.

Timelines:

- The changes to the timeline lengthens the process a lot?
 - Likely lengthens the hearing date from 28 days to 35 days as the earliest time a hearing could be held since proposing a notice be sent 21 days prior to hearing [currently 10 days prior]. Hearing date could move out to 42 days or more if new evidence is allowed. [An exception to this would be if an appeal was filed earlier than the 14-day deadline.]
- Consider proposing a back-loading whereby the hearing date is established, then the deadlines are established. Can take weeks to come up with evidence. Can take a long time for community members to learn the codes and procedures for projects.
- Make sure there isn't dead time when the appeal is filed and that there is enough time to submit the appeal.
- To get an extension on an appeal, would you go to the Clerk's Office or contact Darin Atteberry, City Manager, directly?
 - The Clerk's Office will need to come up with a process for this, but someone would likely be requesting an extension through the Clerk's Office.