

Process for Council Appeals to Quasi-Judicial Decisions

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1. Current Appeals Process
2. Historical Data
3. Due Process Requirements
4. Issues and Considerations
5. Potential Solutions and Improvements



- Do Councilmembers have feedback on the list of identified issues and considerations in the appeals process?
- Are there other issues or considerations that have not yet been identified?
- Are there solutions or improvements that Councilmembers would like to see staff further develop and bring forward for consideration?

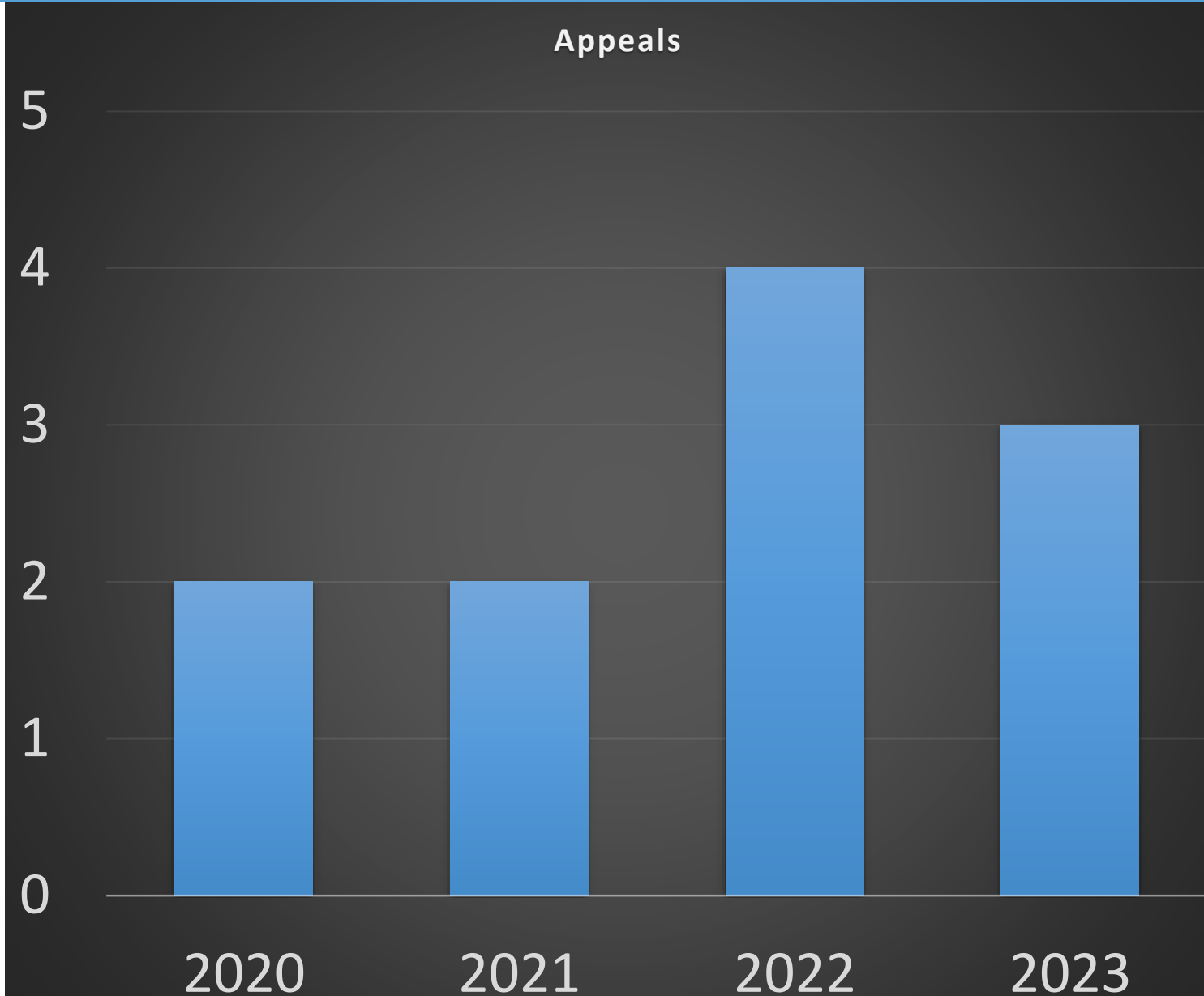
Current Appeal Process- A Broad Overview

- Quasi-judicial Commission or Hearing Officer decisions may be appealed to Council
 - Appeals of administrative decisions go to a Commission (e.g., P&Z or HPC)
- “Party in interest” is broadly defined- this determines who can appeal a decision
- Appeal can be on the basis of a failure to provide a fair hearing, or failure to properly interpret and apply the Code
- Appeal must be submitted within 14 days
- Council has the option of a pre-hearing site visit
- Time to present during a hearing is divided among those in favor and opposed to the appeal
- Council reviews record and hears testimony
- Following Council’s decision, a resolution stating findings of fact is adopted at next meeting



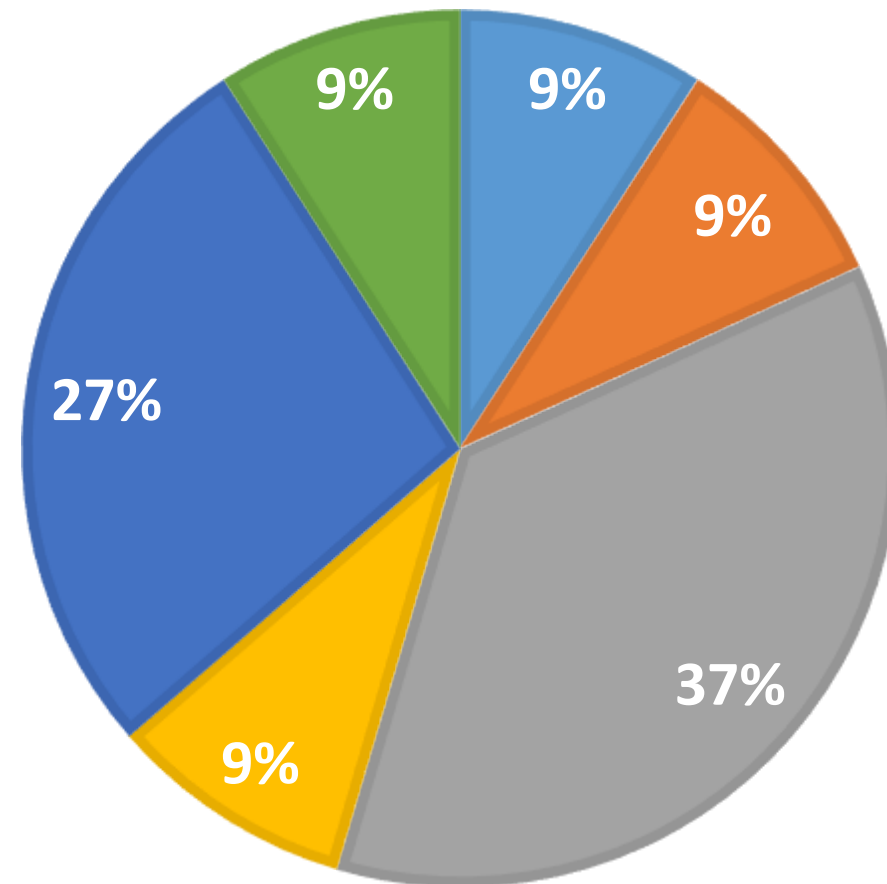
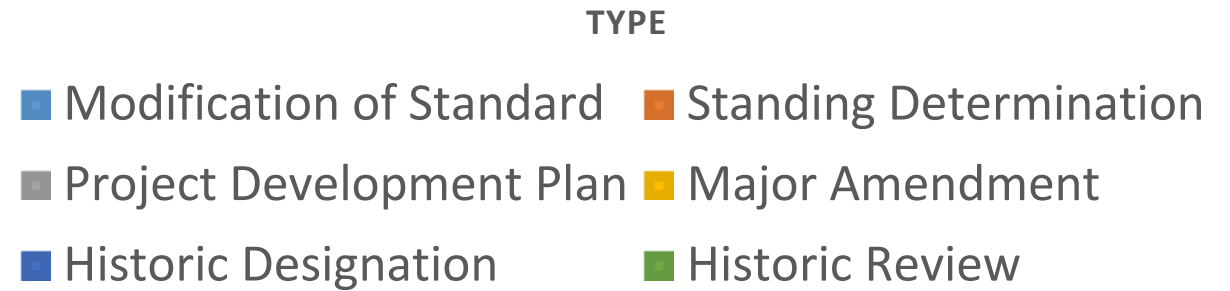
Historical Data: Fours Years of Appeals Heard by Council

- Data reflects year the appeal was heard by Council
- Average number of appeals is just under 3 per year
- Some appeals were filed near the end of the calendar year and were heard in the following year



Historical Data: Types of Appeals

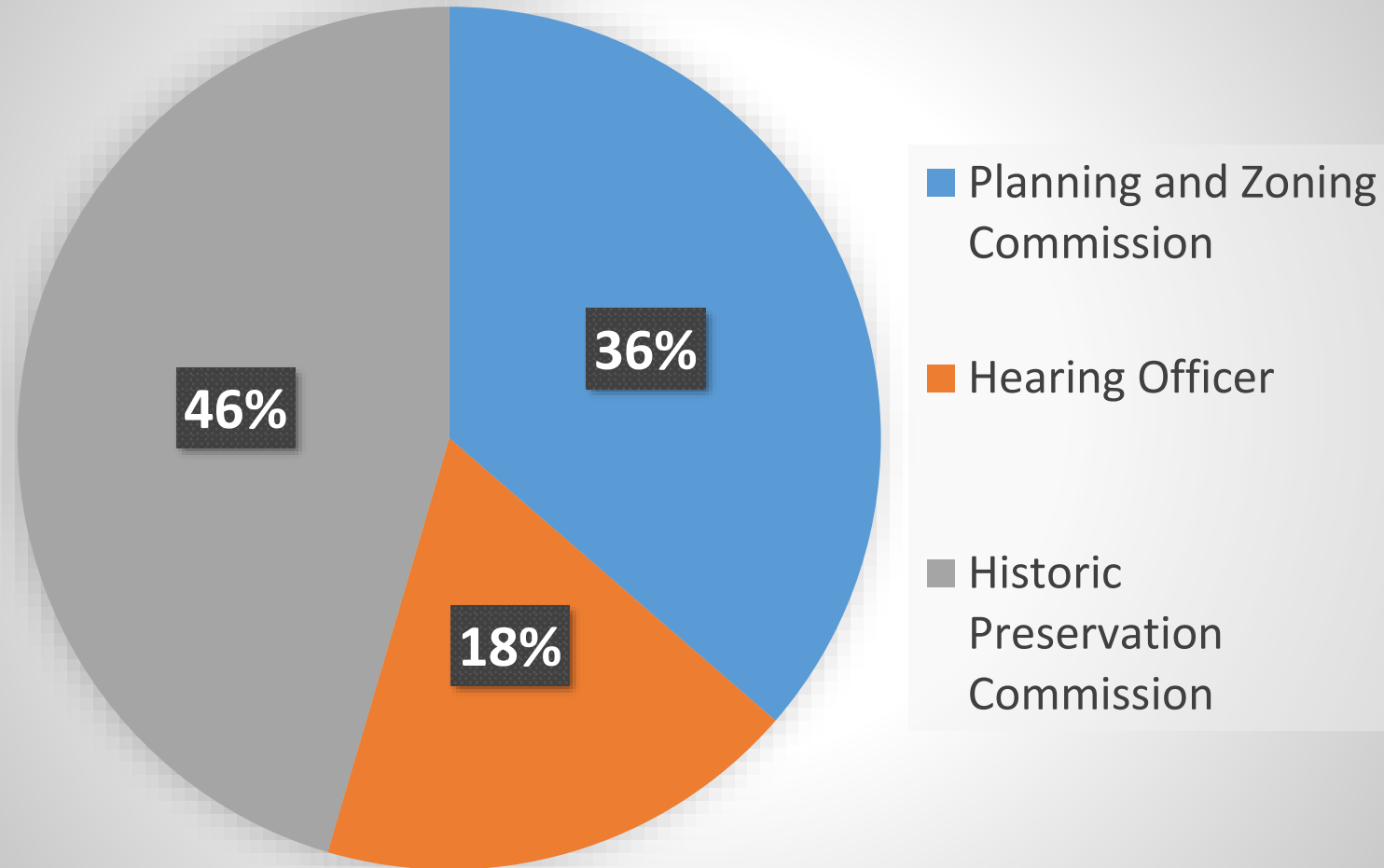
- During the past 4 years, at total of 11 appeals have been heard by Council (1 appeal= 9%)
- The greatest number of appeals were of Project Development Plans (37%)
- The second greatest was appeal of a Historic Designation Determination (27%)



Decision Maker Being Appealed

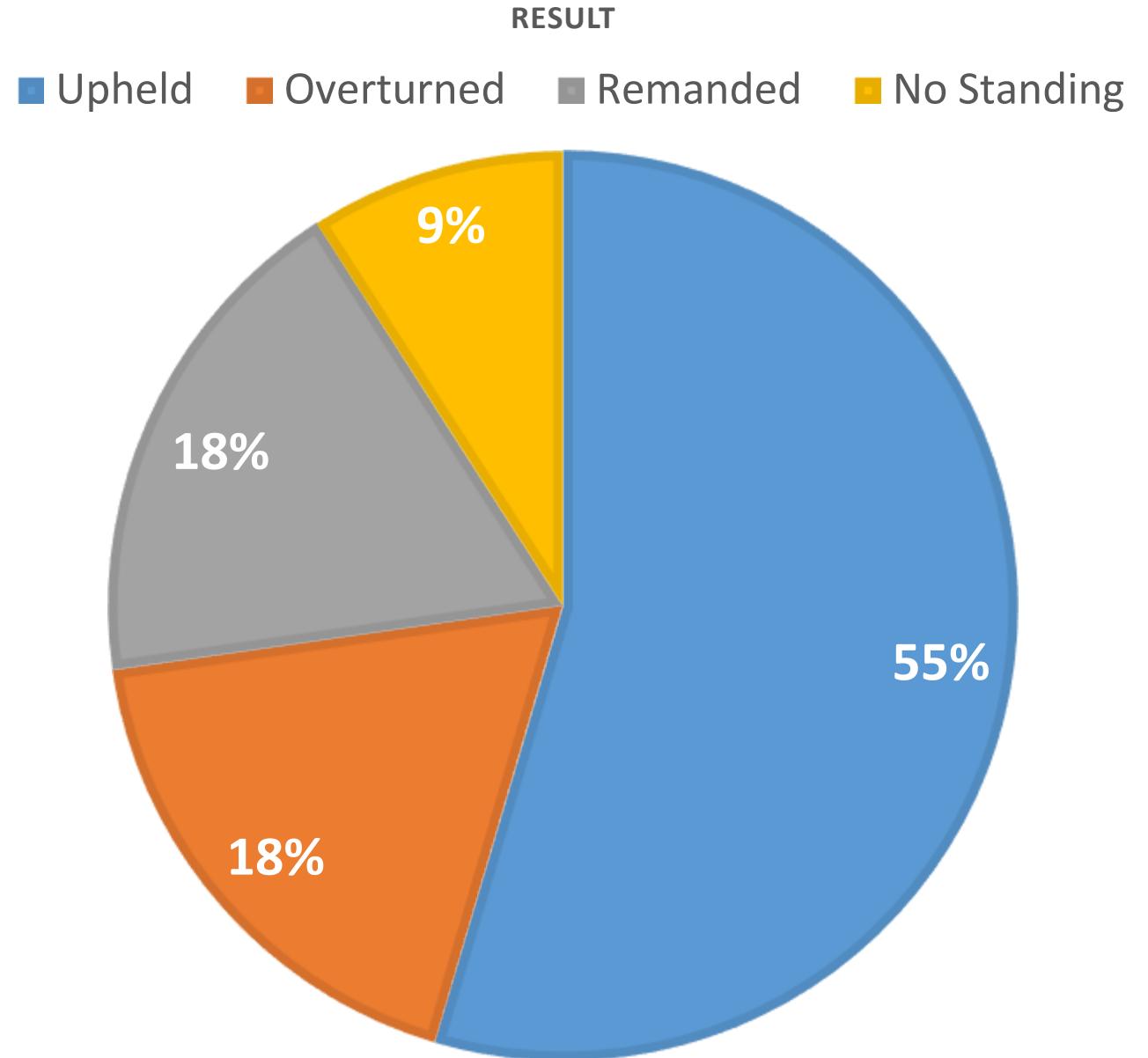
- The largest number of appeals heard by Council were decisions by the Historic Preservation Commission
- This was followed closely by the Planning and Zoning Commission
- Only 18% of appeals were to a Hearing Officer decision

Decision Maker Being Appealed



Outcome of Appeals

- Council upheld the decision in a majority of the appeals (55%)
- An equal number of decisions were either overturned or remanded to the decision maker (18% each)
- One appeal was resolved by determining the appellant did not have standing
- One Council decision (to uphold) was appealed to court and then remanded to the original decision maker



- State and federal law entitle an applicant in a quasi-judicial hearing to procedural and substantive due process. This means:
 - The adopted procedures for hearings must be followed
 - Affected persons must be afforded a “fair hearing” with reasonable opportunity to speak and for rebuttal
 - The decision maker must be “impartial” and “unbiased”
 - The decision must be based “on the record” (only on information that is a part of the hearing)
 - The decision maker must apply the proper standards and criteria in making its decision



- Does the Councilmember appeal process work?
- It is difficult to avoid and discourage ex parte communication from members of the public
- Limitations on discussion make it difficult for Councilmembers to prepare for an appeal hearing
- Participants in appeals hearings have difficulty understanding the process
- Unpredictable set of participants leads to unpredictable hearing dynamics (time allocation, etc.)
- Evidentiary issues raised during the hearing can be complicated, inefficient, and difficult to resolve fairly during the hearing
- Are the right decisions being appealed at the right stage of the process and the right level of detail for review by Council?

Practices in Other Jurisdictions

	<u>Quasi-Judicial Land Use Appeals to Council</u>	<u>Appeal Only On the Record, No New Evidence</u>	<u>Council Can Initiate Appeal</u>	<u>Notable Features</u>
Arvada	Yes	Yes	No	No appeals to Council of items appealed to Planning Commission
Boulder	Yes	No, may consider new evidence + record	Yes	
Centennial	Yes	Yes	No	Basis for appeal must be specific; Council must affirm unless decision was abuse of discretion or unsupported by record
Colorado Springs	Yes	No, may consider new evidence + record	No	Council may preliminarily determine if notice of appeal meets application requirements and dismiss if not; Council may hear appeal de novo or limit to issues raised on appeal
Denver	No	n/a	No	Appeals principally heard by Board of Adjustment
Golden	Yes	Yes	No	Council appeal decisions subject to appeal to municipal court
Greeley	Yes	Yes	No	Council gives deference to decision on appeal; appeals may be filed by any department director or referral agency that provided comments
Longmont	Yes	No, may consider new evidence + record	No	For major development applications, any resident, the Planning Director, and City Manager have standing to appeal; for minor and administrative applications, City Manager has standing
Loveland	Yes	Yes	No	Staff may dismiss appeal if lacks standing or sufficient detail to put City on notice of the appeal's legal basis; no appeals to Council of items appealed to Planning Commission
Thornton	Yes	No, de novo hearings	Yes	
Westminster	Yes	No, de novo hearings	Yes	Four Councilmembers must appeal matter, City Manager may also appeal

- 1. Provide for no appeal from the decision-making Commissions or Hearing Officers.**
- 2. Give Council the role of reviewing underlying decisions based on the record**
- 3. Give Council the role of making a new decision on appeals**
- 4. Give Council the role of initial decision maker on certain applications.**
- 5. Create a separate body, like a “Board of Appeals”**
- 6. Create an option for no presentation of oral arguments**

- 1. Change eligibility to file an appeal**
- 2. Narrow the grounds for appeal**
- 3. Narrow or clarify new evidence rules and procedures.**
- 4. Change participation in the appeal hearing to the applicant and appellant.**
- 5. Eliminate the organized site visit.**
- 6. Allow Councilmembers to make written requests for information**

- 7. Adopt standard times for presentation by hearing participants**
- 8. Consider whether written exchanges by Council with City staff may be allowed**
- 9. Make a distinction between the appealability of different application types**
- 10. Create a mandatory pre-hearing conference**
- 11. Allow submittal of written pre-hearing arguments to Council.**
- 12. Allow City staff to review notices of appeal for obvious defects**

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