

Quasi-Judicial Appeals to Council - Process

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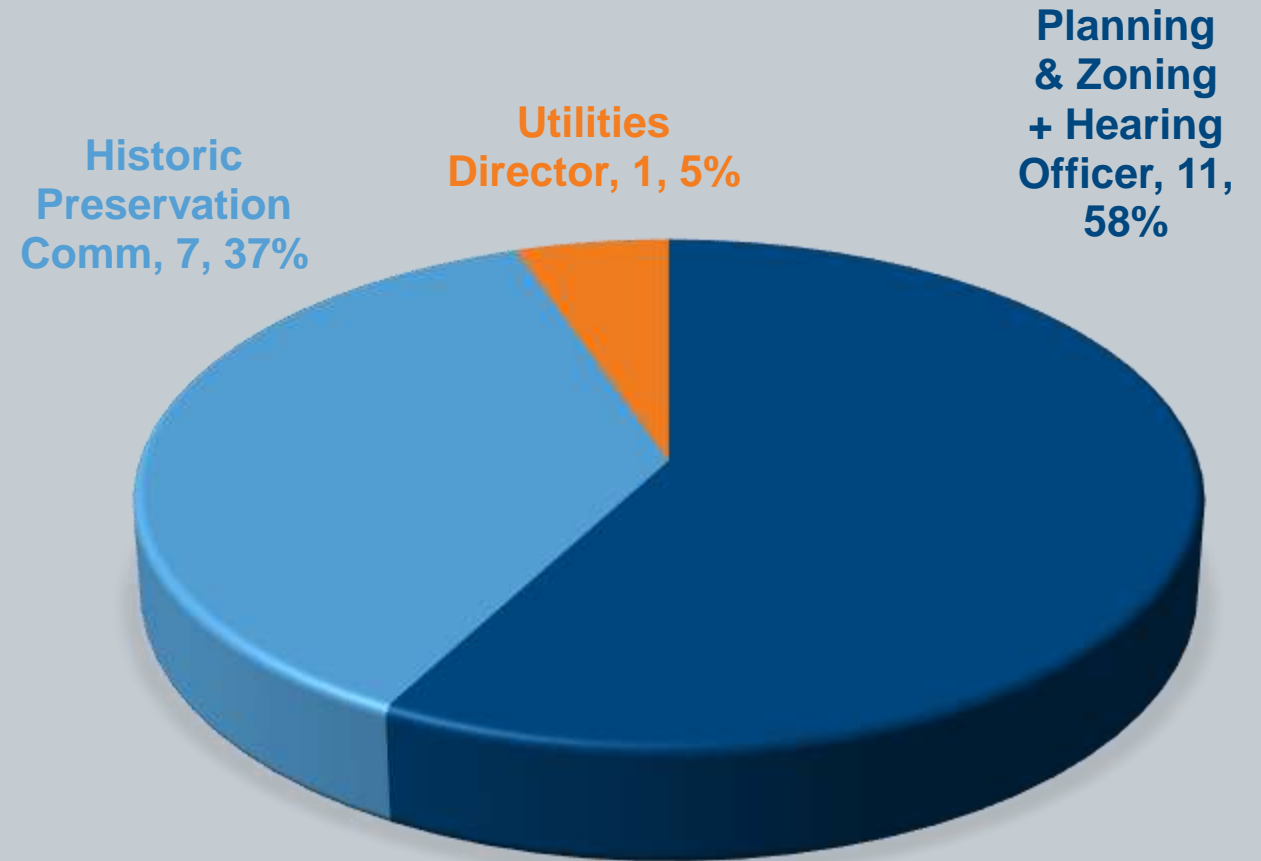
Managing City Attorney



Types & Numbers of Appeals

- From 2020 – 2024 YTD, a total of 19 appeals were heard by Council.
 - 2-4 per year 2020-23
 - 2024 is on track for 6-8 appeals
- The greatest number of appeals were of Project Development Plans by PZC (#: 6, 32%)
- The second greatest was appeal of a Historic Designation Determination or Review by HPC (#: 7, 37%)
- Appeals in 2024 YTD:
 - 1 HPC appeal
 - 3 Land Use appeals + 1 pending

TOTAL APPEALS 2020-2024 YTD



- Appeals can be complex and confusing.
- Certain elements of appeal hearings can be unpredictable.
- Appeals can create an unrealistic expectation of different outcomes.
- Grounds for appeal are frequently found to lack merit at hearing.
- Processing and preparing for appeals is burdensome on Council and other City resources – as well as the Appellant and Respondent.

- What feedback do Councilmembers have related to the individual elements of the process?
- Are there additional issues or solutions that Councilmembers would like staff to investigate?

- Municipalities in Colorado are not required to offer appeal options or any specific approach to appeals beyond basic Due Process considerations.
- Different cities approach appeals in various ways.
- Appeals beyond municipal solutions jump to the Court system.
- The current commissions and boards are comprised of community members with some level of subject matter expertise and supported by professional staff.



Each discussion point will be presented individually, starting a summary of the:

1. Current state of appeals process.
2. Alternative solutions.
3. Staff recommendations summarized.
4. “Keep in Mind” notations indicate additional considerations.
5. Opportunity for Council to discuss and provide feedback.

Finish with a summary of Council feedback.

Current State:

Council is final decision-maker on all process, fair hearing, and failure-to-interpret/apply issues.

Alternatives:

1. Executive-level City Staff or Designee
2. Council Committee (3 or 5 members)
3. Outside Hearing Officer

Recommendation:

Executive-level City Staff or Designee is decision-maker on prehearing process and fair hearing issues.

Council decides hearing procedures and failure to interpret and apply issues.

Keep in mind:

Different decision makers can decide procedural, fair hearing, and failure to interpret and apply issues.

Current State:

Broad standing, including anyone with a mailed notice and Council.

Alternatives:

1. Allow appeals by:
 - a. Project Applicant and Subject Property Owner; and
 - b. Parties who participated in the hearing by providing written or oral comments.

Recommendation:

Revise code provisions to the alternatives presented.

Authorize administrative staff to establish/reject Standing to Appeal, based on the record, during pre-hearing review/prep.

Keep in mind:

This would require active participation by an Appellant at the original decision hearing.

Current State:

The grounds for an appeal did not have to be raised at the original hearing, and may not have factored into original decision being appealed.

Alternatives:

1. Require that the Issue being appealed / argument raised, was identified during original hearing.

Recommendation:

Revise code to require that the issues and arguments that are the basis for an Appeal must have been raised in the original hearing to be appealable.

Keep in mind:

These requirements would not apply to the project Applicant or subject property owner(s), if they become the Appellant.

Current State:

Projects may be subject to multiple levels of appeals – e.g., certain administrative staff decisions are appealable to a commission and then to Council.

Alternative:

1. Allow an appeal of an Admin staff decision to the appropriate Commission or Executive-level staff, as the final decision. *-or-*
2. All appeals direct to Council.

Recommendation:

Revise the code to allow appeals to the appropriate commission or Executive-level staff, as a final City decision.

Allow Director's decision on Affordable Housing projects to be appealable to Executive-level staff only. (Currently a Basic Development Review decision is appealed to PZC for full hearing.)

Current State:

Specific new evidence & oral arguments are permitted, site visit, and responses to Council questions.

Alternatives:

1. Decision based on record evidence only:
 - a. No new evidence submitted;
 - b. Eliminate Council site visit;
 - c. Limit scope of Council questions to only clarifications of appeal record & argument.

2. Change how arguments in favor of and against an Appeal are presented:
 - a. Written arguments in advance of hearing by the Parties; and/or
 - b. No oral argument, presentation, or rebuttal; and/or
 - c. Oral arguments from those listed on the Notice of Appeal (pre-reviewed), or other pre-registered Parties in Interest.

Recommendation:

- No new evidence permitted – limit scope of appeal hearing to existing record and the appeal arguments.
- Require written arguments submitted in advance of hearing by the Parties.
- Oral argument at hearing to address only the record evidence and the issue being appealed, with time for rebuttal.

Keep in mind:

Eliminating new evidence and limiting oral argument will help to focus the discussion on the issue in the appeal, and set more realistic boundaries and expectations of the discussion and final decision.

All Parties in Interest that want to participate in the Appeal must be listed on the Notice of Appeal or Pre-register as a Respondent – subject to Staff review for standing in pre-hearing review.

Schedule Pre-Hearing Conference with Staff to:

- Provide clarity on process and purpose
- Discuss appropriate materials to submit

Authorize Staff to review Notice of Appeal:

- Identify defects in Notice of Appeal & allow time to cure
- Make final determination on certain pre-hearing issues, including standing and fair hearing issues

Improve Ease of Access and Functionality of our current guides and templates.

Enhance technical assistance options to support community members for more impactful participation at *all* levels of decisions.

- Decision-maker
- Standing to Appeal
- Permitted Grounds for Appeal
- Multiple Levels of Appeals
- Evidence & Arguments
- Process Improvements





Process Comparison to other Municipalities



	QJ Land Use Appeals to Council	Appeal Only on Record, No New Evidence	Council Can Initiate	Notable Features
FORT COLLINS	Yes	No, may consider new evidence + record	Yes	
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 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	Major development applications: residents, Planning Director, & City Manager have standing; for minor and administrative application: City Manager has standing.
Loveland	Yes	Yes	No	Staff may dismiss appeal if lacks standing or sufficient detail; 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