

WORK SESSION AGENDA ITEM SUMMARY

City Council



STAFF

Paul Sizemore, Community Development & Neighborhood Services Director
Brad Yatabe, Senior Assistant City Attorney

SUBJECT FOR DISCUSSION

Process for Council Appeals to Quasi-Judicial Decisions.

EXECUTIVE SUMMARY

The purpose of this item is to review issues and considerations that have been identified in the process for Council appeals to quasi-judicial decisions, and to seek Councilmember feedback on potential solutions or improvements.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Does Council have feedback on the list of identified issues and considerations in the appeals process?
2. Are there other issues or considerations that have not yet been identified?
3. Are there solutions or improvements that Council would like to see staff further develop and bring forward for consideration?

BACKGROUND / DISCUSSION

One of Council's current roles under the Municipal Code is to hear appeals to quasi-judicial decisions made by Commissions and Administrative Hearing Officers. Council has expressed a desire to discuss issues and considerations associated with the appeal process and to potentially explore solutions to problems or improvements that could make the process run more predictably and smoothly.

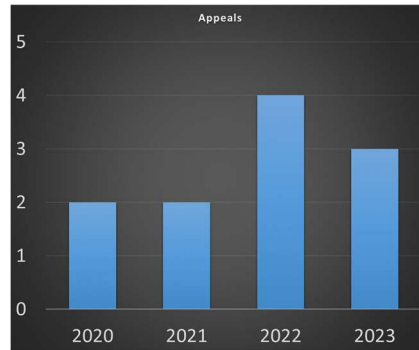
In the City appeals process, decisions made by a Quasi-judicial Commission or Hearing Officer are subject to appeal, and these appeals are brought before the Council. Similarly, administrative decisions can be appealed to a specific Commission, such as the Planning and Zoning (P&Z) or the Historic Preservation Commission (HPC). It is important to note that the definition of a "party in interest" is broadly defined, and this designation determines who has the right to appeal a decision. Appeals can be made on two primary grounds: first, if there is a belief that the decision did not result from a fair hearing, and second, if there is a claim that the Code was not properly interpreted and applied. To initiate an appeal, it must be submitted within a strict timeframe of 14 days.

The Council has the option to conduct a pre-hearing site visit to better understand the circumstances involved. During the actual hearing, the allocated time for presenting arguments is divided among those

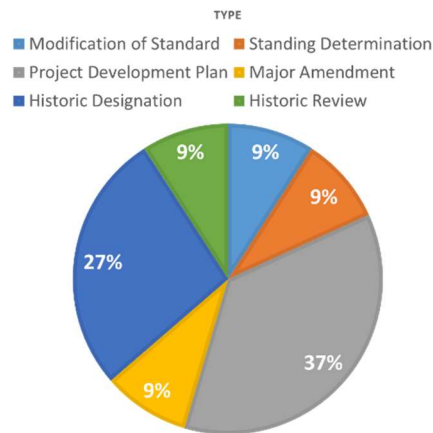
both in favor and opposed to the appeal, ensuring a fair and balanced discussion. The Council carefully reviews the record of the case and listens to testimony from involved parties. Following this deliberation, the Council reaches a decision, and in the subsequent meeting, a resolution is adopted, clearly stating the findings of fact that support their determination. This process aims to ensure that decisions at the local level are made fairly, and the appeal process provides a crucial mechanism for citizens to have their concerns heard and addressed.

Appeals Data

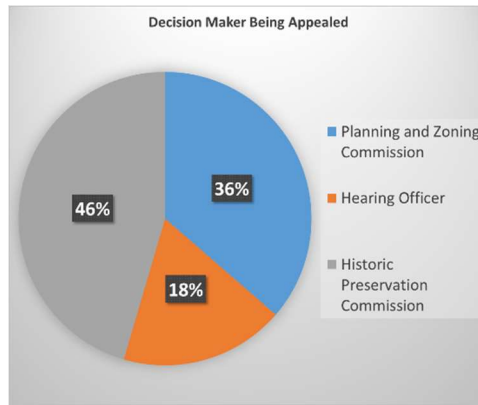
Over the four-year period from 2020 to 2023, the data on appeals heard by the Council provides several insights. The average number of appeals considered by the Council during this time was just under 3 per year.



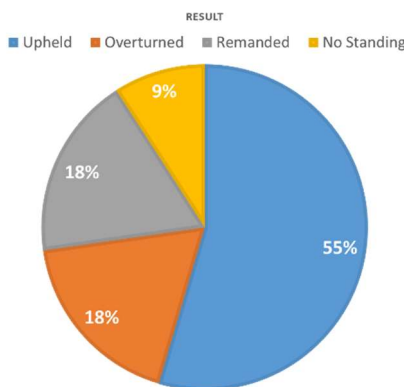
It is worth noting that some appeals were filed towards the end of a calendar year and were subsequently heard in the following year. In total, the Council heard 11 appeals during this period, with each appeal accounting for approximately 9% of the total.



Most of these appeals were related to Project Development Plans, comprising 37% of the cases, followed closely by appeals of Historic Designation Determinations at 27%. These appeals came from various sources, but the largest number were decisions made by the Historic Preservation Commission, with the Planning and Zoning Commission following closely behind.



In terms of outcomes, the Council upheld the original decision in most of the appeals, with a 55% rate of affirming the initial rulings.



Interestingly, an equal number of decisions were either overturned or remanded back to the decision maker, each accounting for 18% of the total cases. One exceptional case involved an appeal where it was determined that the appellant did not have standing. Additionally, one Council decision, specifically the decision to uphold, was further appealed to court and subsequently remanded to the original decision maker. This data underscores the complexity of the appeal process and the various outcomes that can arise during Council review of such cases.

Due Process Requirements

State and federal law entitle an applicant in a quasi-judicial hearing to procedural and substantive due process. Because any hearing process implemented by the City must adhere to these principles of due process, there are certain clear boundaries around potential changes or solutions. Due process rules require:

- 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.

Issues and Considerations

In preparation for this item, staff compiled several issues and considerations from previous Council appeals and conversations as well as staff observations. For this work session, staff is seeking feedback from

Council on whether we have accurately captured the key issues and whether there are any additional issues that we have not included in this inventory. The list of issues and considerations includes:

- 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 appeal 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?

Data from Other Jurisdictions

In preparation for this work session, staff evaluated the process for appeals to land use decisions in other front range communities. The table below summarizes how these jurisdictions handle appeals. Some important takeaways include:

- All jurisdictions except for Denver provide for appeals of land use decisions to Council.
- Jurisdictions are about evenly split between those who conduct appeals only on the record (without admission of new evidence) and those who allow new evidence.
- A significant majority do not allow appeals to be brought forward by Council, although a few do allow this.
- There are many unique features and nuances present in the approaches that reflect community preferences.

	<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

Potential Solutions and Improvements-Structure Based

To help inform Council's discussion about potential solutions and improvements, staff has developed options that fall into two main categories: structural and process. Structural improvements include substantial changes to the way appeals are heard, i.e., changing what can be appealed and/or what body hears appeals. Process-based solutions capture options that are procedural in nature and do not involve major role changes or the creation of new review bodies.

The potential structure-based solutions and improvements identified by staff include:

1. **Provide for no appeal from the decision-making Commissions or Hearing Officers.** Under this approach, an interested party would need to file a lawsuit to challenge the decision.
2. **Give Council the role of reviewing underlying decisions based on the record** without the addition of new evidence .
3. **Give Council the role of making a new decision on appeals** by conducting an entirely new hearing. This is called "de novo" review. Council becomes the decision maker under this model and must reach its own independent decision based on the information presented to Council.
4. **Give Council the role of initial decision maker on certain applications.**
5. **Create a separate body, like a "Board of Appeals"** or a hearing officer, to consider appeals rather than Council.
6. **Create an option for no presentation of oral arguments**, just submittal of written argument.

Potential Solutions and Improvements- Process Based

Process-based solutions can be implemented on their own, or in combination with any of the larger structural changes identified above. Possible process solutions identified by staff include:

1. **Change eligibility to file an appeal** to those who participated and/or have a possessory interest in the property in the process for the appealed decision (not providing standing for everyone who receives notice).
2. **Narrow the grounds for appeal** to eliminate appeal based on bias by decision maker or consideration of false or misleading evidence.
3. **Narrow or clarify new evidence rules and procedures.**
4. **Change participation in the appeal hearing to the applicant and appellant.** If the applicant is the appellant, require opposers to file an entry of appearance by a deadline to participate in the appeal.
5. **Eliminate the organized site visit.**
6. **Allow Councilmembers to make written requests for information** from staff in advance of the hearing so long as the requests and responsive information are available to participants in the appeal.
7. **Adopt standard times for presentation by hearing participants** (to avoid case-by-case uncertainty) allowing for Mayor/Council to make exceptions determined appropriate.
8. **Consider whether written exchanges by Council with staff may be allowed** in advance of the hearing if they are documented and included in the record.

9. **Make a distinction between the appealability of different application types** (for example, a PDP vs an ODP).
10. **Create a mandatory pre-hearing conference** that overviews the process and rules with all participants.
11. **Allow submittal of written pre-hearing arguments to Council.**
12. **Allow staff to review notices of appeal for obvious defects** (example: standing).

NEXT STEPS

Depending on Council conversation at work session, staff is prepared to research any additional issues or considerations identified by Councilmembers, and/or further develop solutions or improvements that Councilmembers would like to explore more thoroughly. Possible next steps could include another work session with more detailed research and solutions, or the development of code amendments for Council consideration in 2024.

ATTACHMENTS

1. Presentation

Process for Council Appeals to Quasi-Judicial Decisions

**Paul Sizemore, CDNS
Director**
**Brad Yatabe, Senior
Assistant City Attorney**



Presentation Outline

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?

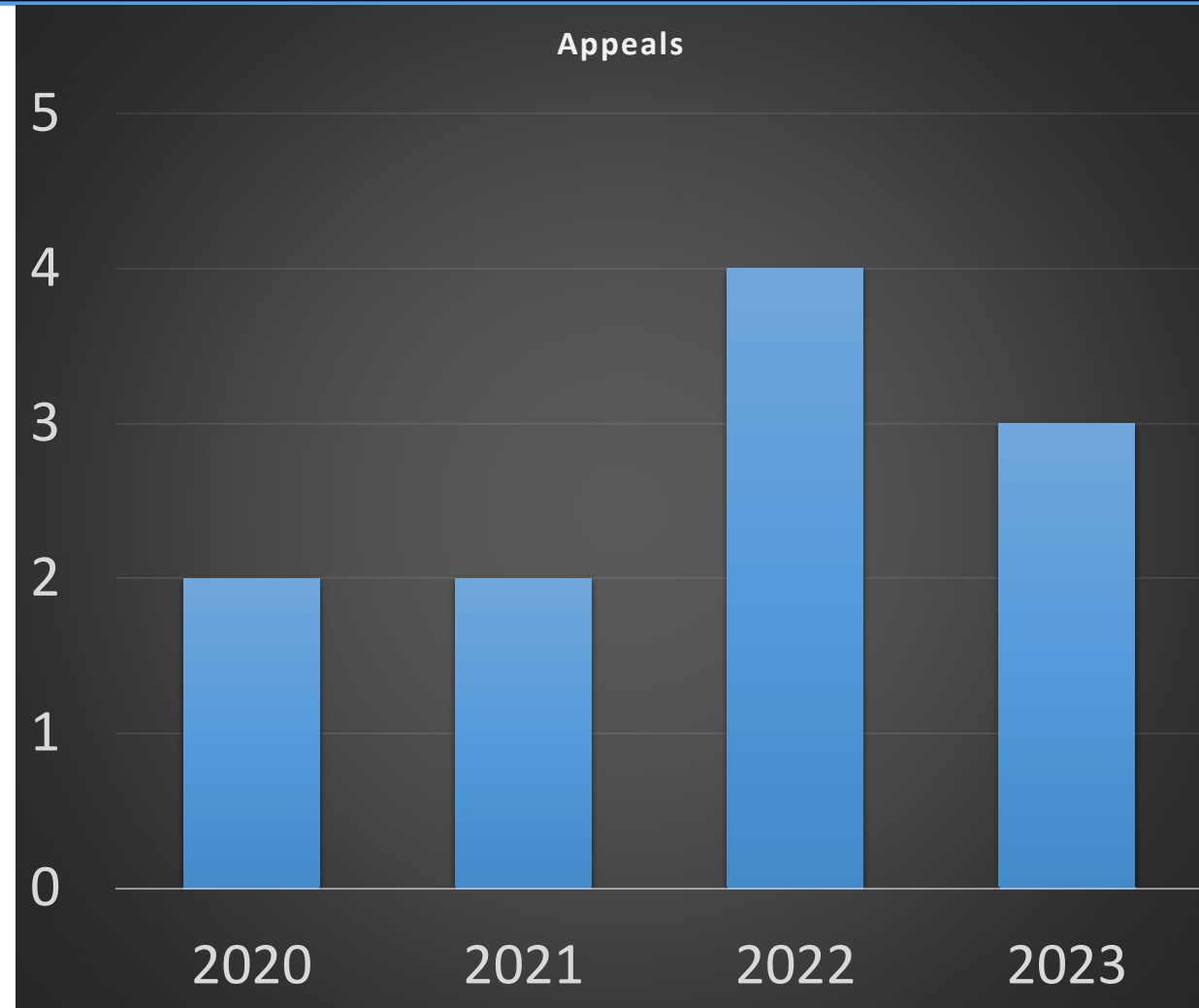
Current Appeal Process- A Broad Overview

- 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



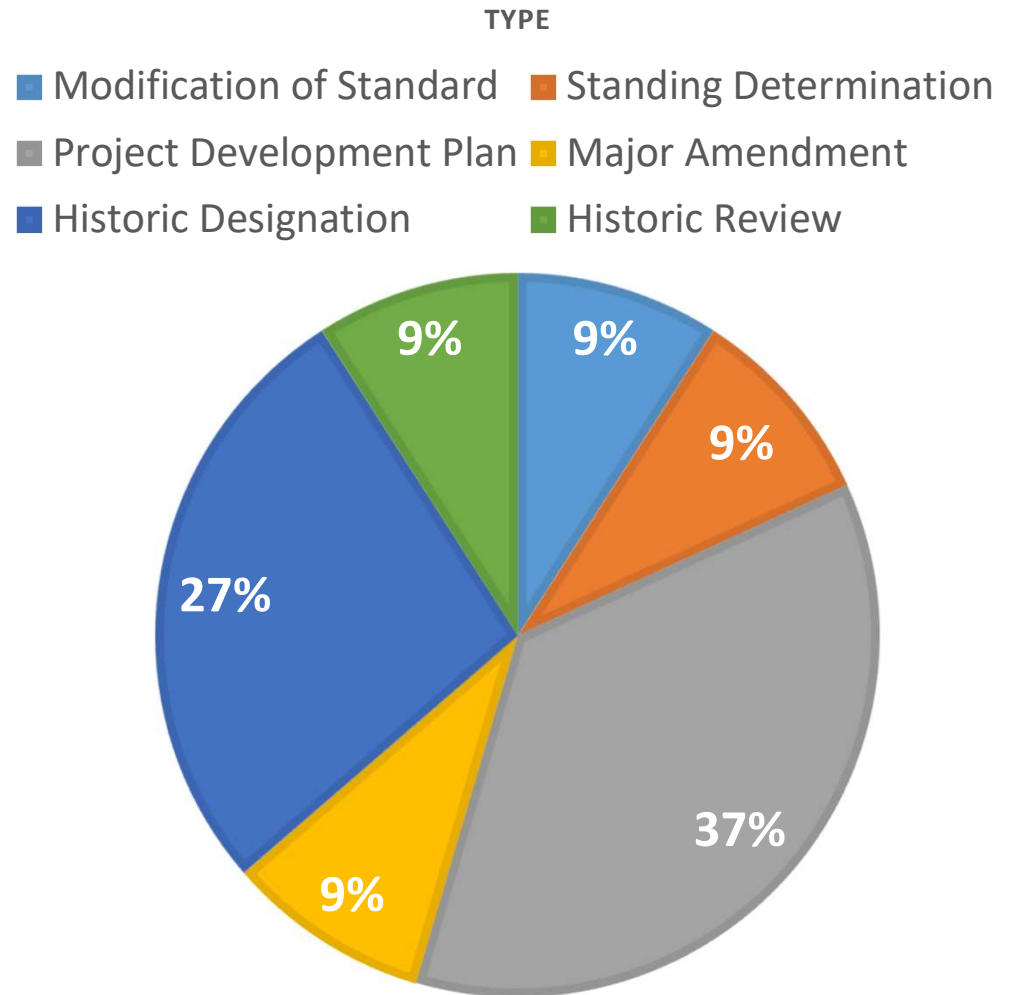
Historical Data: Fours Years of Appeals Heard by Council

- 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

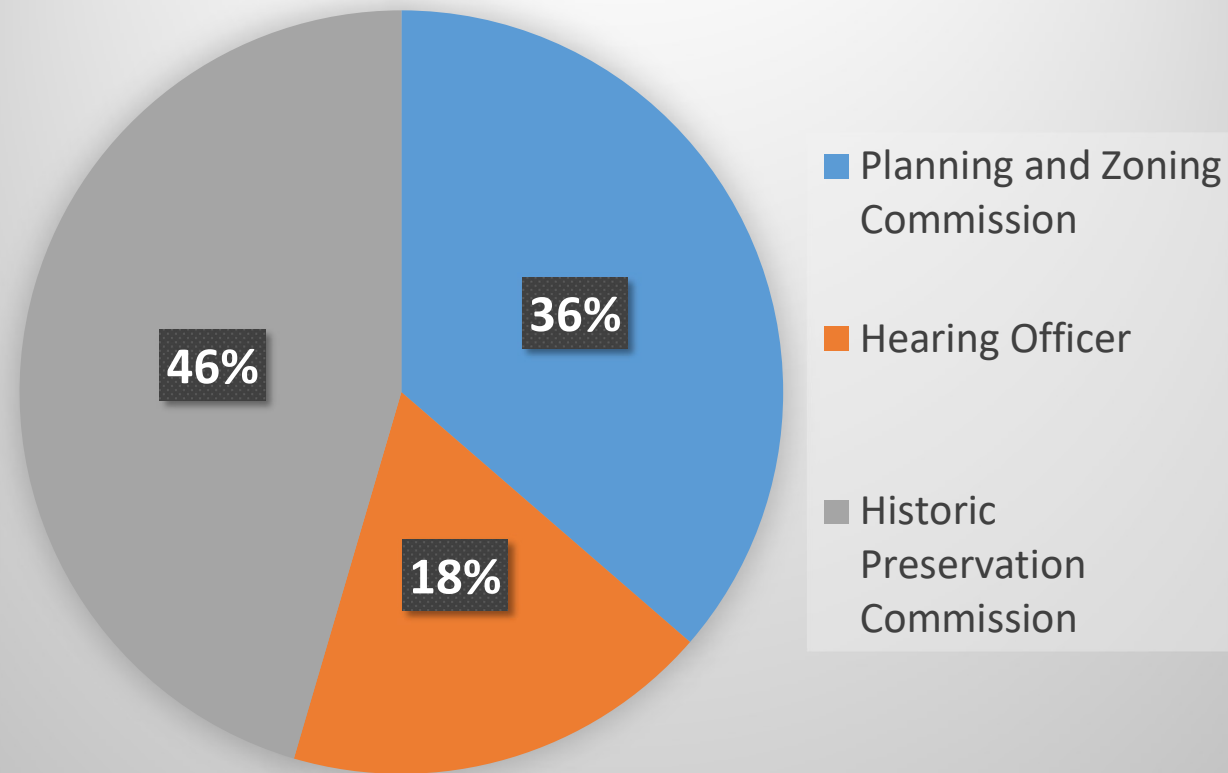
- During the past 4 years, at total of 11 appeals have been heard by Council (1 appeal= 9%)
- The greatest number of appeals were of Project Development Plans (37%)
- The second greatest was appeal of a Historic Designation Determination (27%)



Decision Maker Being Appealed

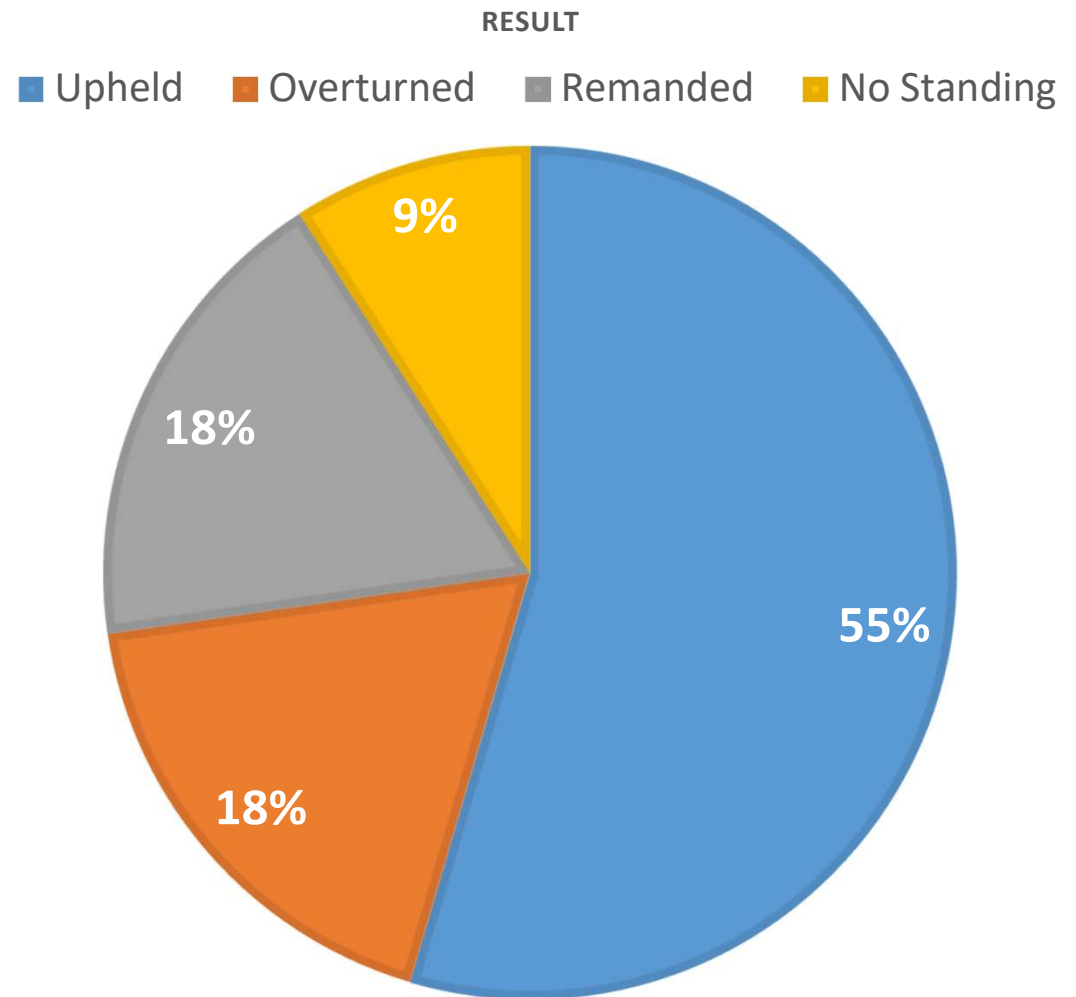
- The largest number of appeals heard by Council were decisions by the Historic Preservation Commission
- This was followed closely by the Planning and Zoning Commission
- Only 18% of appeals were to a Hearing Officer decision

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



Due Process Requirements

- 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
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Issues and Considerations



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Practices in Other Jurisdictions



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Potential Solutions- Structure Based

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- 5. Create a separate body, like a “Board of Appeals”**
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Potential Solutions and Improvements - Process Based



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Potential Solutions and Improvements- Process Based



- 7. Adopt standard times for presentation by hearing participants**
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