

November 9, 2020

**CASE# PLNZAD2020-00789  
Administrative Interpretation  
DECISION AND FINDINGS**



**BACKGROUND and REQUEST:**

The applicant submitted a petition to Salt Lake City to amend the text of the Zoning Ordinance. The proposal would amend zoning regulations that pertain to Salt Lake City's Historic Preservation Overlay District; therefore, the proposal was presented to the Historic Landmark Commission (HLC) for their consideration prior to forwarding the proposal to the Planning Commission and the City Council. The City Council is the final decision maker on zoning text amendments. The HLC reviewed the proposal and voted to forward a negative recommendation to the Planning Commission and City Council.

The applicant is requesting an Administrative Interpretation to determine if the recommendation made by the HLC can be appealed. The applicant claims that the HLC made a "decision"; therefore, the action can be appealed. Note: this is a summarization of the applicant's claim. The applicant's full interpretation application is attached in Attachment A.

**DECISION:**

The Zoning Administrator finds that the Historic Landmark Commission is not the "land use authority" on zoning text amendment matters; therefore; recommendations made by the HLC on these matters cannot be appealed.

**FINDINGS:**

In Salt Lake City, amending zoning regulations requires review and a recommendation by the Planning Commission and approval by the City Council. When an amendment affects properties listed as a Historic Landmark Site or located in a Historic Preservation Overlay District, the proposal is presented to the HLC for their review and recommendation. In any event, the City Council is the final decision maker on amendments to zoning regulations.

Although the HLC reviewed the proposed zoning amendment, made a motion and voted on that motion, they are not the final decision maker. Therefore, the HLC's decision (recommendation in this case) is not an appealable action. The following provides the reasoning according to regulations stated in the Salt Lake City Zoning Ordinance.

Section 21A.16.010 of the Zoning Ordinance states the authority of the Salt Lake City appeals hearing officer as follows:

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the planning commission. The appeals hearing officer may hear and decide appeals alleging an error in administrative decisions made by the historic landmark commission pursuant to Section 21A.16.020 of this chapter. (emphasis added)

This section states that the appeals hearing officer may only hear and decide on decisions made by the HLC when the HLC is making an administrative decision. Section 21A.62.040 of the Zoning Ordinance defines "administrative decision" as:

Any final order, requirement, decision, determination or interpretation made by a Land Use Authority in the administration or the enforcement of this title. (emphasis added)

Section 21A.62.040 of the Zoning Ordinance defines “Land Use Authority” as:

The entity identified by this title to decide a land use application.

Again, the subject application is an amendment to zoning regulations. Section 21A.50.020 of the Zoning Ordinance states the following:

The text of this title and the zoning map may be amended by the passage of an ordinance adopted by the city council in accordance with the procedures set forth in this chapter.

This states that the City Council is the decision maker regarding zoning amendments; therefore, the City Council is the land use authority. Since the HLC is not the land use authority in these matters they are not making an administrative decision; therefore, the appeals hearing officer cannot hear an appeal on the HLC’s recommendation.

In addition to Salt Lake City zoning regulations, the State of Utah Municipal Land Use and Development Management Act (MLUDMA) provides guidance on this matter. MLUDMA, Utah Code Sec. 10-9a-101, et seq., requires cities to appoint at least one appeal authority to hear and decide appeals of administrative land use decisions. (see Utah Code Sec. 10-9a-701). MLUDMA makes clear that only land use decisions applying current land use regulations may be appealed to the appeal authority. (See Utah Code Sec. 10-9a-707(6), providing that, “[o]nly a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.”)

It is important to note how MLUDMA defines “land use decision” and “land use application” in light of the foregoing. Utah Code Sec. 10-9a-103(30) reads:

“Land use decision” means an administrative decision of a land use authority or appeal authority regarding:

- (a) a land use permit;
- (b) a land use application; or
- (c) the enforcement of a land use regulation, land use permit, or development agreement.

Additionally, Utah Code Sec. 10-9a-103(28) provides:

“Land use application”:

- (a) means an application that is:
  - (i) required by a municipality; and
  - (ii) submitted by a land use applicant to obtain a land use decision; and
- (b) does not mean an application to enact, amend, or repeal a land use regulation.

It is clear from the sections of MLUDMA cited above that only “land use decisions” applying current land use regulations may be appealed to a city’s land use appeal authority. Recommendations from a historic landmark commission or a planning commission are not “land use decisions”. Further, a petition to amend existing land use regulations only becomes appealable after the local legislative authority, in this case the Salt Lake City Council, has formally acted on that petition. (See Utah Code Sec. 10-9a-801(3)(a) and 10-9a-801(5)).

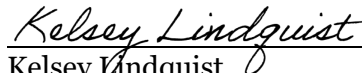
**APPEAL PROCESS:**

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcgov.com/planning/planning-applications> along with information about the applicable fee. Appeals may be filed in person at the Planning Counter, 451 South State Street, Room 215 or by mail at Planning Counter PO BOX 145471, Salt Lake City, UT 84114-5471.

**NOTICE:**

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.

Dated this 9<sup>th</sup> day of November 2020 in Salt Lake City, Utah.



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Kelsey Lindquist  
Senior Planner  
Salt Lake City Planning Division

CC: Nick Norris, Planning Director  
Joel Paterson, Zoning Administrator  
Wayne Mills, Planning Manager  
Greg Mikolash, Development Review Supervisor  
Posted to Web  
Applicable Recognized Organization

## **ATTACHMENT A**



# Administrative Interpretation

SALT LAKE CITY PLANNING

## OFFICE USE ONLY

Project #:	Received By:	Date Received:	Zoning:
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Project Name: Zoning text amendment proposal, subject of landmarks hearing 7/16/2020

## PLEASE PROVIDE THE FOLLOWING INFORMATION

Address of Subject Property: 222 4<sup>th</sup> Ave + 181 B St., SLC UT 84103

Name of Applicant: Stephen C. Pace Phone: [REDACTED]

Address of Applicant: 181 B St SLC UT 84103

E-mail of Applicant: [REDACTED] Cell/Fax: N/A

Applicant's Interest in Subject Property:

☒ Owner ☐ Contractor ☐ Architect ☐ Other:

Name of Property Owner (if different from applicant):

E-mail of Property Owner: Phone:

Proposed Property Use: proposed zoning text amendment to allow reconstruction of Carriage House

Please note that additional information may be required by the project planner to ensure adequate information is provided for staff analysis. All information required for staff analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

## AVAILABLE CONSULTATION

Planners are available for consultation prior to submitting this application. Please call (801) 535-7700 if you have any questions regarding the requirements of this application.

## WHERE TO FILE THE COMPLETE APPLICATION

Mailing Address: Planning Counter  
PO Box 145471  
Salt Lake City, UT 84114

In Person: Planning Counter  
451 South State Street, Room 215  
Telephone: (801) 535-7700

## REQUIRED FEE

Filing fee of \$66, an additional \$61 per hour will be charged if research extends beyond first hour. Fees are non-refundable. (Please call me if you wish immediate payment)

## SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent: Stephen C. Pace Date: 9/17/2020



## SUBMITTAL REQUIREMENTS

Staff Review

Please provide the following information (attach additional sheet/s as necessary)

- |                          |                                     |  |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | a. The provision(s) and section number(s) of the Zoning Ordinance for which an interpretation is sought.<br><i>see below</i>   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | b. The facts of the specific situation giving rise to the request for an interpretation.<br><i>see attached Narrative.</i>   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | c. The precise interpretation the applicant believes to be correct.<br><i>see attached</i>   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | d. When a Use Interpretation is sought:<br><ul style="list-style-type: none"><li>• Please state what use classification you think is most similar to your proposed use.</li><li>• Please provide a complete description of your proposed use and how you feel it will be compatible with the Zoning District. Include any documents or information that you feel would be helpful in making an interpretation.</li></ul> |

a. Ordinance Sections: 21.A.55.070  
21.A.16.020  
21.A.16.030  
21.A.16.040  
21.A.16.050 et seq.

Note: due to apparent changes in the SLc code publishing contracts, the provisions and section numbers are not always consistent going from version to version. As we understand it the appeals rules and practices are generally consistent and raise the same issues for both the Planning Commission and the Historic Landmarks Commission.

### INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

b. Situation Narrative giving rise to request for interpretation.

1. My zoning text amendment proposal was presented for hearing before the Historic Landmarks Commission on July 16, 2020. This resulted in the HLC issuing a negative opinion on the proposal the same day. I believe this finding was based on a number of HLC misinterpretations of established City code and preservation standards and guidelines.
2. I filed a timely notice of appeal to the Mayor's office (who is listed as the chief appeals officer in such matters) on 8/13/2020. I was and am prepared to offer proof for my contentions at an appeals hearing.
3. My notice of appeal was routed to Ms. Rachel Otto of the Mayor's staff. (See attached for summary of Email correspondence with the Mayor's office.) Ms. Otto informed me that because the HLC has issued a "recommendation" as opposed to a "final decision" I have no right of appeal and no forum to seek a non-erroneous interpretation of City law, preservation standards, and guidelines. I was told much the same thing by Mr. Wayne Mills of the City's Planning and Zoning agency who said on 9/5/2020: "The H-L-C- can do anything they want (in your case) without reference to whether it is legal or not under the City code."
4. I pointed out to the Mayor's office that could find no definition or distinction in the City code between "recommendations" and "decisions". Furthermore, I pointed out that the HLC's action in my case is clearly referred to as a "decision" in the Planning Division's records and archives. (See attached "record of decision.") Finally, I pointed out to the Mayor's office that since, in their own words, the HLC would not re-hear my case or modify their motion of disapproval. It is thus impossible to interpret the HLC's action as anything other than their "final" decision.



5. I therefore requested that the Mayor's office give me explanation of the legal basis they claim gives the City the right to deny me an appeal and thus a forum for the correction of errors in spite of the clear wording on the code. The City's position seems arbitrary and clear denial of due process and equal protection. I requested this over three weeks ago and the Mayor's office has not responded.

### C. Recommended correct interpretation

I request a formal appeal hearing either before the Mayor or a hearing officer that is not beholden to the Planning and Zoning Agency. If I make my case before the appeal hearing, I will likely request that either the ILC decision be withdrawn, over-ruled and replaced by the hearing officer, or that a new hearing be held by the ILC.

Because I have doubts that the Planning Agency can fairly interpret this Interpretation Request, I have also provided a copy to the Mayor's office.

Finally, I request that the City stay any further action on my Text Amendment proposal pending the resolution of this request.



8/27/2020

(EXTERNAL) Unfairness/possible impropriety at Historic Landmarks Commission Hearing 7/16/2020

Subject: (EXTERNAL) Unfairness/possible impropriety at Historic Landmarks Commission Hearing 7/16/2020

Date: 8/27/2020 1:19:15 PM Mountain Standard Time

From:

To: Rachel.Otto@slcgov.com

Thank you for your reply. It was a bit ironic to be charged by the City over \$1000 for a "virtual" hearing that I was largely prevented from attending and where evidence I thought was relevant (e.g. the views of neighboring property owners, the legal history of SLC preservation mandates regarding these buildings, etc.) were unfortunately never discussed.

You have indicated that I have no appeal rights or forum to correct errors in this matter because a "decision" can legally be appealed but a "recommendation" cannot. I looked at the City HLC website but could find nothing enlightening on the alleged difference. In the Planning division archive for the meeting in which the HLC passed the motion of disapproval for my proposal the entry is entitled "Record of Decision." I don't know what to think!

I hope that if your time permits you will be able to respond in the next few days to the questions I left for you on your voicemail on 8/25 about the legal distinction between a "decision" and a "recommendation". One additional question occurs to me. If the planning commission, like the Historic Landmarks Commission, will only be forwarding (as you state) a "recommendation" on my zoning text amendment to the City Council, as opposed to a "decision," if it is adverse to my interests, will I be left in the same position as I am now with the HLC? I.e. with no appeal, no equal protection, no guarantee of due process, and with the agency able to apply (or fabricate) any "law" or procedural rule they arbitrarily choose or make up on the spot as the basis for their action? This above-the-law status is certainly the way P&Z staff has told me that the HLC process typically works during a conference call on 8/5/2020. This seems like a pretty odd way to run a constitutional government. Should I expect the planning commission will be any different? Please advise me on how soon I can expect to hear back from you.

Stephen C. Pace  
801 363 8190

In a message dated 8/25/2020 3:42:57 PM Mountain Standard Time, [Rachel.Otto@slcgov.com](mailto:Rachel.Otto@slcgov.com) writes:

Mr. Pace, I apologize. I misunderstood the presence of your attorney. I will make sure the mayor is informed.

RACHEL OTTO

Chief of Staff

O: 801-535-7732

1/5

8/27/2020

(EXTERNAL) Unfairness/possible impropriety at Historic Landmarks Commission Hearing 7/16/2020

C: 801.835.8763

OFFICE of the MAYOR

SALT LAKE CITY CORPORATION

[WWW.SLCMAYOR.COM](http://WWW.SLCMAYOR.COM)

[WWW.SLC.GOV](http://WWW.SLC.GOV)

From: Stephen C Pace  
Reply-To: Stephen C Pace  
Date: Tuesday, August 25, 2020 at 9:24 AM  
To: "Otto, Rachel"  
Subject: Re: (EXTERNAL) Unfairness/possible impropriety at Historic Landmarks Commission Hearing 7/16/2020

You are incorrect. My attorney was not present. I view this as a gross violation of my right to a hearing. I also believe that several city laws were either ignored or violated in the conduct of the hearing. I would appreciate it if you would inform the Mayor personally of this matter.

Stephen C. Pace

In a message dated 8/24/2020 9:39:34 PM Mountain Standard Time, [Rachel.Otto@slcgov.com](mailto:Rachel.Otto@slcgov.com) writes:

2/5

8/27/2020

Dear Mr. Pace,

(EXTERNAL) Unfairness/potential impropriety at Historic Landmarks Commission Hearing 7/16/2020

Thank you for your email explaining your experience with the HLC. I'm sorry to hear that it was frustrating and agree with you that conducting hearings in-person is usually more ideal. I understand, however, that your attorney was able to be at the hearing the entire time.

As you know, the HLC makes a recommendation to the Planning Commission. The Planning Commission will then make a recommendation to the City Council. Because the HLC's decision is a recommendation (not a final decision), there is no right of appeal. In addition, the HLC does not typically reconsider matters. Further, the HLC sometimes takes a different perspective than the Planning Commission, so the fact that you received a negative recommendation at the HLC does not foreclose a positive recommendation from the Planning Commission to the City Council.

As for an in-person hearing with the Planning Commission, my understanding is that they are operating all their meetings virtually. Nick Morris, Planning Director, is aware of your concerns and can help ensure that you have technological support as you or your representative make your presentation to the Planning Commission.

Take care,

Rachel

RACHEL OTTO

Chief of Staff

O: 801-535-7732

C: 801.835.8763

OFFICE of the MAYOR

SALT LAKE CITY CORPORATION

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[WWW.SLCGOV](http://WWW.SLCGOV)

8/27/2020

(EXTERNAL) Unfairness/potential impropriety at Historic Landmarks Commission Hearing 7/16/2020

From: Stephen C Pace  
Reply-To: Stephen C Pace  
Date: Thursday, August 13, 2020 at 12:04 PM  
To: Mayor  
Cc: "Romney, Gabby"  
Subject: (EXTERNAL) Unfairness/potential impropriety at Historic Landmarks Commission Hearing 7/16/2020

Dear Mayor Mendelhall:  
(Drafted 8/5/2020)

I am writing this because in a telecon with Ms. Okay of Planning on 7/31/20, I was told that any suggestions I might have for the conduct of Historic Landmarks Commission proceedings would need to be directed to and approved by you.

When I was finally able to get access to an intelligible video recording of the 7/16/20 HLC meeting (at which my reconstruction project was the only agenda item) I discovered that there was no record of roll call of who on the Commission was in attendance and the chairman launched into the meeting with no announcement of whether a quorum was present. (I was assured by Ms. Lindquist and Mr. Mills, both of Planning, on 8/5/20 that the SLCtv video recording now in my possession constitutes the complete City record of the hearing.) Unless your COVID-19 emergency declarations allow the City to dispense with roll and quorum calls, the entire meeting may thus have been not quite kosher. I believe that the Utah Open Meetings Act requires a quorum in order for the public body to conduct business.

I use the term "finally" above because I was unfortunately given an erroneous computer access code by City staff and I was thus unable to have any participation in the hearing (which I paid for) for the first 25 or so minutes it was held. When I was able to borrow a log in code from my consultant and get on line, I was only able to get a permanently frozen, no audio screen shot. When I was able to make telephone-only contact with the hearing, what I heard was limited to a bunch of unrecognizable, unidentified, and disembodied voices. There was so much cross-talk and other audio interference that I was unable to fully participate in much of the meeting. I counted around 8 times that attendees were unable to hear the proceedings, including 2 complaints by [REDACTED]

me (I gave up after 2 complaints because it was obviously doing no good). The audio problems compromised the hearing during the time I was responding to Commissioners' detailed questions about my project and the staff report because I was apparently the only person at the meeting who could not see the exhibits I was being questioned about, leading to much confusion. The Commissioners were able to make hand signals via video to the chairman when they sought recognition for a question or a comment. I was denied this given my telephone participation and the most important parts of the meeting were closed to public input anyway.

I am preparing a second, lengthier document about what I think went wrong in the hearing, apart from these procedural and fairness issues. There was plenty!

I think SLC has a ways to go to achieve fairness if it continues with these virtual-style hearings. In my case, I hope you will provide me with some guidance on the following options:

- 1...I am considering appealing the HLC decision. Although Ms. Okay told me that no appeal was possible, this apparently may not have been quite true. My reading of the City HLC website is that a 30 day applicant appeal right is provided.
- 2...I am considering requesting a de novo rehearing by the HLC under a revised and mutually agreeable set of ground rules for how to conduct the meeting. This would also include revocation of its 7/16/20 recommendation to the Planning Commission.
- 3...If I am required to present my case directly to the Planning Commission in the near future, I request that it be done in a non-virtual setting. I will be glad to participate with the City in any extra costs associated with holding the session in a remote or non-City facility where making and social distancing practices as per the recommendations of the health department are possible for the Planning Commission, myself, staff, and citizen observers. (I believe, for example, that LDS Hospital has amply sized meeting rooms that are occasionally made available to community groups. Other such options are undoubtedly available.)
- 4...Since I have been pursuing this project with the City for over 40 years, a brief additional delay in the Planning Commission review of it would not shock me. Perhaps we defer their consideration of the matter pending a reevaluation of the delay in, say, 90-120 days when hopefully a non-emergency, non-virtual session may be possible.

I look forward to your reply. The clock is running on my appeal rights. I believe I must appeal by August 15.

Stephen C. Pace

[stephen.pace@alum.mit.edu](mailto:stephen.pace@alum.mit.edu)

p.s. As of today (8/13/2020) I have still not received any minutes or official statement of the adverse recommendation from my 7/16/2020 hearing. In order to protect my appeal rights, please consider this a formal request to appeal to the mayor the decision of the Commission on my project made on that date.



Salt Lake City Planning Division **Record of Decision**

July 16, 2020 5:30 p.m.

This meeting was held electronically pursuant to Salt Lake City Emergency Proclamation No. 2 of 2020 (2)(b)

**Historic Carriage House Zoning Text Amendment**

The Salt Lake City Planning Division has received a zoning text amendment petition from Kirk Huffaker, on behalf of Stephen Pace, to permit the reconstruction of historic carriage houses associated with Salt Lake City Landmark Sites and National Register sites located within the RMF-35 (Moderate Multi-Family Residential), RO (Residential Office), SR-1A (Special Development Residential) and I (Institutional) zoning districts. The reconstructed or restored historic carriage house would be utilized as a dwelling unit. The proposed text amendment is City wide. Related provisions of Title 21A Zoning may be amended as part of this petition. (Staff contact Kelsey Lindquist (801) 434-7930 or kelsey.lindquist@slcgov.com). **Case number PLNPCM2020-00106**

**Decision: Forwarded a negative recommendation to Planning Commission**

*Any final decision made by the Historic Landmark Commission can be appealed by filing an "appeal of decision" application within 10 days of the decision (30 days if the decision is appealed by the applicant). Contact the Planning Division for more information about filing an appeal.*

Dated at Salt Lake City, Utah this 17th day of July 2020.  
Rosie Jimenez, Administrative Secretary



## Planning and HLC appeals per city code

### 21A.55.070: APPEAL OF THE PLANNING COMMISSION DECISION:

Any person adversely affected by a final decision of the Planning Commission on an application for a planned development may appeal to the Appeals Hearing Officer in accordance with the provisions of [Chapter 21A.16](#) of this title. Notwithstanding section [21A.16.030](#) of this title, the filing of the appeal shall not stay the decision of the Planning Commission pending the outcome of the appeal, unless the Planning Commission takes specific action to stay a decision. (Ord. 8-18, 2018)

As described in Section [21A.06.040](#) of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the planning commission. The appeals hearing officer may hear and decide appeals alleging an error in administrative decisions made by the historic landmark commission pursuant to Section [21A.16.020](#) of this chapter.

In addition, the appeals hearing officer shall hear and decide applications for variances as per [Chapter 21A.18](#) of this title and shall make determinations regarding the existence, expansion or modification of nonconforming uses and noncomplying structures pursuant to the procedures and standards set forth in [Chapter 21A.36](#), "Nonconforming Uses and Noncomplying Structures", of this title.

(Ord. 5-20, 2020)

### 21A.16.020: PARTIES ENTITLED TO APPEAL:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer.

(Ord. 5-20, 2020)

### 21A.16.030: PROCEDURE:

Appeals of administrative decisions by the zoning administrator, historic landmark commission or planning commission shall be taken in accordance with the following procedures:

A. Filing of Appeal. All appeals shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court. The deadlines for filing an appeal are as indicated below.

1. Administrative decisions made by the zoning administrator, ten (10) days

2. Planning commission decisions, ten (10) days

3. Historic landmark commission, Thirty (30) days for appeals filed by the applicant, ten (10) days for appeals filed by any other party entitled to appeal.

B. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by [Chapter 21A.19](#) of this title.

C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

#### D. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in [Chapter 21A.19](#) of this title.

2. Public Meeting: Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.

a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission, the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.

b. The city shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, [Chapter 2.60](#) of this code.

3. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the filing of the appeal. Appeals not heard within this time frame will be considered void and withdrawn by the appellant.

#### E. Standard of Review:

1. The standard of review for an appeal, other than as provided in Subsection E.2 of this section, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below:

- a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
- b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
- c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.
- F. Burden of Proof: The appellant has the burden of proving the decision appealed is incorrect.
- G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision shall become effective on the date the decision is rendered.
- H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent to all parties to the appeal within ten (10) days of the decision.

I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

J. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this section, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

K. Matters Delayed: For all matters delayed by the appeals hearing officer, any subsequent written materials shall be submitted a minimum of fourteen (14) days prior to the rescheduled meeting date.

(Ord. 5-20, 2020)

#### **21A.16.040: APPEAL OF DECISION:**

Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

(Ord. 5-20, 2020)

#### **21A.16.050: STAY OF DECISION:**

The appeals hearing officer may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the district court in any appeal of the decision.

(Ord. 5-20, 2020)

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