



**Environmental
Planning
Commission**

**Agenda Number: 13
Project Number: 1001620
Case Number: 08EPC 40009
March 20, 2008**

Staff Report

Agent	City of Albuquerque Planning Department
Applicant	City of Albuquerque City Council
Request	Text Amendments to §14-12-10 ROA 1994, the Appeals Section of the Landmarks and Urban Conservation Ordinance, and to §14-16-4-4, the Appeal Section of the Zoning Code
Location	City-wide
Zoning	NA

Staff Recommendation

That a recommendation of APPROVAL of Text Amendments to Zoning Code §14-16-4-4, the portion of 08EPC 40009 over which the EPC has review authority, be forwarded to the City Council based on the Findings beginning on Page 12 and the Conditions of approval on Page 14.

**Staff Planner
Catalina Lehner, AICP-Senior Planner**

Summary of Analysis

This proposal consists of text amendments to §14-12-10 ROA 1994, the Appeals Section of the Landmarks and Urban Conservation (LUCC) Ordinance, and to §14-16-4-4, the Appeal Section of the Zoning Code. The EPC's task is to make a recommendation to the City Council regarding the proposed changes to §14-16-4-4 only, since the EPC does not have review authority regarding §14-12-10.

The proposed text amendments, which will address certain issues that have arisen during the appeal process, are intended to clarify: 1) who can appeal Staff decisions to the LUCC Commission, 2) submission of written information, 3) hearing officer recommendations, and 4) existing language. The proposed text amendments generally further the intent of the City Charter, the Zoning Code and the Comprehensive Plan, and will help promote citizen participation in the appeals process.

This proposal was advertised via e-mail to neighborhoods, in the neighborhood news and on the City's website. Staff has not received any comments. Staff recommends that an Approval recommendation on the Zoning Code portion of this proposal be forwarded to the City Council.

City-wide

City Departments and other interested agencies reviewed this application from 2/11/2008 to 2/22/2008. Agency comments used in the preparation of this report begin on Page 16.

I. INTRODUCTION

Proposal

This proposal is for text amendments to §14-12-10 ROA 1994, the Appeals Section of the Landmarks and Urban Conservation (LUCC) Ordinance, and to §14-16-4-4, the Appeals Section of the Zoning Code, sometimes referred to as the appellate rules. The proposed text amendments are intended to clarify: 1) who can appeal Staff decisions to the LUCC Commission (§14-12-10), 2) submission of written information (§14-16-4-4), 3) recommendations and use of a hearing officer (§14-16-4-4), and 4) existing language (§14-16-4-4). The idea is to address certain issues that have arisen during the appeal process and to provide clarifications that have been needed for some time now.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to §14-16-4-4 of the Zoning Code *only*. The City Council is the City's Zoning Authority and the EPC is a recommending body. The City Council also has authority regarding §14-12-10, the LUCC ordinance, but in this case the EPC does not make an official recommendation because it does not have review authority.

Background and Context

The impetus for the proposed text amendments to §14-12-10 arose due to issues that surfaced in the context of a recent appeal of a Landmarks and Urban Conservation Commission (LUCC) case (AC-07-17). Staff offers a summary below. The proposed text amendments to §14-12-10 of the Zoning Code came about because of issues that have become apparent over time and in the appeals process for land use cases.

Background: In July 2005, the LUCC approved plans for a single-family residence in the Fourth Ward Historic Overlay Zone in the Downtown area (05-LUCC-00954). Approximately two years later, the property owner applied for a "design amendment" to install another decorative screen (metal grille) on a window in addition to the other window grilles that were included in the original approval. Staff, in trying to assist the property owner, determined that the screen could be considered an alteration to an existing non-contributing building and issued a Certificate of Appropriateness. The Downtown Neighborhood Association (DNA) disagreed with the Staff decision and appealed it to the LUCC. The LUCC reversed the Staff decision, finding that the metal screen increased the visibility of an inappropriate material on the building.

The property owner disagreed with the LUCC decision and appealed to the City Council (AC-07-17). AC-07-17 was introduced at the City Council in September 2007 (see attachment) and was referred to the Land Use Hearing Officer (LUHO). The LUHO rendered a recommendation in October 2007 (see attachment). The LUHO, in a literal reading of the LUCC ordinance, noted that it states that "the applicant may appeal the decision of the City staff designated by the Mayor relative to a Certificate of Appropriateness to the Commission." Therefore, the right to appeal is limited by ordinance to the applicant only, although this is contrary to the LUCC Rules of Procedure and Conduct (the "rules") which contains the general statement that "a staff decision may be appealed to the LUCC requesting a

Commission decision regarding a Certificate of Appropriateness.” The LUHO reasoned that the LUCC rules of procedure cannot supersede law; these are procedural arguments and did not address the merits of the appeal.

Context: The City Council considered the LUHO’s recommendation regarding AC-07-17 in December 2007. The inconsistency between the LUCC ordinance and the LUCC rules became apparent and caused concern at Council. The City Council voted to remand this case to the LUHO for a hearing on the merits. If the Council chooses, it will hear the merits argument (the appropriateness, or lack thereof, of the window grille) at a later date.

In the meantime, Bill No. O-08-6 was introduced at the City Council on January 7, 2008 to remedy the inconsistency. The proposed text amendments to §14-16-4-4, the appellate rules of the Zoning Code, came about in association with the proposed text amendments to the LUCC ordinances. The relatively minor, but needed, language clarifications to the appellate rules can be handled at the same time as remedying the inconsistency in the LUCC ordinance’s appeals subsection.

The LUHO hearing on the merits regarding the remanded AC-07-17 occurred on February 15, 2008. In his recommendation and based on the merits, the LUHO advises that the City Council reverse the LUCC’s decision and reinstate the Staff decision to approve the additional window grille (see attachment) as the appellant desires. Basically, the LUHO found that the LUCC did not correctly interpret the design guidelines and acted arbitrarily and capriciously because it did not provide sufficient evidence to support its decision.

II. ISSUES

Standing

In this context, standing means that a person has the right to appeal a decision. As explained in the Background and Context section of this report (see above), the issue is that there is an inconsistency between §14-12-10, the LUCC ordinance, and the LUCC Rules of Procedure and Conduct (the “rules”). The LUCC ordinance limits the right to appeal a City staff decision to the applicant only. The LUCC rules make no such limitation, but generally state that “a staff decision may be appealed to the LUCC.” The current language in the LUCC ordinance limits citizens’ due process since only the applicant can appeal. The LUCC ordinance, written in the 1970s, needs to be updated to reflect the fact that parties other than the applicant may wish to appeal a Staff decision. Another reason for the update is to create consistency with the LUCC rules and with Zoning Code §14-16-4-4, the appellate rules, which were updated in December 2006 (O-06-28) to allow appeals by any person who demonstrates a personal, pecuniary or neighborhood-based interest in a case.

Submission of Written Information

An issue related to standing is the submission of written material. Zoning Code §14-16-4-4, the appellate rules, need to be clarified in line with the intent to create consistency between the LUCC ordinance the appellate rules. The idea is to allow any party to an appeal to submit written information to the appellate body through the staff of that body. New information is not allowed. If there is any other

communication besides written materials, that communication shall be disclosed by the member of the appellate body who receives it.

Recommendations of the Hearing Officer/Remands

The role of a hearing officer is another issue related to the appeals process. Zoning Code §14-16-4-4, the appellate rules, need to be clarified to reflect the fact that the LUHO does not make a decision. Rather, the LUHO makes a recommendation to the City Council. This is a clarification of the hearing officer's role. Another clarification is new language to allow the City Council to accept a portion of the LUHO's recommendation and reject the remainder if it so chooses.

New language is proposed that would allow the City Council to use a hearing officer to take testimony and make recommendations if it chooses, and to allow any City appellate body to suspend procedural rules as long as doing so does not adversely affect the person's rights. Other new language would allow the City Council to remand an appeal to the Planning Director if it chooses.

Language Improvements

In general, language clarifications are proposed to improve Zoning Code §14-16-4-4, the appellate rules. For specifics, please refer to section IV of this report, in which proposed language changes are discussed and analyzed.

III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Policy citations are in regular text; ***Staff analysis is in bold italics.***

CHARTER OF THE CITY OF ALBUQUERQUE

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. **The purpose of this Charter is to provide for maximum local self government.** A liberal construction shall be given to the powers granted by this Charter.” (emphasis added)

Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area.”

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision is an exercise in local self government (City Charter, Article I). As a response to circumstances that arose through the appeal process for urban conservation and land use decisions, this clarification expresses the Council's desire to promote and maintain an aesthetic environment and to ensure the proper use and development of land (City Charter, Article IX).

ALBUQUERQUE/BERNALILLO COUNTY COMPREHENSIVE PLAN
Applicable *Comprehensive Plan* goals and policies include:

The **Developing and Established Urban Area Goal** is “to create a quality urban environment, which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.”

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision will help ensure that the Developing and Established Urban Area Goal is met. The Goal of creating a quality urban environment is more likely to become reality if the public 1) has a clear understanding that they can be involved in the planning process and can appeal decisions of both staff and boards, and 2) that there is an inclusive appeal process available if they wish to question decisions made through the planning process.

The **Central Urban Area Goal** is “to promote the Central Urban Area as a focus for arts, cultural, and public facilities/activities while recognizing and enhancing the character of its residential neighborhoods and its importance as the historic center of the City.”

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision will help ensure that the Central Urban Area Goal is met. The objectives of recognizing and enhancing the character of neighborhoods and enhancing the importance of the City's historic center is more likely to become reality if the public 1) has a clear understanding that they can be involved in the planning process and can appeal decisions of both staff and boards, and 2) that there is an inclusive appeal process available if they wish to question decisions made through the planning process.

The **Historic Resources Goal** is “to protect, reuse, or enhance significant historic districts and buildings.”

Policy c: Increase public and inter-agency awareness of historic resources and preservation concerns.

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision will help ensure that the Historic Resources Goal is met and that Policy c is furthered. The Goal of enhancing significant historic districts and buildings, and the objective of increasing public awareness (Policy c), are more likely to come to fruition if the public 1) has a

clear understanding that they can be involved in the planning process and can appeal decisions of both staff and boards, and 2) that there is an inclusive appeal process available if they wish to question development decisions made through the planning process which affect historic districts and buildings.

The **Community and Urban Design Goal** is “to preserve and enhance the natural and built characteristics, social, cultural and historical features that identify Albuquerque and Bernalillo County sub-areas as distinct communities and collections of neighborhoods.”

Policy b: In each Community Area, strategic planning, neighborhood planning, development and redevelopment shall be evaluated in light of its relationship to and effect upon the following:

- 1) The natural environment
 - Indigenous vegetation and other materials appropriate to landscapes.
 - Topography and landscape features such as arroyos, the Rio Grande and Bosque, the foothills and escarpments
 - Soils and erosion potential
 - Colors and textures of the natural environment
 - Views
- 2) Built environment
 - Height and massing of buildings
 - Setbacks from the street
 - Placement of entrances and windows
 - Walls and fences
 - Parking areas design and relationship to buildings
 - Road widths, sidewalks, curb cuts, medians
 - Grain of streets/size of parcels
 - Patterns of movement (e.g. pedestrian connections, access to transportation/transit)
 - Street furniture (e.g. bus stops, street lights, signs)
 - Landscaping materials, both planting and hardscape
 - Public infrastructure (e.g. drainage facilities, bridges)
 - Social interaction opportunities
 - Relationship between built and natural environment
- 3) Local history
 - Architectural styles and traditions
 - Current and historic significance to Albuquerque
 - Historic plazas and other Activity Centers
- 4) Culture and traditions
 - Cultural characteristics of residents
 - Community celebrations and events

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision will help ensure that the Community and Urban Design Goal is met and that Policy b is furthered. The Goal of preserving and enhancing the built characteristics and historical features that identify Albuquerque's distinct communities is more likely to be met with greater public involvement in the planning process. People concerned about planning and development can continue to evaluate the effects upon the natural environment, built environment, local history and culture/traditions, and clarifying the appeal process may help people to further understand how they can be involved and what their rights are.

ALBUQUERQUE COMPREHENSIVE ZONING CODE

Zoning Code Section 14-16-1-3, Intent, states:

“(A) This article is intended to help achieve Article IX of the Charter of the City of Albuquerque and the City’s master plan; in particular the master plan documents which comprise the Albuquerque/Bernalillo County Comprehensive Plan. This article is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the City...”.

Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision will help achieve Article IX (Environmental Protection) of the City Charter, and generally furthers the applicable Goals, policies and intent of the City’s master plan, the Albuquerque/Bernalillo County Comprehensive Plan. Therefore, the proposed text amendments meet the intent of the Zoning Code and further the Zoning Code goals of promoting the health, safety and welfare of the citizens. However, as zoning authority for the City of Albuquerque, the City Council will make the final determination.

NEIGHBORHOOD RECOGNITION ORDINANCE (O-92)

The Neighborhood Recognition Ordinance, commonly known as O-92, is found in the Albuquerque Code of Ordinances, Chapter 14-Zoning, Planning and Building, Article 8-Commissions, Councils, Agencies and Other Bodies. The City Council passed O-92 in 1987. The City’s Office of Neighborhood Coordination (ONC) is responsible for its implementation.

Section 14-8-2-2, Legislative Findings and Purpose, states:

- A. Early identification and resolution of potential conflicts involving neighborhoods and the private sector can be of utmost value to all concerned.
- B. A standardized recognition policy for Albuquerque neighborhood associations would promote improved communications between neighborhood associations and City government.
- C. Due to the potential impact of new development and redevelopment upon neighborhoods, it can be useful if developers coordinate major proposals and plans with neighborhood associations.
- D. The purpose of Section 14-8-2-1 et seq. is to meet the needs specified by the above legislative findings, while not limiting the rights of any other person, including non-recognized neighborhood groups, to input directly into the City’s decision-making process.

The proposed text amendments are related to the purpose of O-92, which is to facilitate resolution of potential conflicts and improve communication between the public (usually neighborhoods) and the private sector (usually applicants). In clarifying that any party who has an interest has standing to file and pursue an appeal of a decision, the proposed text amendments will strengthen O-92 by spelling out that filing an appeal is a right available to anyone who has a personal, pecuniary or neighborhood interest. The proposed text amendments will promote input into the City's decision making process in the spirit of O-92 and will not preclude the participation of non-recognized groups.

IV. PROPOSED AMENDMENTS & DISCUSSION

The proposed text amendments are to §14-12-10 ROA 1994, the Appeals subsection of the Landmarks and Urban Conservation (LUCC) Ordinance, and to §14-16-4-4, the Appeals Procedures of the Zoning Code (the appellate rules). Planning Staff has consulted with Council Services Staff, who developed the proposed amendments, and with City Legal Staff.

New language is [+underlined and bracketed+]. Deleted language is [~~underlined, bracketed and struck through~~]. Planning Staff's explanation is included in **Bolded Italics**. The language was written by Council Services Staff. Planning Staff offers a few minor suggestions. Page references are to the proposed Bill O-08-6 (see attachment).

Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 12- Landmarks and Urban Conservation (LUCC)

Section 14-12-10, APPEALS

Page 1, Line 10:

(A) The applicant [+or any aggrieved party+] may appeal the decision of the city staff designated by the Mayor relative to a Certificate of Appropriateness to the Commission. The applicant or any person aggrieved by decision of the Commission may appeal the decision to the City Council. Any city staff or Commission decision is final unless appeal is initiated by application to the city within 15 days of the decision. The date of determination is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday, or holiday as listed in § 3-1-12, the next working day is considered as the deadline for filing the appeal. A building permit dependent on a case shall not be issued and a proposed project not requiring a building permit shall not be initiated until an appeal is decided or the time for filing the appeal has expired without an appeal being filed.”

The intent, as stated previously, is to specify that other parties besides the applicant have the right to appeal a City staff decision in an urban conservation case. Staff, in consultation with Council Services, recommends leaving the “aggrieved party” language as is. Staff considered incorporating language from §14-16-4-4, the Appeals Procedures of the Zoning Code, to create consistency. Since doing so would be cumbersome, however, another approach is to add a definition of Aggrieved Party to the definitions section of the LUCC ordinance, as proposed below.

Adding the definition would ensure that there is no question in the future that an aggrieved party in urban conservation cases is intended to be defined as an aggrieved party the same way as in land use cases. That is, an aggrieved party is understood to be any person with a personal, pecuniary or neighborhood interest in a given case.

Page 1, insert proposed new definition:

[+AGGRIEVED PARTY. A party aggrieved according to §14-16-4-4 of the Zoning Code.+]

Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code

Section 14-16-4-4, APPEALS

1. Page 4, Lines 12-21:

(5) A permit dependent on a decision described in division (A) of this section shall not be issued until an appeal is decided or the time for filing the appeal has expired without an appeal being filed; however, if public hearing produces no objection of any kind to approval of an application, which application is approved, the deciding entity may allow issuance of a building permit before 15 days if the applicant agrees in writing to return the building permit if an appeal is duly filed. [+The appeal of a decision by the Planning Director to issue a building permit shall not result in the automatic revocation of the permit. The holder of the permit shall be on notice that the building permit may be withdrawn.+]

This language is needed to make it obvious that there is a process available to appeal a Planning Director decision to issue a building permit. A building permit shall not be automatically revoked in this case, but the permit holder shall be put on notice. Staff recommends no changes.

2. Page 4, Lines 23-33 and Page 5, Lines 1-21:

(C) Acceptance.

(1) The City Council, upon accepting an appeal, shall refer the appeal to the Land Use Hearing Officer for a hearing. The Land Use Hearing Officer may place reasonable limitations on an appeal hearing at the beginning of the hearing in question. The Land Use Hearing Officer shall hear the appeal in accordance with rules adopted by the Council and shall enter a [~~decision~~][+recommendation+]
regarding the appeal after making appropriate findings of fact. The Land Use Hearing Officer may accept new evidence into the record. If the Land Use Hearing Officer's [~~decision~~][+recommendation+]
is that the appeal should be remanded, the Land Use Hearing Officer shall set forth the reason(s) for the remand and the matters to be reconsidered. The Land Use Hearing Officer shall forward the [~~decision~~][+recommendation+]
and findings to the Council within five days of the decision. The Council shall place the Land Use Hearing Officer's [~~decision~~][+recommendation+], including findings, on the agenda of the next regular full Council meeting at which land use, planning and zoning matters are heard following receipt of the Land Use Hearing Officer's decision. At the Council meeting, the Council shall vote whether to accept or reject the Land Use Hearing Officer's [~~decision~~][+recommendation+]
and findings. [+The Council may accept a portion of the Land Use Hearing Officer's recommendation and findings and reject the remainder.+] A motion to reject or accept the Land Use Hearing Officer's [-

~~decision-~~[+recommendation+] and findings must be approved by a majority of the membership of the Council. If the Land Use Hearing Officer's [~~decision-~~][+recommendation+] is rejected [+or if a majority of the Council fails to either accept or reject the recommendation+], the appeal shall be scheduled before the full Council no earlier than the next regular meeting of the full Council at which land use matters are heard.

This proposed language clarification recognizes that the LUHO does not make a decision. Rather, the LUHO makes a recommendation to the City Council and the City Council makes a decision. Language is also included to specify that the City Council may accept a portion of the LUHO's recommendation and reject the remaining portion if it chooses. (Please refer also to 3 below). Staff suggests no changes.

3. Page 5, Lines 15-21:

[+(2)+] [If only a portion of the Land Use Hearing Officer's recommendation and findings are rejected, only that portion shall be scheduled for hearing before the Council.] The Council [~~shall not-~~] [may] accept new evidence [~~in any appeal that was first heard by the Land Use Hearing Officer-~~]. [Prior to the Council hearing a matter, following the rejection of a LUHO recommendation, the LUHO hearing shall be transcribed and made a part of the record before the City Council.]

The intent behind this language is to allow the City Council to hear only a portion of the LUHO's recommendation if it chooses, and to make a LUHO hearing a part of the record that City Council will consider. Staff recommends breaking out the language from the very long preceding paragraph for clarity's sake. The topic can stand on its own and would become (2).

4. Page 5, Lines 22-29:

(2) The City Council may remand an appeal to the Planning Commission, Board of Appeals, Development Review Board, [Planning Director] or Landmarks and Urban Conservation Commission for rehearing and decision if it finds that rehearing would be likely to serve public policy and resolve the appeal. If the City Council remands an appeal to the Planning Commission, Board of Appeals, Development Review Board [+, Planning Director] or Landmarks and Urban Conservation Commission, the Council shall state key findings of fact on which that action is based.

This language is proposed to be added to allow the City Council, if it chooses, to remand an appeal to the Planning Director. Staff recommends no changes.

5. Page 6, Lines 5-10:

(D) Fee. A filing fee of \$55 to cover reasonable expenses shall accompany each appeal application. When an application is withdrawn, the application fee shall not be refunded. There shall be no filing fee on an appeal of the Planning Commission, the Board of Appeals, Development Review Board [±, Planning Director] or the Landmarks and Urban Conservation Commission, on a decision remanded to it by the City Council.

To be consistent with 4 above and 7 below, this language needs to be added. Doing so will create internal consistency.

6. Page 7, Lines 4-23:

(e) Staff of the appellate body, other than employees of a city division which is the appellant or the appellee, may upon request of a member of the appellate body communicate with that member at any time and by any means; copies of any written materials shall be distributed to all parties. [+Any party to an appeal may provide written argument to the appellate body by submitting it through the staff of that body. The written argument shall not include new evidence and shall be submitted at least five days before the next hearing on the appeal with copies provided to any neighborhood association entitled to notice in the case and to all parties. There should be no other communication, outside a hearing, with a member of an appellate body concerning a pending appeal. Any other communication that does occur shall be disclosed by the member of the appellate body who receives the communication.+]~~[-Any other person who communicates outside a hearing with a member of an appellate body concerning a pending filed appeal to that body shall do so only by printed materials and shall supply copies of said printed communications to the record, to any neighborhood association entitled to notice on the case, and to all parties; the copies shall be distributed at least five days before the next hearing on the appeal, and there shall be no communication after the five-day deadline until the public hearing.-]~~

The intent of this proposed amendment is to specify that any party to an appeal, rather than the general “any other person”, may submit written information. New evidence will still not be allowed and the submission will still have to be within at least five days of the hearing. Other proposed language states that there shall be no other communication outside of the hearing and, if there is, it shall be disclosed. Staff recommends no changes.

7. Page 8, Lines 19-26:

2. It is the burden of the persons asserting the applicability of this division (a) to show that it applies through clear and convincing evidence.

(b) Unless division (a) above applies, a majority of all members of the City Council is required to reverse a determination by the Planning Commission, the Board of Appeals, the Development Review Board [+, the Planning Director+] or the Landmarks and Urban Conservation Commission.

This proposed language was added to create internal consistency, and acknowledges that the Planning Director makes decisions which are subject to appeal. Staff added a comma, as has been done consistently through this addition. Staff recommends no substantive changes.

8. Page 9, Lines 28-30:

[+(I) In any matter heard by the Council without the Land Use Hearing Officer [+,+] the Council may choose to have a Hearing Officer take testimony and make recommendations.+]

There are a few matters, such as appeals of impact fee administrator decisions, which are not heard by the LUHO. In these cases, the City Council must have a full hearing. This proposed language is intended to give the City Council the option to appoint a hearing officer to assist them and create a record, which will help the City Council use its time more efficiently. Staff added a comma. Staff recommends no substantive changes.

9. Page 9, Lines 31-33:

[+(J) Any city appellate body, including the City Council and Land Use Hearing Officer, for a given case, may suspend any applicable procedural rule if doing so does not adversely impact any party's rights.+]"

The intent of this proposed language is to allow an appellate body to suspend their procedural rules, as long as doing so does not adversely impact anyone's rights. For instance, an appellate body may want to consider written information that was received later than the deadline for submission. This proposed language would allow the body to do so if it chooses (typically by a majority vote). Staff recommends no changes.

V. COMMENTS

CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

There are no adverse agency comments. The Office of Neighborhood Coordination (ONC) states that notice of the proposed text amendments will be published in the "Neighborhood News" Newsletter and will be available on the Planning Department's ONC's newsletter page on the City's website (which has since happened). Several commenting agencies indicated that they have no comment. The pre-hearing discussion meeting was held on February 27, 2008.

NEIGHBORHOOD CONCERNS

There is no known neighborhood or other opposition to the proposed text amendments. On February 26, 2008, the Office of Neighborhood Coordination (ONC) sent out an e-mail notification to neighborhood representatives regarding the proposed text amendments. Notification was also provided in the March issue of the Neighborhood Newsletter. Staff has received one inquiry and provided the individual with basic information.

VI. CONCLUSION

The proposed text amendments are to §14-12-10 ROA 1994, the Appeals subsection of the Landmarks and Urban Conservation (LUCC) Ordinance, and to §14-16-4-4, the Appeals Procedures of the Zoning Code, sometimes referred to as the appellate rules. The proposed text amendments to the LUCC ordinance allow any aggrieved party, not just the applicant, to appeal an administrative decision of City staff. The proposed text amendments to the Appeals procedures of the Zoning Code allow for and/or clarify the following: submission of written information, recommendations and use of a hearing officer, and existing language.

The idea is to address certain issues that have arisen during the appeal process and to provide clarifications that have been needed for some time now. Overall, the proposed text amendments further the intent of the City Charter, applicable Comprehensive Plan Goals and the Zoning Code. In sum, the proposed text amendments will reinforce the administrative appeal process and will promote public participation in the City's planning process in the spirit of O-92.

FINDINGS- 08EPC 40009, March 20, 2008-Text Amendments

1. §14-12-10 ROA 1994, the Appeals Section of the Landmarks and Urban Conservation (LUCC) Ordinance and §14-16-4-4, the Appeals Section of the Zoning Code, outline procedures that aggrieved persons can use to appeal urban conservation decisions and land use decisions, respectively.
2. The purpose of the text amendments is to clarify: A) who can appeal Staff decisions to the LUCC Commission (§14-12-10), B) submission of written information (§14-16-4-4), C) recommendations and use of a hearing officer (§14-16-4-4), and D) existing language (§14-16-4-4). The idea is to address certain issues that have arisen during the appeal process and to provide clarifications that have been needed for some time now.
3. The EPC's task is to make a recommendation to the City Council regarding the proposed changes to §14-16-4-4 of the Zoning Code *only*. The City Council is the City's Zoning Authority and the EPC is a recommending body. The City Council also has authority regarding §14-12-10, the LUCC ordinance, but in this case the EPC does not make a recommendation because it does not have review authority.
4. Achievement of the City Charter:
Clarifying that any party who has an interest has standing to file and pursue an appeal of an administrative decision is an exercise in local self government (Article I). This clarification expresses the Council's desire to promote and maintain an aesthetic environment and to ensure the proper use and development of land (Article IX).
5. The text amendments further the Developing and Established Urban Area Goal of the Comprehensive Plan. The Goal of creating a quality urban environment is more likely to become reality if the public understands that they can appeal decisions of both staff and boards, and that there is an inclusive appeal process available if they wish to utilize it.
6. The text amendments further the Central Urban Area Goal of the Comprehensive Plan. The objectives of recognizing neighborhood character and enhancing the importance of the City's historic center are more likely to become reality if the public understands that they can appeal decisions of both staff and boards, and that there is an inclusive appeal process available if they wish to utilize it.
7. The text amendments further the following Comprehensive Plan Goal and policy with respect to Community and Urban Design:

- A. Goal—Greater public involvement in the planning process will help to preserve and enhance the built characteristics and historical features that identify Albuquerque’s distinct communities.
- B. Policy b—A clarified appeal process will provide another avenue for people concerned about development’s effects upon the built environment, natural environment and local history.

8. The text amendments further the following Comprehensive Plan Goal and policy with respect to Historic Resources:

- A. Goal—Greater public involvement in the planning process will help to protect and enhance significant historic districts and buildings.
- B. Policy c—A clarified appeal process could help increase public and inter-agency awareness of historic resources and preservation concerns.

9. Intent of the Comprehensive City Zoning Code (Section 14-16-1-3):

The text amendments further applicable Goals, policies and intentions of the Comprehensive Plan, and therefore meet the intent of the Zoning Code.

10. Neighborhood Recognition Ordinance (O-92):

The text amendments to clarify appeal procedures will promote participation in the planning process in the spirit of O-92, since doing so will help the public to understand that there is an inclusive appeal process available if they wish to utilize it.

11. There is no known neighborhood or other opposition to the proposed text amendments. The Office of Neighborhood Coordination (ONC) provided e-mail notification to neighborhood representatives. Notification was also provided in the Neighborhood Newsletter and on the City’s website.

RECOMMENDATION

That a recommendation of APPROVAL of Text Amendments to Zoning Code §14-16-4-4, the portion of 08EPC 40009 over which the EPC has review authority, be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL- 08EPC 40009, March 20, 2008-Zoning Code Text Amendments

1. New definition- Insert on p. 1 of O-08-6:

[+AGGRIEVED PARTY. A party aggrieved according to §14-16-4-4 of the Zoning Code.+]

2. Make this language a new subsection 2 on Page 5, Lines 15-21 of O-08-6:

[+(2)+] [+If only a portion of the Land Use Hearing Officer's recommendation and findings are rejected, only that portion shall be scheduled for hearing before the Council.+] The Council [~~shall not~~] [+may+] accept new evidence [~~in any appeal that was first heard by the Land Use Hearing Officer~~]. [+Prior to the Council hearing a matter, following the rejection of a LUHO recommendation, the LUHO hearing shall be transcribed and made a part of the record before the City Council.+]

3. Add the following language on Page 6, Lines 5-10 of O-08-6, to create internal consistency:

(D) Fee. A filing fee of \$55 to cover reasonable expenses shall accompany each appeal application. When an application is withdrawn, the application fee shall not be refunded. There shall be no filing fee on an appeal of the Planning Commission, the Board of Appeals, Development Review Board [+, Planning Director+] or the Landmarks and Urban Conservation Commission, on a decision remanded to it by the City Council.

4. Minor "clean up"- Add a comma in the following locations to create internal grammatical consistency:

A. Page 8, Lines 19-26:

It is the burden of the persons asserting the applicability of this division (a) to show that it applies through clear and convincing evidence.

(b) Unless division (a) above applies, a majority of all members of the City Council is required to reverse a determination by the Planning Commission, the Board of Appeals, the Development Review Board [+, the Planning Director+] or the Landmarks and Urban Conservation Commission.

B. Page 9, Lines 28-30:

[+(I) In any matter heard by the Council without the Land Use Hearing Officer [+,+] the Council may choose to have a Hearing Officer take testimony and make recommendations.+]

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

AGENCY COMMENTS

➤ **The following agencies did not review or comment on Project #1001620 (08EPC 40009):**

City of Albuquerque

Environmental Health, Air Quality Division
Environmental Health, Env. Services Division
Environmental Health, City Forrester
Fire Department, Planning
Parks & Recreation, Open Space Division
Parks & Recreation, Planning & Design
Planning, Advance Planning & Urban Design
Police Department/Planning
Transit Department

Other

Bernalillo County
Middle Rio Grande Conservancy Dist. (MRGCD)

➤ **The following City of Albuquerque Departments reviewed and commented on Project #1001620 (08EPC 40009):**

Planning, Zoning Code Services

Reviewed: No comments.

Planning, Office of Neighborhood Coordination

2/19/08 – to be published in the “Neighborhood News” Newsletter and will be on the Planning Department’s ONC’s newsletter page on the city’s website.

Parks & Recreation, Planning & Design

Reviewed, no objection. Request does not affect our facilities.

Solid Waste Management Dept., Refuse Division

No adverse comments.

City of Albuquerque Public Works Department

Transportation Development (City Engineer/Planning Department):

- Reviewed, no comments.

Hydrology Development (City Engineer/Planning Department):

- The Hydrology Section has no objection to the text amendment.

Transportation Planning (Department of Municipal Development):

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

Utility Development (Water Authority):

- No adverse comments to text amendment.

Water Resources, Water Utilities and Wastewater Utilities (Water Authority):

- Comments sent directly to staff planner.

New Mexico Department of Transportation (NMDOT):

- Reviewed, no comments.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT,
WATER AUTHORITY and NMDOT:**

Conditions of approval for the proposed Text Amendment shall include:

- a. None.

➤ **The following agencies reviewed Project #1001620 (08EPC 40009):**

Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)

Reviewed, no comment.

Albuquerque Public Schools (APS)

City of Albuquerque proposes an amendment that will clarify a recent Council decision that any aggrieved party may appeal a staff decision to the LUCC, who may make written submissions to an appellate body, and clarifies that the City Council may use a hearing officer in cases not heard by the LUHO. This amendment also allows the City Council to accept new evidence in a case that has been heard by the LUHO, and clarifies the language in the existing ordinance. This amendment will have no adverse impacts to the APS district.

Mid-Region Council of Governments (MRCOG)

MRCOG staff have no comment on this project.

Public Service Company of New Mexico

No comment based on the information provided to date.