



**Environmental
Planning
Commission**

**Agenda Number: 4
Project Number: 1001620
Case #: 13EPC-40153
January, 9 2014**

Staff Report

Agent Planning Department

Applicant City of Albuquerque

Request Amend Zoning Code §14-16-4-4(A) ROA 1994, Appeal, to remove the exception that requires Zone Map Amendments to be heard only by City Council

Location City-wide

Staff Recommendation

That a recommendation of APPROVAL of 13EPC-40153 be forwarded to the City Council, based on the Findings on page 6.

**Staff Planner
Carrie Barkhurst**

Summary of Analysis

This request is for a text amendment to §14-16-4-4, the Appeal Section of the Zoning Code. The EPC's role is to make a recommendation to the City Council regarding these amendments.

The proposed text amendment would amend sub-section A, Jurisdiction, to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.

The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The request generally furthers the intent of the City Charter and the Zoning Code.

The request was announced in the Neighborhood News and posted on the Planning Department website. Staff has not received any inquiries or comments as of this writing.

The request is very limited in scope. Staff recommends that an Approval recommendation be forwarded to the City Council.

I. INTRODUCTION

Request

This request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council. The proposed text amendment would apply City-wide. This request is considered legislative in nature.

Environmental Planning Commission (EPC) Role

The EPC is a recommending body with review authority. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision regarding these text amendments.

Purpose/Intent

The intent of the amendment is to modify Section 14-16-4-4(A)(2)(a) of the Zoning Code as follows: "Appeal of the following actions is to the City Council through the Land Use Hearing Officer: (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [~~- except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer -~~]."

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The Appeal Process regulations also establish that, "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." (§14-16-4-4(I)). The regulation is not clear as to why the City Council would rely on a different Hearing Officer for zone map amendments only. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

History

This section of the zoning code was last amended in 2008, related to a neighborhood appeal of a Certificate of Appropriateness to the Landmarks and Urban Conservation Commission (LUCC). At that time, only the applicant had standing to appeal a decision to the LUCC according to the Zoning Code; however, the LUCC Rules of Procedure allowed any aggrieved party to initiate an appeal. In response to this inconsistency, City Council initiated amendments to the LUCC Ordinance, §14-12-10, to expand the right to appeal LUCC staff decisions to include any aggrieved parties. The Appeal procedures of the Zoning Code, §14-16-4-4, were also amended allow for and/or clarify the following: submission of written information, recommendations and use of a hearing officer, and existing language (O-08-6/08EPC-40009). These amendments did not change the Appeals Jurisdiction section of the Zoning Code, §14-16-4-4(A), which is the subject of this proposed amendment.

II. PROPOSED TEXT AMENDMENTS

Below is the proposed text amendment, shown with “~~strickethrough~~” text.

§14-16-4-4 Appeal.

(A) Jurisdiction.

- (1) Appeal of declaratory rulings as to the applicability of the Zoning Code by the Zoning Enforcement Officer, or any action which is authorized by the Zoning Code and is made by the Planning Director is to the City Council through the Land Use Hearing Officer. Appeal of decisions of the Zoning Hearing Examiner is to the Board of Appeals. Upon denial of a Certificate of Appropriateness by the Mayor or Planning Director under the terms of § 14-16-2-25 or § 14-16-2-28 of this Zoning Code, the matter will be remanded to the Landmarks and Urban Conservation Commission for further consideration, if the applicant requests such remand within 15 days of denial.
- (2) Appeal of the following actions is to the City Council through the Land Use Hearing Officer:
 - (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [- ~~except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer~~ -];
 - (b) Denial of an application for the HO Historic Overlay Zone or UCO Urban Conservation Overlay Zone by the Landmarks and Urban Conservation Commission;
 - (c) A decision on a special use permit by the Landmarks and Urban Conservation Commission;
 - (d) Appeals of a decision of the Board of Appeals; and
 - (e) Appeals of a decision of the Development Review Board.
- (3) Once an appeal is filed, no prior decision rendered by the Zoning Enforcement Officer, the Zoning Hearing Examiner, the Planning Director, the Planning Commission, the Board of Appeals, the Development Review Board, or Landmarks and Urban Conservation Commission upon which the appeal is based may be unilaterally withdrawn, changed or modified by any of the above as they have lost jurisdiction to act on the matter.

The proposed amendment removes the requirement that a zone map amendment must only be heard by City Council. City Council has delegated review authority to the Land Use Hearing Officer (LUHO) for appeal of any other cases heard by the EPC as well as other boards and commissions.

Currently, the City Council may choose to use a Hearing Officer in cases that are not automatically processed through the LUHO, although this is not typically done. The only unintended consequence of this change is that appeals of zone map amendments may take longer to reach final conclusion. However, the proposed amendment provides a consistent practice across the board for appeals that are decided by City Council.

III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

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

A) *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.”

The use of a Hearing Officer to take testimony and make recommendations to the City Council for all appeal actions is an authority that City Council already has, under §14-16-4-4(I) of the Zoning Code. Allowing the Land Use Hearing Officer (LUHO) to take testimony and make recommendations to the City Council in appeals of zone map amendments is consistent with the Council’s authority to effectively administer city policy and regulations and is an exercise in local self-government (City Charter, Article I). This change is also consistent with the City Council’s mandate to ensure the proper use and development of land and (City Charter, Article IX).

B) *Comprehensive City Zoning Code*

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City’s general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Role of Land Use Boards (aka Amendment Procedure, summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities

to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

The proposed text amendment generally furthers the Zoning Code goal of promoting the health, safety and welfare of the citizens because it provides consistency for all land use and development appeal processes. The proposed text amendment will ensure that City Council has the benefit of a Land Use Hearing Officer to take testimony and review the facts of the case prior to the full Council hearing of the case.

C) Albuquerque/Bernalillo County Comprehensive Plan

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies serve as a means to evaluate development proposals and requests for text amendments such as this.

In this case, the proposed text amendment is very limited in scope. Staff does not find any goals or policies that apply to the proposed amendments to allow the Land Use Hearing Officer to take testimony and make recommendations to the City Council for zone map amendments.

IV. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

Few agency comments were submitted. Long Range Planning Staff noted that the proposed change to the zoning code will facilitate a better appeal process. Cases will arrive at City Council with a more detailed record; this will give the decision making body a breadth and depth of information that is always available. None of the commenting agencies indicated opposition or concern regarding the proposed text amendments.

The pre-hearing discussion meeting was held on December 18, 2013. Agency comments begin on page 8.

V. NEIGHBORHOOD/PUBLIC CONCERNS

The proposed text amendments were posted on the Planning Department's main web page. Staff sent a brief article to Office of Neighborhood Coordination (ONC) Staff for inclusion in the December/January 2014 issue of the Neighborhood Newsletter (see attachment). As of this writing, Staff has not received any inquiries or comments regarding the proposed amendment.

VI. CONCLUSION

The proposed text amendment to Zoning Code §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The City Council uses the LUHO to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The proposed text amendment, which would apply City-wide, was announced in the Neighborhood News and posted to the Planning Department's main web page. Staff has not received any inquiries or comments as of this writing.

The EPC's role is to make a recommendation to the City Council. Staff finds that the proposed text amendment generally furthers the intent of the City Charter and the Zoning Code. Staff recommends that an approval recommendation, with a condition, be forwarded to the City Council.

FINDINGS – 13EPC-40153, JANUARY 9, 2014, ZONING CODE TEXT AMENDMENT

1. The request is for a text amendment to §14-16-4-4(A) ROA 1994, Appeal, Jurisdiction, of the City's Comprehensive Zoning Code. The purpose of the proposed text amendment is to remove the exception that appeals of zone map amendments (zone changes) cannot be heard by the Land Use Hearing Officer (LUHO) prior to being heard by the City Council.
2. The proposed text amendment is to Zoning Code which is an ordinance of general application. The proposed text amendment would apply City-wide, so the request is considered legislative in nature.
3. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.
4. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendment. The City Council is the City's Zoning Authority and will make the final decision. The EPC is a recommending body.
5. The City Council uses the Land Use Hearing Officer (LUHO) to take public testimony, to review the complete record, and to make a recommendation to City Council based on the facts of the case. Currently, zone changes are the only EPC decision that, upon appeal, does not go to the LUHO for a recommendation before being heard by City Council.
6. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.
7. Intent of the City Charter: Changing provisions to the ROA 1994, specifically the Comprehensive Zoning Code, to allow City Council to use Land Use Hearing Officer in appeals of zone map amendments is consistent with the Council's authority to effectively administer city policy and regulations and is an exercise in local self-government (City Charter, Article I). This change is also consistent with the City Council's mandate to ensure the proper use and development of land (City Charter, Article IX).
8. Intent of the Zoning Code (§14-16-1-3): The proposed text amendment generally furthers the Zoning Code goal of promoting the health, safety and welfare of the citizens because it provides consistency for all land use and development appeal processes. The proposed text amendment

will ensure that City Council has the benefit of a Land Use Hearing Officer to take testimony and review the facts of the case prior to their hearing of the case.

9. All commenting Agencies and City Departments had no objections to the proposed amendment.
10. An announcement of the proposed text amendment was posted on the Planning Department's main web page and announced in the January/February 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has not received any inquiries or comments from members of the public.

RECOMMENDATION – 13EPC-40153, JANUARY 9, 2014, ZONING CODE TEXT AMENDMENT

That a Recommendation of APPROVAL of Case 13EPC-40153, to amend the text of the Zoning Code §14-16-4-4, Appeals, be forwarded to the City Council, based on the preceding Findings.

***K. Carrie Barkhurst
Planner***

cc: City of Albuquerque, City Council, Attn: Chris Melendrez, P.O. Box 1293, Abq. NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Abq. NM 87102

Attachments

Agency Comments
Application Form
City Council Bill O-13-63 – proposed text amendments
Section 14-16-4-4 of the Comprehensive Zoning Code

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement - No comments received

Office of Neighborhood Coordination

Citywide

12/2/13 – Article for the Dec13/Jan14 “Neighborhood News” newsletter for NA/HOA/Coalition notification – siw

12/4/13 – Received article from Carrie Barkhurst - siw

The following was published in the Neighborhood News:

Text Amendment to the Zoning Code Related to Appeal Regulations

City Councilor Trudy Jones sponsored a resolution to amend the appeal regulations in the Zoning Code (Bill O-13-63). This amendment will apply city-wide.

The intent of the amendment is to modify Section 14-16-4-4(A)(2)(a) of the Zoning Code as follows: “Appeal of the following actions is to the City Council through the Land Use Hearing Officer: (a) Any action which is authorized by the Zoning Code and is made by the Planning Commission [- ~~except a zone map amendment, the appeal of which shall be heard only by the City Council and not by the Land Use Hearing Officer -].”~~

Currently, zone changes are the only Environmental Planning Commission (EPC) decision that, upon appeal, does not go to the Land Use Hearing Officer (LUHO) for a recommendation before being heard by City Council. The proposed text amendment would create consistency in the appeal process for all cases heard by the EPC. City Council will remain as the final decision-making body.

The Environmental Planning Commission will consider these amendments on January 9, 2014. The hearing begins at 8:30 a.m. in the basement hearing room at Plaza del Sol, 600 2nd Street NW. The amendment will then be forwarded to the City Council with the Planning Commission’s recommendation. The City Council will consider the amendment at a future date.

This application can be reviewed at the City Planning Department offices in downtown Albuquerque at the Plaza del Sol building. If you would like to provide comments to the Environmental Planning Commission, contact Carrie Barkhurst at 924-3879, or kcbarkhurst@cabq.gov. Comments should be received at least 48 hours in advance of the public hearing on January 9th.

Long Range Planning

The proposed change to the zoning code will facilitate a better appeal process. Cases will arrive at City Council with a more detailed record; this will give the decision making body a breadth and depth of information that is always available.

CITY ENGINEER

Transportation Development Services

Reviewed, no comments.

Hydrology

Reviewed, no comments.

DEPARTMENT OF MUNICIPAL DEVELOPMENT

Transportation Planning

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

Traffic Engineering Operations - No comments received

Street Maintenance - No comments received

WATER UTILITY AUTHORITY/UTILITY SERVICES

No adverse comment.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division - No comments received

Environmental Services Division - No comments received

PARKS AND RECREATION

Planning and Design - No comments received

Open Space Division - No comments received

POLICE DEPARTMENT/PLANNING

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zoning Code or Subdivision Regulatory Text at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division - No comments received

FIRE DEPARTMENT/PLANNING - No comments received

TRANSIT DEPARTMENT

No comments.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY - No comments received

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Amendment to Zoning Code for Appeals Process; Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

The City of Albuquerque proposes a City-Wide amendment to allow zoning appeals to be heard by the Land Use Hearing Officer (LUHO) before going to the full Council for acceptance or rejection of the LUHO recommendation. APS does not oppose this proposal.

MID-REGION COUNCIL OF GOVERNMENTS - No comments received

MIDDLE RIO GRANDE CONSERVANCY DISTRICT - No comments received

NEW MEXICO DEPARTMENT OF TRANSPORTATION

The NMDOT has no objections to amend the zone code.

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.