

Development Services Memorandum

To: Planning and Zoning Commission
From: Jenah Thornborrow, Development Services Director
Subject: Administrative Rules for Title 8 Appeals
Requested Date for Action: June 15, 2016

Recommended Action: Approval of Planning and Zoning Administrative Rules of Procedure for Title 8 Appeals

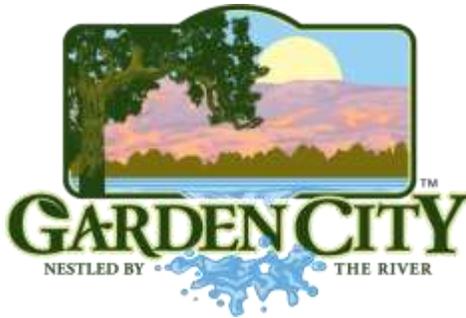
No Public Hearing Needed

Executive Summary: Garden City Council has adopted administrative rules for procedure to hear appeals under Title 8 of the Garden City Code. While the Planning and Zoning Commission has adopted administrative rules for procedure to hear appeals under Title 7 of the Garden City Code, they have not adopted procedures for Title 8.

Analysis: There is one difference between the proposed Planning and Zoning Commission administrative rules of procedure for Title 8 appeals from that which City Council has adopted. The rules that City Council has adopted indicate that the Council should *affirm, vacate, remand, and or reverse* the order being appealed. Garden City Code 8-6A-9 indicates that an appeal should be *granted, granted with conditions, remanded, and/or denied*. The proposed draft administrative rules of procedure for appeals for the Planning and Zoning Commission utilizes Garden City Code 8-6A-9 language to identify the action to be taken on the appeal.

Attachments:

Planning and Zoning Commission Rules of Procedure for Title 8 Appeals
Summary of Planning and Zoning Commission Rules of Procedure for Title 8 Appeals



6015 Glenwood Street ■ Garden City, Idaho 83714
Phone 208/472-2900 ■ Fax 208/472-2998

**ADMINISTRATIVE RULES OF PROCEDURE
APPEALS PURSUANT TO TITLE 8 OF THE GARDEN CITY CODE BEFORE THE
PLANNING AND ZONING COMMISSION OF THE CITY OF GARDEN CITY, IDAHO**

Conflicts

At the beginning of the hearing: the Chair shall ask members of the Planning and Zoning Commission if they have any actual and potential conflicts of interest in the appeal.

- (1) A Commissioner with an actual or potential conflict of interest should disclose on the record the basis of the Commissioner's disqualification, and may ask the parties to consider, out of the presence of the Commissioner, whether to waive disqualification.
- (2) If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties, without participation by the Commissioner, all agree that the Commissioner should not be disqualified, and the Commissioner is then willing to participate, the Commissioner may participate in the proceeding.
- (3) Any agreement regarding a conflict of interest shall be incorporated in the record of the proceeding.

A conflict of interest is: any official action, decision or recommendation by a public official, which would be to the private financial benefit of the individual or a member of their household, or a business with which the person or a member of their household is associated. Idaho Code Title 59, Chapter 7, prohibits public officials from taking any official action or making a decision or recommendation on any matter where the official has a conflict of interest and has failed to disclose the conflict of interest. Members of the Planning and Zoning Commission must regulate themselves against actual and potential conflicts of interest in the discharge of their prescribed duties.

Actual and potential conflicts of interest: the Commissioner must immediately discontinue any involvement in the matter including discussions of it with other members or staff. Further, a Commissioner shall not participate in any matter if a judge similarly situated would be required to disqualify himself or herself under the Idaho Code of Judicial Conduct.

Accordingly, a Commissioner shall disqualify himself or herself: in a proceeding in which that person's impartiality might reasonably be questioned, including but not limited to instances where:

- (1) The Commissioner has a personal bias or prejudice concerning a party or a party's representative, or has personal knowledge of disputed evidentiary facts that might reasonably affect the Commissioner's impartiality in the proceedings;
- (2) The Commissioner served as a party or representative in the matter in controversy, or the Commissioner has been or is a material witness concerning it;
- (3) The Commissioner knows that he or she, individually or as a fiduciary, or the Commissioner's spouse, parent or child wherever residing, or any other member of the Commissioner's family residing in the Commissioner's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;
- (4) The Commissioner or the Commissioner's spouse, or a person within the second degree of relationship to either of them, or the spouse of such a person:
 - (a) is a party to the proceeding, or an officer, director or trustee of a party;
 - (b) is acting as a lawyer in the proceeding;
 - (c) is known by the Commissioner to have a more than de minimis interest that could be substantially affected by the proceeding;
 - (d) is to the Commissioner's knowledge likely to be a material witness in the proceeding.

A Commissioner shall not participate in any proceeding or action when: the Commissioner or employee or his/her employer, business partner, business associate, or any person related to him/her by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. The term "participation" means engaging in activities which constitute deliberations pursuant to the open meeting act. No Commissioner with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. I.C. § 67-6506

Recusal requires that a Commissioner shall not:

- (1) Have access to the investigative file;
- (2) Receive any of the staff reports;
- (3) Give advice in the matter;
- (4) Make recommendations in the matter;
- (5) Be present during the meeting in which that member has been recused;
- (6) Participate in consideration of the matter;
- (7) In any way assume responsibility for any aspect of the deliberative process; or
- (8) Participate in any manner.

Disclosure of a conflict: does not affect a Commissioner's authority to be counted for purposes of determining a quorum.

Title 8 of the Garden City Code

The following shall be utilized as rules of procedure for hearing and deciding appeals of orders, decisions and/or determinations made by the Development Services, Planning Official relative to the application and interpretation of Title 8 of the Garden City Code and all of the other codes enumerated within it.

At the beginning of the hearing: after asking members of the Planning and Zoning Commission if they have any actual and potential conflicts of interest, the Chairman may:

- (1) Identify for the record each of the orders, decisions, and/or determinations being appealed;
- (2) Ask the parties if they have any issues with the content of the record and/or transcript if one exists, and whether they intend on presenting any new evidence;
- (3) Identify for the record what the standard of review is;
- (4) Identify for the records which party has the burden of proof;
- (5) Identify for the record the order of the hearing;
- (6) Identify for the record what action is required;
- (7) Identify for the record what the Commission decision may include (affirming, vacating, remanding, and/or reversing the Planning Official's decision to either grant, grant with conditions, or deny the application or petition);
- (8) Identify the possible grounds for affirming the decision by the Planning Official to either grant, grant with conditions, or deny the application or petition; and
- (9) Identify the possible grounds for vacating, remanding, or reversing the decision by the Planning Official to either grant, grant with conditions, or deny the application or petition.

The evidence and information considered: unless the Planning and Zoning Commission directs otherwise, the appeal will be on the record of the Planning Official and such new evidence as may be presented.

- (1) The parties should be prepared to present the Commission with citations to the record and/or transcript if one exists by page number, which supports the parties' respective arguments.
- (2) If asking questions of the parties, the Planning and Zoning Commission should be prepared to reference citations to the record and/or transcript if one exists by page number.

Standard of Review: the Planning and Zoning Commission's role is to review the decision(s) of the Planning Official. When reviewing a decision of the Planning Official, the Planning and Zoning Commission shall review the record of the Planning Official with due regard for the Planning Official's decision. The standard of review of an appeal from a Planning Official decision to the Planning and Zoning Commission shall not be de novo but the record may be supplemented by such new evidence as may be presented. The standard of review shall be governed by the following:

- (1) **Deference:** due deference shall be given to the actions of the Planning Official.

Burden of Proof: in all appeals pursuant to Title 8 of the Garden City Code, the burden of proof shall be on the appellant.

Order of Hearing: First the appellant shall present its argument. Second, the respondent shall present its argument. Third, then the appellant shall present any rebuttal argument.

Planning and Zoning Commission Action Required: deliberations and the oral opinion for each item being appealed must be concluded prior to adjournment of hearing. A decision for each item being appealed must be determined through a separate motion and voted on through a roll call vote so that each member of the Planning and Zoning Commission may make his or her vote individually. After the hearing on the appeal, the Planning and Zoning Commission shall make its written decision and adopt findings of fact and conclusions by its next regularly scheduled meeting.

Planning and Zoning Commission decisions shall: determine whether the application or petition should be, in part or in the entirety, granted, granted with conditions, remanded to the decision maker (Planning Official) for additional proceedings and findings, or denied. The Planning and Zoning Commission's actions shall mean the following:

- (1) **Affirm:** to agree with and confirm the Planning Official's decision (whether the Planning Official's decision was to grant, grant with conditions, or deny the application or petition).
- (2) **Vacate:** to cancel or render the Planning Official's decision null and void (whether the Planning Official's decision was to grant, grant with conditions, or deny the application or petition).
- (3) **Remand:** to send back to the Planning Official for additional proceedings and findings. A remand shall include either specific issues to be considered alone or direction that the Planning Official opens the entire application for *de novo* review.
- (4) **Reverse:** to change the Planning Official's decision so that the decision of the Planning Official is overturned (whether the Planning Official's decision was to grant, grant with conditions, or deny the application or petition).

Grounds for affirming the decision by the Planning Official (whether the Planning Official's decision was to grant, grant with conditions, or deny the application or petition): the following may serve as grounds for affirming the Planning Official's decision:

- (1) If the Planning Official's findings, inferences, conclusions, or decisions are not in violation of constitutional or statutory provisions;
- (2) If the Planning Official's findings, inferences, conclusions, or decisions are not in excess of the statutory authority of the agency;
- (3) If the Planning Official's findings, inferences, conclusions, or decisions are not made upon unlawful procedure;

- (4) If the Planning Official's findings, inferences, conclusions, or decisions are supported by substantial evidence on the record as a whole;
- (5) If the Planning Official's findings, inferences, conclusions, or decisions are not arbitrary, capricious, or an abuse of discretion.

Grounds for vacating, remanding, or reversing the decision by the Planning Official (whether the Planning Official's decision was to grant, grant with conditions, or deny the application or petition): the following may serve as grounds for vacating, remanding, or reversing all or part of a Planning Commission decision:

- (1) If the true intent of Title 8 of the Garden City Code or the codes adopted thereunder have been incorrectly interpreted by the Planning Official;
- (2) If the provisions of Title 8 of the Garden City Code or the codes adopted thereunder do not apply or an equally good or better form of construction should have been applied by the Planning Official;
- (3) If findings made by the Planning Official as a basis for its action are not supported by the weight of the evidence;
- (4) If there is a significant error in the application of the provisions of Title 8 or other provisions of the City Code that is important to sustaining the action by the Planning Official;
- (5) If it is determined that there is a significant violation of the notice provisions of the codes enumerated in Title 8 of the Garden City Code;
- (6) If significant errors are discovered that were committed by the Planning Official or in the materials provided to the Planning Official;
- (7) If there is a significant error in the application of approved City policies that is important to sustaining the action taken by the Planning Official.



SUMMARY OF ADMINISTRATIVE RULES OF PROCEDURE
APPEALS PURSUANT TO TITLE 8 OF THE GARDEN CITY CODE BEFORE THE
PLANNING AND ZONING COMMISSION OF THE CITY OF GARDEN CITY, IDAHO

The following is a summary of the rules of procedure for hearing and deciding appeals of orders, decisions and/or determinations made by the Planning and Zoning Commission relative to the application and interpretation of Title 8 of the Garden City Code and all of the other codes enumerated within it.

At the beginning of the hearing:

- (1) **The Chair shall:** ask members of the Commission if they have any actual and potential conflicts of interest in the appeal; and
- (2) **The Chair may:**
 - (a) Identify for the record each of the orders, decisions, and/or determinations being appealed;
 - (b) Ask the parties if they have any issues with the content of the record and/or transcript if one exists, and whether they intend on presenting any new evidence;
 - (c) Identify for the record what the standard of review is;
 - (d) Identify for the records which party has the burden of proof;
 - (e) Identify for the record the order of the hearing;
 - (f) Identify for the record what action is required;
 - (g) Identify for the record what the Planning and Zoning Commission decision may include (affirming, vacating, remanding, and/or reversing the Planning Official's decision to either grant, grant with conditions, or deny the application or petition);
 - (h) Identify the possible grounds for affirming the order, decision and/or determinations by the Planning Official to either grant, grant with conditions, or deny the application or petition; and
 - (i) Identify the possible grounds for vacating, remanding, or reversing the order, decision and/or determinations by the Planning Official to either grant, grant with conditions, or deny the application or petition.