Agenda Item No: 14.A

STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** May 5, 2022

Staff Contact: Jason D. Woodbury, District Attorney

Agenda Title: For Possible Action: Discussion and possible action to introduce, on first reading, a proposed ordinance establishing various provisions governing administrative appeals related to land use and zoning. (Jason D. Woodbury, jwoodbury@carson.org)

Staff Summary: This is the first reading of a proposed ordinance which, if enacted, would establish various provisions governing administrative appeals related to land use and zoning in the Carson City Municipal Code ("CCMC"). Pursuant to Nevada Revised Statutes ("NRS") Chapter 237, a business impact statement is not required to be prepared with this ordinance.

Agenda Action: Ordinance - First Reading **Time Requested:** 20 minutes

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Proposed Motion
I move to introduce, on first reading, Bill No. _____.

Board's Strategic Goal
Efficient Government

Previous Action
N/A

Background/Issues & Analysis
This proposed ordinance establishes new provisions and revises existing provisions of CCMC governing administrative appeals related to land use and zoning. Pursuant to NRS 278.3195, Carson City is required to adopt an ordinance providing for any person who is aggrieved by a decision of the Planning Commission, hearing examiner or any other person appointed or employed by Carson City who is authorized to make decisions regarding the use of land, to appeal the decision to the Board of Supervisors. Provisions governing such administrative appeals in Carson City were adopted in 2011 and are codified in Title 18 of CCMC.

While the existing provisions of CCMC relating to administrative appeals from land use decisions fully satisfy all state law requirements, this proposed ordinance resets - for the benefit of the public and without altering the original intent of CCMC as ascertained through a plain reading of the existing ordinance language - the organizational structure of the relevant CCMC appeal provisions, and also updates language for legal clarity, technical precision and textual consistency with current legislative drafting style and convention.

In addition, for consideration by the Board of Supervisors, this proposed ordinance incorporates the following substantive changes which are intended to foster the public trust by increasing governmental transparency through procedural exactness in the appeal process: (1) a requirement for the submission of a standardized form, to be prescribed by the Community Development Director, for the filing of an appeal; (2) provisions for amending an incomplete or deficient form and the effect of resubmission on timing for an appeal; (3) the

express authorization for the consolidation of appeals; (4) the standard of review for appeals; and (5) the criteria pursuant to which a person is deemed to be a person aggrieved by a decision for the purpose of establishing legal standing. See, e.g., City of Las Vegas v. Eighth Judicial Dist. Ct., 122 Nev. 1197, 1206 (2006) (explaining that in counties with populations less than 400,000 - since amended to 700,000 - local ordinances govern the definition of who is aggrieved for purposes of NRS 278.3195).

Except as specifically exempted, NRS 237.080 requires a business impact statement to be prepared whenever an ordinance by the adoption of which the governing body of a local government exercises legislative powers. Under these exemptions, a business impact statement is not required to be prepared with this ordinance because the ordinance is proposed pursuant to a provision of NRS Chapter 278 and also because Carson City does not have the authority to consider less stringent alternatives pursuant to a state statute (NRS 278.3195).

Applicable Statute, Code, Policy, Rule or Regulation

NRS Chapters 237 and 244; NRS 278.3195; Article 2 of the Carson City Charter

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted?

Explanation of Fiscal Impact:

Alternatives

Do not introduce the proposed ordinance on first reading, modify the proposed ordinance and/or provide alternative direction.

Attachments:

20220427 JDW Memo to BOS.pdf

Ordinance_2022_Title 18 Admin Appeals_First Reading.pdf

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay

2) _____ _____

_____

_____

_____

_____

_____

(Vote Recorded By)

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M E M O R A N D U M

To: **Carson City Board of Supervisors**

From: **Jason Woodbury**

Date: **April 27, 2022**

Re: **Proposed Amendments to CCMC Provisions Relating to Land Use and Zoning Administrative Appeals**

NRS 278.3195(1) requires the Carson City Board of Supervisors ("Board") to "adopt an ordinance providing that any person who is aggrieved by a decision" involving land use or zoning "may appeal the decision" to the Board. Subsection 2 of NRS 278.3195 sets forth certain requirements regarding the content of the ordinance. CCMC 18.02.060 is the ordinance required by NRS 278.3195.

Although CCMC 18.02.060 includes all the content required by NRS 278.3195(2)(b), this Board has encountered three recurring circumstances upon which the existing ordinance is either silent or somewhat unclear. Those recurring issues are:

(1) What is the definition of an "aggrieved party" who is entitled to appeal an administrative decision?

(2) What is the standard of review for an appeal?

(3) What evidence may be considered in an appeal?

The District Attorney's Office has been directed to prepare an amendment to CCMC 18.02.060 designed to address these recurring issues and to provide the Board with legal guidance as to its options concerning the administrative appeal process. In accordance with this direction, a draft amendment to NRS 18.02.060 has been prepared and submitted to the Board for consideration.

A brief explanation of the nature of the draft ordinance that has been prepared is in order. The Board has significant discretion concerning the subject of administrative appellate procedure under review. Statutes and caselaw establish general legal parameters of that discretion, but within those parameters this Board has wide-ranging authority to shape the details of Carson City's administrative appellate process. In this regard, it is critical to understand that the draft ordinance should not be considered a "proposed" ordinance in the sense that the District Attorney's Office is not actively advocating for adoption of the draft ordinance as presented. Rather, the draft ordinance is intended to reflect the existing procedure established by CCMC 18.02.060, supplemented by clarifying language and styled in a manner to be consistent with the format and conventions of the District Attorney's *Ordinance Drafting Manual*. In other words, the draft ordinance does not and is not intended to modify Carson City's existing administrative appellate procedure at all. However, this is not to suggest that this Board lacks the authority to modify that procedure. It certainly does have such authority.

With that context addressed, the following background is offered to help guide the Board's consideration of the three recurring issues identified above.

I. AGGRIEVED PARTY

The manner in which an "aggrieved party" is defined by the Board is entwined with the legal concept of standing. Standing is a foundational principle of the American legal system, and applies with equal force in the context of administrative appeals, such as those which are presented to the Board. In order to understand the significance of standing, it is useful to examine the nature of the administrative appeal process.

Administrative appeals, like legal cases, are, by design, adversarial proceedings. As the word is used here, "adversarial" simply means that the parties involved have conflicting interests in the outcome of the proceeding; the term does not necessarily connote personal animosity between the parties. In an adversarial proceeding, two or more advocates with competing interests endeavor to persuade an independent and impartial decision maker that his or her desired outcome is the correct outcome. The premise of an adversarial system is that the interest of each party provides proper motivation for the presentation of all material facts and arguments in favor of that party's position. In turn, the adverse party has an opposing motivation to present facts and arguments favoring a different position. This ensures that the independent, impartial decision maker will receive from these opposing parties a full presentation of all facts and perspectives in regard to the issue in dispute.

A lack of standing disrupts the essential premise of an adversarial proceeding. "Standing" refers to a party's legal right to participate in an adversarial process. *Cf*. *Black's Law Dictionary* at 1624 (10th 3d. 2014) (defining "Standing" as "a party's right to make a legal claim or seek judicial enforcement of a duty or right.") Relating the

concept of standing back to the underpinnings of the adversarial system, the United States Supreme Court explained standing in the judicial process as follows:

> Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing.

Baker v. Carr, 369 U.S. 186, 204 (1962). The Nevada Supreme Court has similarly articulated the concept.

> "The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation" so as "to ensure the litigant will vigorously and effectively present his or her case against an adverse party."

Nevada Pol'y Rsch. Inst., Inc. v. Cannizzaro, 138 Nev. Adv. Rep. 28, 2022 Nev. LEXIS *25 (Nev. 2022) (*quoting Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (Nev. 2016)).

The requirement that parties have standing is designed to protect the integrity an adversarial process by ensuring that each party has sufficient motivation to present information that favors its position and also to challenge information that the opposing party presents. This allows the decision maker to evaluate the information supporting each party's position with the benefit of a scrutinized, critical analysis of the information that supports the opposing positions of the parties. In this way, legal conflict is intentionally built into the process because it creates a framework that is most likely to result in the optimal decision.

The definition of an aggrieved party serves the same objective. Under NRS 278.3195, an aggrieved party has standing, but, subject to some discernable legal standards, the definition of an aggrieved party is within the discretion of the Board. Thus, in answering the question, "Who is an aggrieved party?" the Board is also answering the question, "Who has standing?" Stated another way, the question before the Board is "What is the quantum of personal interest that a party must have in the subject of an administrative appeal to assure the Board that 'concrete adverseness which sharpens the presentation of issues' upon which the Board depends for illumination of the difficult questions implicated by an administrative appeal?"

In evaluating this question, several criteria may help guide the Board's consideration.

A. Involvement in Administrative Process Underlying Appeal

The language of NRS 278.3195 strongly implies that an "aggrieved party" must participate in the underlying decision-making process that precedes an appeal to the Board, and that the participation must be active as opposed to passive. In pertinent part, that statute provides, a "person shall be deemed to be aggrieved … if the person appeared, either in person, through an authorized representative or in writing … on the matter which is the subject of the decision" that is appealed. NRS 278.3195(1). At present, that requirement is not imposed on Carson City, as it only applies in a county with a population of 700,000 or more. NRS 278.3195(1). The provision, together with the population trigger, was first adopted by the Legislature in 2003. The legislative history does not explain the Legislature's reason for conditioning the requirement on a population trigger. Regardless of that reason, however, nothing prohibits Carson City from imposing a similar requirement that a person must actively participate in the administrative process preceding an appeal in order to be deemed an aggrieved party. That requirement has been included in Carson City's ordinance since it was first adopted in 2001. *See Carson City Ordinance No. 2001-23* at 18.02.040(4)(a) ("Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.")

B. Geographical Proximity to Property Subject to Decision

CCMC 18.02.045 requires the issuance of advance written notice to people who hold property interests within a certain proximity to other property that is the subject of a land use or zoning matter under consideration by the Planning Commission. It is the opinion of the District Attorney's Office that a person who is within the notice area established by CCMC 18.02.045 has categorical standing to appeal so long as the person participates in the administrative process preceding the appeal.

C. Personal or Property Interest which is Adversely and Substantially Affected

Additional guidance provided by Nevada caselaw supports the proposition that standing may be imputed to a person who has a particular personal or property interest that is adversely and substantially affected without regard to that person's geographic proximity to the property which is the subject of the underlying decision. It is important to note at this point that the caselaw discussed below was decided in the context of judicial review and not in the context of administrative appeals. For this reason, the Board is not legally bound to follow the rulings. This Board has discretion to accept or reject, in whole or in part, the Nevada Supreme Court's rationale on this subject as it determines the appropriate scope of the standing requirement for administrative appeals.

Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (Nev. 2006), provides the clearest articulation of the Court's jurisprudence on this issue. The *Kay* court explained that "for general appellate purposes", a person "whose personal or property right has been 'adversely and substantially' affected" is deemed to be an aggrieved party. *Kay*, 122 Nev. at 1106, 146 P.3d at 806 (*quoting Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (Nev. 1980) (holding a party is aggrieved, "for appellate jurisdiction purposes … when either a personal right or right of property is adversely and substantially affected")).

D. General Public Concern

Kay's proposition is not entirely unqualified, however. Other caselaw explains that the effect on an aggrieved party must be specific and individualized in a way that distinguishes the aggrieved party's grievance from that of the general public. This principle was examined in *L&T Corp. v. Henderson*, 98 Nev. 501, 654 P.2d 1015 (Nev. 1982). In that case, the Court explained a person may be deemed to have standing only when the person "has suffered special or peculiar damage differing in kind from the general public." *L&T Corp.*, 98 Nev. at 504, 654 P.2d at 1017 (*citing Teacher Bldg. Co. v. City of Las Vegas*, 68 Nev. 307, 232 P.2d 119 (Nev. 1951); *Blanding v. City of Las Vegas*, 52 Nev. 52, 280 P. 644 (Nev. 1929)); *see also Nevada Pol'y Rsch. Inst., Inc.*, 138 Nev. Adv. Rep. 28, 2022 Nev. LEXIS 25 ("Thus, to have standing" an aggrieved party "generally must suffer a personal injury traceable to that act 'and not merely a general interest that is common to all members of the public.'" (*quoting Schwartz*, 132 Nev. at 743, 382 P.3d at 894; *citing Morency v. State, Dep't of Educ.*, 137 Nev. Adv. Rep. 63, 496 P.3d 584, 588 (Nev. 2021)).

Read together, *Kay* and *L&T* establish the principle that this Board, if it chooses, may confer standing to appeal upon a person who possess a real or personal property right that has been adversely affected by a decision in a manner substantially different from any right of the general public.

II. STANDARD OF REVIEW

The term "standard of review" refers to the amount of deference afforded to the decision being appealed. *See Williams v. Eighth Judicial Dist. Ct.*, 127 Nev. 518, 525, 262 P.3d 360, 365 (Nev. 2011). The standard of review requiring the least deference to the underlying decision is "*de novo*"[1] review. Application of the *de novo* standard allows an entirely "'nondeferential review of an administrative decision.'" *Pasillas v. HSBC Bank USA*, 127 Nev. 462, 466 n.8, 255 P.3d 1281, 1285 n.8 (Nev. 2011). Under a *de novo* standard, the appellate body may review the evidence and draw legal conclusions anew and without any regard to the underlying decision.

[1] "De novo" means anew. *Black's Law Dictionary* 529 (10th ed. 2014).

The most deferential standard of review is the "abuse of discretion" standard. Under this standard, significant deference is granted to the underlying decision, and the appellate body is not permitted to engage in an entirely new and independent review of the evidence and issues. Instead, the scope of the appellate body's review is restricted to an analysis of whether the underlying decision is:

(1) Arbitrary;[2]
(2) Capricious;[3]
(3) A manifest abuse of discretion;[4] or
(4) Based on a conclusion that is not supported by substantial evidence.[5]

In its present form, CCMC 18.02.060 does not expressly identify the standard of review for administrative appeals. Interpreting the current language of CCMC 18.02.060 as a whole, it is the opinion of the District Attorney's Office that the existing standard of review which applies to administrative appeals is the more deferential, "abuse of discretion" standard. As such, the amendment presented to the Board expressly identifies that as the standard of review.

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[2] "An exercise of discretion is arbitrary if it is 'founded on prejudice or preference rather than on reason….'" *Nev. Dep't of Pub. Safety v. Coley*, 132 Nev. 149, 153, 368 P.3d 758, 760 (Nev. 2016) (*quoting State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (Nev. 2011) (*quoting Black's Law Dictionary* 119 (9th ed. 2009))).

[3] An exercise of discretion is capricious if it is "'contrary to the evidence or established rules of law.'" *Coley*, 132 Nev. at 153, 368 P.3d at 760 (*quoting Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780 (*quoting Black's Law Dictionary* 119 (9th ed. 2009))). The meaning of the words "arbitrary" and "capricious" in this context have also been elaborated on as follows: "[A]rbitrariness or capriciousness of governmental action … is most often found in an apparent absence of any grounds or reason for the decision. 'We did it just because we did it.'" *City Council of Reno v. Irvine*, 102 Nev. 277, 280, 721 P.2d 371, 372-73 (Nev. 1986) (referring to Oxford Universal Dictionary's definitions of "arbitrary" as "baseless, despotic" and "caprice" as "a sudden turn of mind without apparent motive; a freak, whim, mere fancy").

[4] A manifest abuse of discretion is a ""clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule."" *Aerogrow Int'l, Inc. v. Eight Judicial Dist. Court*, 137 Nev. Adv. Rep. 76, 499 P.3d 1193, 1197 (Nev. 2021) (*quoting Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (*quoting Steward v. McDonald*, 958 S.W.2d 297, 300 (Ark. 1997); *citing Jones Rigging and Heavy Hauling v. Parker*, 66 S.W.3d 599, 602 (Ark. 2002) (holding that a manifest abuse of discretion "is one exercised improvidently or thoughtlessly and without due consideration"); *Blair v. Zoning Hearing Hd. of Tp. of Pike*, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) ("[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.")))

[5] Under Nevada law, "substantial evidence" means evidence which "a reasonable mind might accept as adequate to support a conclusion." NRS 233B.135(4); *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (Nev. 1994).

III. NEW EVIDENCE OR ISSUES

CCMC 18.02.060 generally prohibits the introduction of new evidence or a new issue on appeal that was not presented in the preceding administrative process. *See* CCMC 18.02.060(4)(b). Such new material may only be allowed if it: (1) Is relevant;[6] (2) Is substantial;[7] and (3) Was not available during the underlying proceedings. If all three conditions are satisfied, the Board is authorized to remand the matter back to the underlying decision maker to revisit the decision with the benefit of the new information.

This particular procedure is not required by NRS 278.3195, but does seem to be a prudent strategy to optimize the decision making process. The introduction of a new information necessitates a balance between competing objectives: a fully-informed decision versus an expeditious process. On the one hand, more information is better than less in terms of reaching an optimal decision. As such, a categorical rejection of any new information seems ill-advised because it may result in the exclusion of something important that could change an outcome. But on the other hand, allowing the introduction of new information without restriction would disrupt and delay the appellate process. Potential appellants might be unintentionally encouraged to keep information up their sleeve in order to suddenly reveal it during an appeal in the event of an adverse decision. This, of course, would be counterproductive to the administrative process because the underlying decision would be less than fully-informed. It is the opinion of the District Attorney's Office that CCMC 18.02.060, as clarified in the draft amendment, strikes an appropriate balance between these competing objectives. New information is not categorically rejected, but it is not unconditionally accepted, either. Rather, if the new information is important and there is an adequate justification for the failure to present it during the underlying administrative process, it may be introduced into the process at the Board's discretion.

[6] "Relevant evidence" means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015.

[7] In this context, "substantial" means the information is highly probative of a meaningful issue in dispute, and not merely superficial, tangential, repetitious, or unduly cumulative.

Summary: an ordinance establishing various provisions governing administrative appeals related to land use and zoning.

BILL NO. ____

ORDINANCE No. 2022 - _____

AN ORDINANCE RELATING TO ADMINISTRATIVE APPEALS; ESTABLISHING PROVISIONS GOVERNING APPEALS FROM ADMINISTRATIVE DECISIONS OF THE DIRECTOR OF THE COMMUNITY DEVELOPMENT DEPARTMENT; REVISING PROVISIONS GOVERNING APPEALS FROM DECISIONS OF THE HEARING EXAMINER, THE HISTORIC RESOURCES COMMISSION, THE GROWTH MANAGEMENT COMMISSION AND THE PLANNING COMMISSION; ESTABLISHING PROVISIONS REQUIRING THE SUBMISSION OF A PRESCRIBED FORM TO FILE AN APPEAL; ESTABLISHING PROVISIONS AUTHORIZING THE CONSOLIDATION OF MULTIPLE APPEALS; ESTABLISHING THE STANDARD OF REVIEW IN AN APPEAL; ESTABLISHING PROVISIONS FOR LEGAL STANDING IN AN APPEAL; REPEALING OBSOLETE PROVISIONS GOVERNING APPEALS FROM DECISIONS OF THE HISTORIC RESOURCES COMMISSION; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS) is hereby amended (**bold, underlined** text is added, [~~stricken~~] text is deleted) by adding thereto a new section 18.02.057 (Appeals to Commission: procedure; standing) as follows:

18.02.057 – Appeals to Commission: procedure; standing. (NRS 278.3195)

1. Except as otherwise provided in CCMC 18.12.090 for the transfer of an entitlement certificate, a person who is aggrieved by an administrative decision of the Director may, not later than 10 days after the date on which the written notice of decision is recorded with the Clerk-Recorder, file an appeal to the Commission in the same manner as is prescribed by CCMC 18.02.060 for the filing of an appeal to the Board of Supervisors.

2. For purposes of this section, a person is deemed to be aggrieved by a decision if the person:

(a) Submitted an application for a property pursuant to the provisions of this title which was denied by the decision; or

(b) Appeared, in person, through an authorized representative or in writing, before the Department or Director and who satisfies one of the following conditions:

(1) Received, or should have received, a notice of public hearing required by CCMC 18.02.045; or

(2) Possesses a real or personal property right that has been adversely affected by the decision which is the basis of the appeal in a manner substantially different from any right of the general public.

SECTION II:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS), Section 18.02.060 (Appeals) is hereby amended (**bold, underlined** text is added, [~~stricken~~] text is deleted) as follows:

18.02.060 – [~~Appeals.~~] Appeals to Board of Supervisors: procedure; standard of review; standing. (NRS 278.3195)

1. [~~Appeals of Staff Decisions. An administrative decision of the director may be appealed by the applicant or any aggrieved party to the commission following the procedures in subsection 4 of this section within ten days of the date of the decision. The commission may affirm, modify or reverse the decision.~~

~~2. Appeals of Commission, Hearing Examiner or Historic Resources Commission (HRC). Any decision of the commission, hearing examiner or the HRC may be appealed to the board by the applicant, any aggrieved party, or any member of the board by following the procedures in subsection 4 of this section within 10 days of the date of the decision. The board may affirm, modify or reverse the decision. In reviewing the decision, the board shall be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.~~

~~3. Appeals of Board Decisions. A decision of the board is final. Any appeal of its decision shall be in a court of competent jurisdiction within the time frames established by the NRS.~~

~~4. Procedures for Filing an Appeal.~~

~~a. Standing for filing an appeal. Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.~~

~~b. Issues for an Appeal. Issues not addressed in the public hearing stage of the administrative process for a project which is being appealed may not be raised as a basis for the appeal unless there is substantial new evidence which has become available accompanied by proof that the evidence was not available at the time of the public hearing. If new information is~~

~~submitted to the board, the application shall be referred back to the commission for further appeal, review and action.~~

~~c. Appeal Application. All appeal applications shall be filed in writing with a letter of appeal to the director.~~

~~(1) The letter of appeal and application shall be submitted within ten days of the date of the staff or commission decision for which an appeal is requested.~~

~~(2) The appeal letter shall include the appellant's name, mailing address, daytime phone number and shall be accompanied by the appropriate fee.~~

~~(3) The letter shall specify the project or decision for which the appeal is being requested. The letter shall indicate which aspects of the decision are being appealed. No other aspect of the appealed decision shall be heard.~~

~~(4) The letter shall provide the necessary facts or other information that support the appellant's contention that the staff or commission erred in its consideration or findings supporting its decision.~~

~~d. Decision. The commission or board, whichever has jurisdiction over the appeal, shall render its decision on the appeal within 60 days of the submittal of a complete appeal application.~~

~~e. Notice of appeals. Notice of an appeal hearing shall be provided in accordance with section 18.02.045.~~] **A person who is aggrieved by a decision of the hearing examiner, the HRC, the Growth Management Commission or the Commission may, not later than 10 days after the date on which the written notice of decision is recorded with the Clerk-Recorder, file an appeal to the Board of Supervisors.**

2. An appeal must be submitted on a form prescribed by the Department and be accompanied by the required fee for filing an appeal as set forth in CCMC 18.02.055. The form must include, without limitation:

(a) The name and signature of the person who is aggrieved.

(b) The mailing address, electronic mail address and telephone number of the person who is aggrieved.

(c) If the form is submitted through an authorized representative of the person who is aggrieved, the mailing address, electronic mail and telephone number of the authorized representative.

(d) The complete street address of the property that is the subject of the appeal.

(e) A complete description of the project that is the subject of the appeal.

(f) The date on which the written notice of decision which is the basis of the appeal was recorded with the Clerk-Recorder.

(g) A clear and concise statement of the specific issue of fact or law raised on appeal.

3. If a form that is submitted pursuant to subsection 2 is deemed incomplete or deficient in any material respect by the Director, the Director must make a reasonable attempt to notify the person who submitted the form of the incompleteness or deficiency. A person may submit an amended form without incurring an additional fee for filing an appeal. The failure of a person to submit a completed form in the time prescribed shall constitute a forfeiture of any right to appeal under this section. The time to complete or otherwise amend a submitted form:

(a) Tolls any limitation in which a public hearing on the appeal must be heard until such time a completed form is submitted.

(b) Does not toll any limitation in which a completed form must be submitted.

4. A form that is submitted pursuant to subsection 2 may be accompanied by supporting material as evidence for the appeal. Except as otherwise provided in subsection 5, supporting material must be substantially related to an issue of fact or law that was previously considered in the issuance of the decision that is the basis of the appeal.

5. A new issue of fact or law that is raised on appeal and which was not previously considered in the issuance of the decision that is the basis of the appeal may be introduced if the person who is aggrieved submits with the form:

(a) Supporting material substantially relevant to the new issue of fact or law; and

(b) Proof that the supporting material was not available at the time the decision which is the basis of the appeal was issued.

6. If a new issue of fact or law is properly introduced during an appeal in accordance with subsection 5, the Board of Supervisors may remand the matter of the appeal to the person or entity from which the notice of decision was issued for further consideration.

7. If more than one appeal concerning the same decision is filed pursuant to this section, the appeals may be consolidated. A decision to consolidate appeals is at the sole discretion of:

(a) The Mayor, if the appeal is before the Board of Supervisors.

(b) The hearing examiner or the Chair of the entity, as applicable, if the matter of the appeal has been remanded for further consideration pursuant to subsection 6.

8. Unless a different period is required by statute, the person or entity before which an appeal must be heard pursuant to this section shall hold a public hearing and issue a decision on the appeal not more than 60 days after the date on which a completed form is submitted pursuant to subsection 2.

9. The standard of review for an appeal before the Board of Supervisors is an abuse of discretion standard. In issuing a decision, the Board of Supervisors:

(a) May affirm, modify or reverse the decision which is the basis of the appeal; and

(b) Will be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.

10. A decision of the Board of Supervisors is a final decision for the purpose of judicial review.

11. Notice of an appeal that is filed pursuant to this section must be provided in accordance with CCMC 18.02.045.

12. For purposes of this section, a person is deemed to be aggrieved by a decision if the person:

(a) Submitted an application for a property pursuant to the provisions of this title which was denied by the decision; or

(b) Appeared, in person, through an authorized representative or in writing, before the person or entity from whom the decision which is the basis of the appeal was issued and who satisfies one of the following conditions:

(1) Received, or should have received, a notice of public hearing required by CCMC 18.02.045; or

(2) Possesses a real or personal property right that has been adversely affected by the decision which is the basis of the appeal in a manner substantially different from any right of the general public.

SECTION III:

That Title 18 (ZONING), Chapter 18.06 (HISTORIC DISTRICT), Section 18.06.070 (Appeals of HRC action) is hereby repealed.

18.06.070 – [~~Appeals of HRC Action.~~] Reserved.
(Editor's note: Ord. No. 2022 - ___, § III, adopted _____, 2022, repealed CCMC 18.06.070 – Appeals of HRC Action.

SECTION IV:

That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____, 2022.

PROPOSED by _____.

PASSED on _____, 2022.

VOTE: AYES: SUPERVISORS: _____

_____

_____

_____

_____

NAYS: SUPERVISORS: _____

_____

_____

Lori Bagwell
Mayor

ATTEST:

_____
Aubrey Rowlatt
Clerk-Recorder

This ordinance shall be in force and effect from the _____ day of the month of _____ of the year 2022.

TEXT OF REPEALED SECTIONS

[~~**18.06.070 - Appeals of HRC action.**~~

~~Appeal of the HRC action must be as follows:~~

~~1. Appeals of HRC decisions. Any decision of the HRC may be appealed by the applicant, any aggrieved party, or any member of the board by following the procedures in subsection 2 of this section within ten (10) days of the date of the HRC decision.~~

~~2. Procedures for filing an appeal.~~

~~a. Standing for filing an appeal. Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.~~

~~b. Issues for an appeal. Issues not addressed in the public hearing stage of the administrative process for a project which is being appealed may not be raised as a basis for the appeal unless there is substantial new evidence which has become available accompanied by proof that the evidence was not available at the time of the public hearing. If new information is submitted to the board, the application may be referred back to the HRC for further review and action.~~

~~c. Appeal application. All applicant or aggrieved party appeal requests shall be filed in writing with a letter of appeal to the director.~~

~~(1) The letter of appeal shall be submitted within ten (10) days of the date of the staff or HRC decision for which an appeal is requested.~~

~~(2) The appeal letter shall include the appellant's name, mailing address, daytime phone number, and shall be accompanied by the appropriate fee.~~

~~(3) The letter shall specify the project or decision for which the appeal is being requested. The letter shall indicate which aspects of the decision are being appealed. No other aspect of the appealed decision shall be heard.~~

~~(4) The letter shall provide the necessary facts or other information which support the appellant's contention that the staff or HRC erred in its consideration or findings supporting its decision.~~

~~d. Upon determination that the appeal request is complete, the director shall request time on the next available board meeting agenda.~~

~~Appeals before the board shall be scheduled within time frames established in NRS.~~]