

**RESOLUTION NO. 2004-10**

**A RESOLUTION ESTABLISHING THE PROCEDURE TO BE FOLLOWED IN CONSIDERING APPEALS FROM PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION ACTION ON ZONING MATTERS PURSUANT TO MTC 18.80.270.**

**WHEREAS**, the Board of Trustees desires to establish procedures to be followed in considering certain appeals from Planning, Zoning and Historical Appropriateness Commission action (PZHAC); and

**WHEREAS**, the Board of Trustees may follow the appellate procedures mandated by the State ex rel. Battershell v. Albuquerque, which are referred to herein as the Battershell procedures. These Battershell procedures are intended to protect the due process rights of all parties to the appeal. **However, the *Battershell* procedures will only be followed when any party in the appeal requests use of these procedures as specified.**

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Mesilla, New Mexico that the following Battershell procedures will be followed in considering appeals from Planning, Zoning and Historical Appropriateness Commission action (PZHAC), and upon proper and timely election of Battershell procedures by a part to the appeal.

**APPEAL PROCESS**

Persons wishing to give testimony on any item shall wait to be recognized, then go to the lectern, give their name and address, and if Battershell procedures have been adopted, shall be sworn in, and shall limit their comments to three minutes. If there is a properly identified spokesperson, attorney or real estate agent for one of the parties, the time limit shall be ten (10) minutes. The chairperson of the proceeding may permit a person to speak more than once provided the testimony is not repetitious. Proponents shall speak first, followed by opponents.

***BATTERSHELL PROCEDURES***

**FOR APPEALS PRESENTED TO THE BOARD OF TRUSTEES**

**I. PRE-APPEAL HEARING REQUIREMENTS:**

- a. Any party to be represented by an attorney at the appeal hearing, and who is relying on any legal authorities or references, shall present to the Town Attorney and the Town Clerk, at least 5 business days before the hearing, any memorandum with citations of authority substantiating the party's position. This memorandum is different from the appeal summary submitted 15 days after the public hearing by the Board of Adjustment or the Planning and Zoning Commission.
- b. All parties in the appeal that desire to have a specific Town staff person present at the appeal, need to present to the Mayor, at least 5 business days before the appeal hearing, a letter requesting that the specific staff person be present at the appeal hearing. This allows ample opportunity to notify the staff person to assure attendance.

**II. AT THE BEGINNING OF THE *BATTERSHELL* APPEAL HEARING, the Board of Trustees will:**

- a. Identify all parties to the appeal, including all witnesses, that wish to give testimony.
- b. All persons who give testimony, including Town staff, will be sworn-in by the clerk or person authorized to administer oaths.
- c. All persons giving testimony will be subject to cross-examination by other parties within the appeal, including Town staff.
- d. All items presented in the appeal, whether or not *Battershell procedures have been adopted* or not, will be limited to the relevant matter being appealed and the presiding chairperson may place a reasonable limit on the number of persons to be heard and their amount of testimony.

**PROCEDURES FOR PRESENTATION OF ALL APPEALS**

The following procedures will be used whether an appellant chooses to utilize the *Battershell* procedure or not.

**I. ORDER OF ALL PRESENTATIONS:**

- a. Town Staff Presentation
- b. Appellant Presentation
- c. Other party's presentation

**II. APPLICABLE STEPS FOR ALL PRESENTATIONS:**

- a. Opening statements about the case by the party.
- b. Board of Trustees may question the presenter/party.
- c. Cross-examination by other parties, which must be done in the form of questions to be answered by the presenter(s).

- d. Board of Trustees may question the presenter/witness.
- e. Continue to other witnesses for the party until complete.
- f. Once all parties are through with giving testimony, closing statements can be made by each party, in same order as above (I).

**III. BOARD OF TRUSTEES ACTION**

- a. A Board of Trustee member makes a motion, followed by a second.
- b. There may be discussion of the motion.
- c. The Board is prepared to vote. In the vote, the Board of Trustees may reverse, modify, affirm, or change any decision or determination of the Official, Board, or Commission from which the case was appealed.
- d. The Town Clerk takes roll call of the Board of Trustees; the decision is announced.

**PASSED, ADOPTED AND APPROVED** this 12<sup>th</sup> day of April 2004.

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Michael M. Cadena  
Mayor

**ATTEST:**

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Juan A. Fuentes, CMC  
Town Clerk-Treasurer