

18.30.060 Appeals to the borough assembly.

An appeal made to the borough assembly of the commission's decision on any permit shall be requested by filing with the borough clerk, within 10 business days of the date of the decision appealed, a written notice of appeal stating with particularity the grounds for the appeal. **At the next regularly scheduled borough assembly meeting the borough assembly, by passage of a motion, may choose to rehear the commission's decision.** Any aggrieved person, including the developer, may appear at that meeting and explain to the borough assembly why it should rehear the commission's decision.

A. If the borough assembly chooses to rehear the decision, it may choose to rehear the entire decision or any portion thereof. If it decides to rehear a decision or any portion thereof, it shall give public notice (as described in HBC [18.20.020](#)), conduct a public hearing and make its decision at its next regularly scheduled meeting.

B. In all re-hearings the burden of proof shall be on the party challenging the decision of the commission.

1. Findings of fact adopted expressly or by necessary implication shall be considered as true if, based upon a review of the whole record, they are supported by substantial evidence.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record as a whole affords a substantial basis of fact from which the fact in issue may be reasonably inferred, the fact is supported by substantial evidence. The burden of proof shall be on the appellant to demonstrate the facts and resolution of the issues on appeal by substantial evidence. The evidence shall be limited to a review of the record, although further argument may be allowed.

2. In all decisions the burden of proof shall be on the party challenging the decision of the planning commission.

3. The borough assembly may confirm the commission's decision, reverse the commission's decision, or change the conditions which the commission placed on approval. The borough assembly shall support its action with written findings.

...

HBC 18.70.030(A)(3) provides, the following in the Townsite Zone:

3. I/W – **Waterfront Industrial Zone**. The intent of the waterfront industrial zone is to provide for and protect productive, marine-related heavy industries, including wharfage, natural resource export, milling and major seafood processing. Areas zoned as waterfront industrial should be located so that adjacent nonindustrial areas are buffered from the external effects common to **heavy industry** including noise,

dust, vibration, glare, pollution, heavy traffic and unsightly uses or activities. The area is served by, or intended to have, the necessary level of public utilities and an adequate transportation system as deemed appropriate for the planned use.

“**Industrial, heavy**” (use by right in the Waterfront Industrial zone) means a use that has potential for significant negative impact on adjoining [uses](#). This category includes uses that incorporate buildings that are large, tall, or unsightly; uses that generate offensive odors, noise, dust, smoke, fumes, vibration or glare; [uses](#) that involve large amounts of exterior storage; and [uses](#) that, because of their scale or characteristics, create nuisances or hazards such as heavy truck or other vehicle traffic, or other intense activity.

These [uses](#) include airports, landing strips, and [heliports](#); truck or ship terminals and [docks](#); concrete batching plants; asphalt or concrete mixing plants; [resource extraction](#); bulk material or machinery storage; petroleum refineries and trans-shipment facilities; grain elevators; meat packing plants or fish processing facilities; mills; resource [recycling facilities](#); [commercial](#) flammable or [hazardous material](#) storage; sanitary [landfills](#) and solid waste storage/transshipment facilities; large scale sewage treatment facilities and manufacturing plants.

“**Resource extraction**” means a [heavy industrial use](#) involving the removal of rock, gravel, sand, clay, topsoil, peat, timber, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics. Resource extraction does not include: (1) the removal of material from within the legal boundaries of the [property](#) of origin which are incidental to the construction, alteration or repair of a [building](#) (or the [grading](#) and landscaping incidental thereto); or (2) within the [subdivision](#) of origin of a [platted](#) public or private access road and utilities or [public facility](#) providing essential services.

Other useful terms:

“*Marine industrial facility*”(use by right in the Waterfront Industrial zone) is a [use](#) involving [heavy](#) or [light industrial](#) activities that require access to the marine waterfront as an integral and unavoidable part of their conduct.

HBC 18.50.040 Decision

The commission shall hold a public hearing on the conditional use permit application. The commission may adopt the manager’s recommendation on each requirement unless it finds, by a preponderance of the evidence, that the manager’s recommendation was in error and states its reasoning for such finding with particularity. In addition, for good cause, the commission may alter the conditions on approval or requirements for guarantees recommended by the manager.

B. The commission may alter the manager’s proposed permit conditions, impose its own, or both. Conditions may include one or more of the following:

1. Development Schedule. The conditions may place a reasonable time limit on construction activity associated with the development, or any portion thereof, to minimize construction-related disruption to traffic and neighbors, to ensure that lots are not sold prior to substantial completion of required public improvements, or to implement other requirements.

-
2. Use. The conditions may restrict the use of the development to specific uses indicated in the approval.
 3. Owner's Association. The conditions may require that if a developer, homeowner or merchant association is necessary or desirable to hold or maintain common property, that it be created prior to occupancy.
 4. Dedications. The conditions may require conveyances of title, licenses, easements or other property interests to the public, to public utilities, or to the homeowners association. The conditions may require construction of public utilities or improvements to public standards and then dedication of public facilities to serve the development and the public.
 5. Construction Guarantees. The conditions may require the posting of a bond or other surety or collateral (which may provide for partial releases) to ensure satisfactory completion of all improvements required by the commission.
 6. Commitment Letter. The conditions may require a letter from a utility company or public agency legally committing it to serve the development if such service is required by the commission.
 7. Covenants. The conditions may require the recording of covenants or other instruments satisfactory to the borough as necessary to ensure permit compliance by future owners or occupants.
 8. Design. The conditions may require the adoption of design standards specific to the use and site.