

Article 61 – Review by the Board

ARTICLE 61 - REVIEW BY THE BOARD

Section 61.00 - Final Decision

The decision of the hearings body or officer shall be final unless an appeal is filed within 15 days of the date the hearings body's or officers' decision is signed.

Section 61.02 - Board Procedure

Review by the Board shall be accomplished in accordance with its own adopted Rules of Procedure. The Board may continue the hearing from time to time to gather evidence or to consider the application fully. Unless otherwise provided by the Board, no additional notice need be given of continued hearings if the matter is continued to a time and date certain.

Section 61.04 - Notices

Notice of hearing and a record of the proceeding shall be the same as required for initial hearings on proposed action.

Section 61.06 - Standing

- A. Any "party" having "standing" as provided by this section may appeal to the Board of Commissioners an action or ruling of the initial hearings body or officers.
- B. The Board review of final actions or rulings by the initial hearings body or officer shall be solely as provided in this article.
- C. In order to have standing for review under this Ordinance, a party, as defined in subsections 1, 2, 3 and 4 below, must have submitted testimony in writing or by testifying at the hearing on the matter on which the Planning Commission based its action or ruling. The following are hereby defined as "parties" having standing for review under this Ordinance:
 1. A person or persons jointly or severally adversely affected or aggrieved in fact by an action or ruling of the Planning Commission.
 2. A governmental agency, civic or community organization, which demonstrates to the Board that it has a valid interest in the preservation of aesthetic, healthful, or conservational conditions for the welfare of the general public.
 3. Any other person who demonstrates to the Board that his legal rights are affected by the outcome of the hearing.

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4. The Board of County Commissioners shall make all decisions of qualifications as a party having standing under this Ordinance prior to the matter on appeal.

Section 61.10 - Appeals

- A. The filing of the application of appeal shall not stay enforcement of the initial hearing body or officer's order or ruling, but the Board may do so upon requiring the giving of a bond or other undertaking or upon such other terms as it deems proper. Any bond or other undertaking executed pursuant to this subsection shall be in favor of Hood River County, Oregon for its benefit and for the benefit of whomever else it may concern and may be enforced by the Board or any other person concerned in an appropriate proceeding as their interest may appear.
- B. At least 7 days prior to the hearing the Planning Director shall transmit to the Board of Commissioners the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The Board may require or permit subsequent corrections or additions to the record when deemed desirable.
- C. All notice given of the public hearing shall be by publication in a newspaper of general circulation in the county not less than ten (10) days prior to the date of the hearing. Such notices shall also be sent by mail to all property owners within 250 feet of the exterior boundaries of the property, which is the subject of the appeal.
- D. If, not later than 15 days before the date set for the hearing on the petition application is made to the Board for leave to present additional evidence, and it is shown to the satisfaction of the Board that the additional evidence is material and that there were good substantial reasons for failure to present it in the proceeding before the initial hearing body, the Board may order the additional evidence to be taken before the initial hearings body upon such conditions as the Board deems proper. Notice of the time and place where the initial hearings body is to take the additional evidence shall be published in the same manner as in the original hearing. The initial hearings body may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the Board file with the Board, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or that it elects to stand on its original findings and order.
- E. The Board's review of the Planning Commission's order shall be confined to the record unless the Board elects at its option to hear the application de novo and

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allow testimony and other evidence in addition to that received upon initial action. If the Board elects to hear the application de novo this fact shall be included in the notice of the hearing.

- F. If the review of the initial hearings body's order is a review on the record and not a de novo hearing, no additional evidence shall be received. However, in the case of disputed allegations of irregularities in procedure before the initial hearings body, the Board may take evidence limited to the alleged irregularities in procedure and make findings of fact and enter an order upon them.
- G. The Board may modify, affirm, reverse or remand the hearings body's order. The Board shall reverse or remand the initial hearings body's order only if it finds:
 - 1. The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the Board shall find that substantial rights of the petitioning party were prejudiced thereby and defects in the content of the notice required by this section but not asserted at or prior to the commencement of the hearing before the Planning Commission; or
 - 2. The rule or order is not supported by reliable, probative and substantive evidence on the whole record, or is not supported by sufficient probative and substantial findings of fact.
- H. The Board may adopt or include findings of the initial hearings body as it sees fit. If the Board's decision upholds the decision of the initial hearings body, the Board shall make findings substantiating their decision. In the case of reversal or modification, the Board shall make findings of facts based upon evidence in the record and conclusions of law indicating clearly all respects in which the Board disagrees with or modifies the initial hearings body's order.
- I. In the case of a remand to the Planning Commission or Hearings Officer, the Board shall give instructions regarding the specific issues on which the Board requires additional testimony, information, discussion or findings. The Board may also provide direction regarding hearing procedures, such as limiting testimony to remand issues, etc. The decision on whether to remand shall not be appealable.
- J. All decisions of the Board of Commissioners under this article shall be final and shall be reviewed only upon writ of review as provided in ORS Chapter 34.