



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: July 06, 2015
Jurisdiction: Hood River County
Local file no.: P-15-0007
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 06/15/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD less than 35 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 001-15 {22627}
Received: 7/1/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See OAD 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Hood River County

Local file no.: **P-15-0007**

Date of adoption: June 15, 2015

Date sent: July 1, 2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): January 8, 2016

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

No

Local contact (name and title): John Roberts, Community Development Director

Phone: 541.387.6868

E-mail: john.roberts@co.hood-river.or.us

Street address: 601 State St.

City: Hood River

Zip: 97031

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

N/A

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|------------------------|----|--------|--|
| Change from
change. | to | acres. | A goal exception was required for this |
| Change from
change. | to | acres. | A goal exception was required for this |
| Change from
change. | to | acres. | A goal exception was required for this |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Text amendments to the Hood River County Zoning Ordinance (Article 61 – Review By Board).

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: N/A

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

1) June 15, 2015 signed Ordinance (with Exhibit); 2) May 18, 2015 - Staff Report and amendments presented to Board of County Commissioners (includes strike through of Article 61).



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & Veterans' Services

601 State Street, Hood River OR 97031

JOHN ROBERTS, DIRECTOR
(541) 387-6840 • plan.dept@co.hood-river.or.us

July 1, 2015

Attn: Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street, NE, Suite 150
Salem, OR 98301-2450

Re: DLCD Form 2 – Notice of Amendment Adoption to Hood River County Zoning Code;
Hood River County Local File No. P-15-0007

Dear Plan Amendment Specialist.

Enclosed please find the following:

- DLCD Form 2 – Notice of Adopted Change
- Hood River County Ordinance No. 326 (with Exhibit)
- May 18, 2015 Staff Report before the Hood River Board of County Commissioners

Hood River County Ordinance No. 326 amended Article 61 (Review By Board) and implements the following changes:

- The Board of County Commissioners scope of review in an appeal to enable a more open-ended review.
- The existing limits to reversing, remanding, or affirming the underlying decision. Notably, when conducting an on-the-record review the Board of County Commissioners now has explicit authority to modify the planning commission's decision of record.

Please note that there was no testimony from any party at the public hearing before the Board of County Commissioners.

Sincerely,

John Roberts

**Signed Ordinance 326
(Article 61 HRCZO - Review By Board)**

HOOD RIVER COUNTY

ORDINANCE NO. 326

AN ORDINANCE TO APPROVE LEGISLATIVE AMENDMENTS TO ARTICLE 61 ("REVIEW BY BOARD") OF THE HOOD RIVER COUNTY ZONING ORDINANCE AND REPEALING SECTION 6-D ("PROCEDURE FOR HEARING") OF THE HOOD RIVER COUNTY ADMINISTRATIVE CODE AND RESTATING THE SAME.

WHEREAS, the Board of County Commissioners ("Board") initiated the legislative actions pursuant to Article 61 ("Legislative Amendments") of the Hood River County Zoning Ordinance.

WHEREAS, the legislative action has been reviewed for compliance with applicable Oregon Revised Statutes, the Statewide Planning Goals, and the County Comprehensive Plan.

WHEREAS, approval of this legislative amendment would result in adoption of amendments to the Hood River County Zoning Ordinance to include modifications to Article 61 ("Review By Board") and Hood River County Administrative Code Section 6-D ("Procedures For Hearing"), incorporated herein by this reference as Exhibit "A" and Exhibit "B."

WHEREAS, the County Planning Commission held a hearing on February 11, 2015, which was continued to March 25, 2015 and thereupon voted unanimously to refer proposed changes incorporated in Exhibit A to the Board for adoption.

WHEREAS, the above matter came before the Board for a public hearing on May 18, 2015 in the County Board of Commissioner Conference Room (1st floor), 601 State Street, Hood River, Oregon to consider the ordinance changes recommended. At the hearing the Board suggested minor modifications to create consistency in nomenclature and thereupon voted unanimously to approve the amendments incorporated in Exhibit A and B upon further review.

NOW, THEREFORE, the Board of County Commissioners for Hood River County adopts this Ordinance, as set forth below and attached hereto:

I. **IT IS HEREBY ORDAINED** that the Hood River County Zoning Ordinance be amended to incorporate modifications to Article 61 ("Review By Board") as set forth in Exhibit "A."

II. **IT IS HEREBY ORDAINED** that the Hood River County Administrative Code Section 6-D (Procedure For Hearing) be repealed in its entirety and restated as set forth in Exhibit "B."

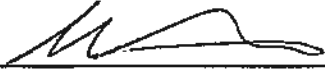
DATED THIS 15th DAY OF JUNE, 2015

HOOD RIVER COUNTY BOARD OF COMMISSIONERS



Ron River, Chair

Les Perkins, Commissioner



Maui Meyers, Commissioner



Karen Joplin, Commissioner



Robert Benton, Commissioner

Approved as to Form: _____
Wilford K. Carey, County Counsel

EXHIBIT A

Hood River County Zoning Ordinance - Article 61 (Review By The Board)

ARTICLE 61 - REVIEW BY THE BOARD

Section 61.00 - Final Decision

The decision of the planning commission or hearings officer shall be final unless an appeal is filed within 15 days of the date the planning commission or hearing officer's 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 planning commission or hearing officer.
- B. The Board review of final actions or rulings by the planning commission or hearings 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 other 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.

EXHIBIT A

Hood River County Zoning Ordinance - Article 61 (Review By The Board)

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 planning commission or hearings 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 planning commission or hearings officer, the Board may order the additional evidence to be taken before the planning commission or hearings officer upon such conditions as the Board deems proper. Notice of the time and place where the planning commission or hearings officer is to take the additional evidence shall be published in the same manner as in the original hearing. The planning commission or hearings officer 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 or hearings officer's order shall be confined to the record unless the Board elects at its option to hear the application de novo and 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.

EXHIBIT A

Hood River County Zoning Ordinance - Article 61 (Review By The Board)

- F. If the review of the planning commission or hearings officer'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 planning commission or hearings officer, 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 planning commission or hearings officer's order. The Board shall reverse or remand the planning commission or hearings officer'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 shall not be cause for reversal or remand; or
 2. The rule or order is unconstitutional, 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 planning commission or hearings officer as it sees fit. If the Board's decision upholds the decision of the planning commission or hearings officer, 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 planning commission or hearings officer'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.

**May 18, 2015 Staff Report
Board of Commissioners - Exhibits**



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & Veterans' Services

601 State Street, Hood River OR 97031

Ph: (541) 387-8840 • plan.dept@co.hood-river.or.us • www.co.hood-river.or.us

STAFF REPORT

DATE: May 18, 2015 Board of Commissioner Public Hearing

FILE NUMBER: P-15-0007

APPLICANT: Hood River County Community Development Department

REQUEST: Text amendments to the Hood River County Zoning Ordinance (Article 61) & Hood River County Administrative Code Section 6-D (Procedure for Hearing) to:

- 1) Address the existing limits to reversing, remanding, or affirming an underlying decision.
- 2) Coordinate the Zoning Ordinance procedures for a hearing with the Administrative Code.

STAFF CONTACT: John Roberts, Community Development Director

RECOMMENDATION: Accept the proposed amendments as submitted.

ATTACHMENTS:

- Exhibit A: Proposed Amendments Article 61
- Exhibit B: Proposed Amendments Section 6-D
- Ordinance

I. BACKGROUND

Attached are proposed text amendments to Hood River County Zoning Ordinance ("HRCZO") Article 61 (Review By Board) and Hood River County Administrative Code ("Administrative Cod") Section 6-D (Procedure for Hearing) shown in ~~strike-through~~ and **bold underline**. Reasons the proposed changes have been initiated include the need to:

- Improve the HRCZO based upon local application.
- Address the existing limits to reversing, remanding, or affirming an underlying decision.
- Specify in the case of a remand to the planning commission the Board provide direction regarding the specific issues that they would like addressed or to be further examined.
- Provide more clarity through simplified language.

A recent LUBA case noted some nuances to Article 61 of the HRCZO, specifically: 1) the Board of County Commissioners ("Board") does not approve or deny an underlying applications as it

conducts a limited review of the planning commission's decision, 2) when conducting an on-the-record review the Board lacks explicit authority to modify a decision, and 3) the circumstances under which the Board may choose to reverse rather than remand the planning commission's decision is not specified. As recently stated by LUBA, the limited scope of the Board's review is "rather unusual." As such, the proposed amendments allow for a more open-ended review and ability to for the Board to render a new decision on the merits of an application.

The planning commission's recommendations have been incorporated into the proposed changes to Article 61. The proposed amendments to Section 6-D of the Administrative Code were not considered or deliberated by the commission, as the Administrative Code is a guiding document for the Board. The commission heard and discussed the proposed amendments to Article 61 at a February 11, 2015 public hearing, which was continued to a March 25, 2015 hearing. There were issues with the proposed amendments expressed during the February 11 hearing, which centered on: standing, parties of record, appeals, and conflicts between sections. Moreover, there was discussion on streamlining the appeals process and concerns with providing the Board more authority.

II. APPLICABLE PLANNING GOALS & OTHER CRITERIA

The proposed amendments will not impact the statewide planning goals, county's comprehensive plan or policy document. The proposed changes are procedural and not a land use measure.

A. APPLICABLE STATE LAW

ORS 197.610 and OAR 660-018-0020 – Notice of a Proposed Change to a Comprehensive Plan or Land Use Regulation – 20 - 35 day notice to DLCD, prior to 1st evidentiary hearing

FINDING: The amendments to do not constitute a land use regulation. Nevertheless, consistent with the above rules, staff provided notice of the proposed amendment to the Department of Land Conservation and Development on January 8, 2015, which is 20 days prior to the first evidentiary hearing, originally scheduled before the Planning Commission on Wednesday, January 28, 2015 and rescheduled to February 11, 2015.

B. LEGISLATIVE REVIEW - ARTICLE 62 ("Legislative Amendments"), HRCZO

Section 62.00 - Initiation: An amendment, supplemental or change to the text or maps of this ordinance may be initiated by the Board of Commissioners, the Planning Commission, or the Planning Director.

FINDING: The legislative action was initiated at the request of the Board. The request was in part prompted by LUBA Case No. 2012-073; Hood River Valley Parks and Recreation District vs. Hood River County. However, the Board is not required to amend the Administrative Code in conjunction with the proposed changes to Article 61 of the HRCZO. The Administrative Code could be amended using a different process and procedures. Nevertheless, it is in the interest

of the county and public to coordinate the language between the two codes to reduce potential confusion and create consistency in implementation. Therefore, the changes to both the Administrative Code and HRCZO are being synchronized.

Section 62.02 – Procedures

FINDING: A public hearing was held before the planning commission to review amendments to Article 61 on Wednesday, February 11, 2015 and continued to a Wednesday, March 25, 2015 hearing. Within 30 days from receipt of the recommendation by the planning commission, on April 20, 2015 the Board committed to conducting a public hearing.

Section 62.04 – Notice

FINDING: Notice of the public hearing was published in the *Hood River News* on Saturday, January 17, 2015, more than ten days prior to the January 28, 2015 hearing. The January 28th meeting was rescheduled for February 11, 2015. Notice of that hearing was published in the *Hood River News* on Saturday, January 31, 2015, more than 10 days prior to the hearing. There was no additional notice for the March 25, 2015 hearing as it was continued to a date certain. Notice was published in the *Hood River News* more than 10 days prior to the May 18, 2015 Board hearing. Notification was sent by mail to affected local and state agencies and individuals who indicated an interest in the legislative action.

III. BOARD OPTIONS & STAFF RECOMMENDATION

Board Options

- A. **Accept** the amendments as proposed in Exhibit A and B.
- B. Recommend **changes** to Exhibit A and B.
- C. Recommend **denial** of the proposed amendments identified in Exhibit A and B.

Staff Recommendation: Option A – **Adopt** the amendments as proposed (as identified in staff report and accompanying Ordinance).

EXHIBIT A – PROPOSED AMENDMENTS
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 ~~initial action with the Director of Records and Assessments~~ **the date the hearings body’s or officers’ decision is signed.** ~~or if three members of the Board of Commissioners order review within 15 days of action.~~

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 be represented or attend the hearing** on which the Planning Commission based its action or ruling, ~~and speak or introduce input in opposition to the Planning Commission's ultimate action or ruling, at the hearing, unless the party can show to the Board good cause or reason why attendance at the hearing was not possible.~~ The following **only** 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 environmental** organization, **which that** 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

EXHIBIT A – PROPOSED AMENDMENTS
Article 61 – “Review By The Board”

outcome of the hearing. ~~and subsequent on a specific application.~~

4. The Board of County Commissioners shall make all decisions of ~~who shall qualify~~ qualifications as a party having standing under this ordinance prior to the matter on appeal. ~~the time set for final hearing on review.~~

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 ~~Within 30 days after the filing of the "Petition for Appeal"~~ 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 ~~one~~ 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 ~~its certificate~~ that it elects to stand on its original findings and order ~~as the cases may be.~~
- 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 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.

EXHIBIT A – PROPOSED AMENDMENTS
Article 61 – “Review By The Board”

- F. If the review of the initial hearings body's order is a review on the record and not a de novo hearing, ~~the Board shall not substitute its judgment for that of the initial hearings body as to any issue of fact, and~~ 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 shall not be cause for reversal or remand; or
 2. The rule or order ~~is to be~~ unconstitutional, **not supported by reliable, probative and substantive evidence on the whole record, or is not supported by sufficient probative and substantial findings of fact.** ~~† or~~
 3. ~~The order is not supported by reliable, probative and substantial evidence on the whole record.~~
 4. ~~The order 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 **special** 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. ~~If the Board's decision upholds the decision of the initial hearings body, the Board shall make special findings substantiating their decision. The Board may adopt or include findings of the initial hearings body as it sees fit.~~
- 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.