

Washoe County Board of Review
(WCC Chapter 100, Article 112)

Rules of Procedure

Introduction. The Board of Review is created under Washoe County Code Chapter 100, Article 112, to review orders, decisions or determinations made by the building official for the purpose of correcting an error, omission or oversight. These rules establish the procedures and standards for conducting such reviews.

1. Initiating a request; appointment of Administrative Officer.

- a. Request.** Any person may request a Board of Review hearing to consider an order, decision or determination made by the Building Official for the purpose of correcting an error, omission or oversight. The request must be made during the application process and active life of the permit, must be in writing and must be specific on the order, decision or determination to be reviewed and indicate the nature of the error, omission or oversight. WCC Chapter 100, Article 112.1, WCC Chapter 100, Article 112.4.
- b. Filed with Building Department.** The request must be filed with the building department who shall refer it to the Director of the Community Services Department.
- c. Administrative Officer.** When a request for review by the Board of Review is filed, the Director of the Department of Community Services shall designate an Administrative Officer to coordinate appointments of Members to the Board and conduct of the Board of Review proceedings. The Administrative Officer shall:

 - i.** Seek and coordinate nominations for the Board of Review and secure the appointment of the Board by the chairman of the Board of County Commissioners.
 - ii.** Provide notice to the appellant and county employees who will be involved in the review process.
 - iii.** Schedule and coordinate prehearing conferences to discuss and narrow down the issues to be decided by the Board of Review and the evidence to be presented, if practical. Secure evidence and cause it to be numbered and copied by the secretary.
 - iv.** Schedule all meetings and hearings by the Board of Review and cause them to be properly noticed under the Nevada Open Meeting Law.
 - v.** Arrange for administrative and logistic support for the Board of Review, if applicable, proceedings as needed.
 - vi.** Arrange for payment of expenses of the Board of Review, if applicable.
 - vii.** Attend all meetings of the Board to assure that all the administrative requirements are being met, but is not required to attend the hearings of the board.

- viii. Assure that all decisions and actions of the Board of Review are properly documented and noticed, and that the record of proceedings is turned over to the Building and Safety Department.

2. Appointment of Board; Secretary; Counsel

- a. **Board.** The Board of Review is appointed by the Chairman of the Board of County Commissioners on an ad hoc basis pursuant to WCC Chapter 100, Article 112.1 and WCC Chapter 100, Article 112.3. Appointment shall be by letter. Unless otherwise specified in the Letter of Appointment, the Board shall remain appointed until the resolution of the matter to be heard.
- b. **Secretary.** When a Board of Review is appointed, the Director of the Department of Community Services shall appoint a Secretary to the Board. The Secretary shall:
 - i. Prepare all files and records of the Board and turn them over to the county Building and Safety Department once the matter is completed.
 - ii. Prepare and cause to be posted all agendas and open meeting law notices required for the Board of Review proceedings.
 - iii. Tape record or arrange for video recording of all meetings and hearings held by the Board of Review. If requested, arrange for a transcript to be made of the tape or video recording.
 - iv. Number and retain a copy of all exhibits offered and admitted at the hearing. May assist in preparing evidence books prior to hearing.
 - v. Keep minutes of all meetings and hearings.
 - vi. Prepare (with assistance of counsel) decisions and when signed by the Board chair, process the decision in accordance with these rules.
 - vii. Perform other duties as required by the Administrative Officer, Board, or counsel to the Board.
- c. **Counsel.** The District Attorney shall provide counsel for the board of review to provide advice regarding the law of the case, evidentiary matters, the conduct of the hearing, and the decision of the Board. Depending on circumstances, separate counsel may need to be appointed to represent the Building Official or other County staff.

3. Scheduling and prehearing procedures.

- a. Unless otherwise agreed or provided by law a hearing on the appeal shall be scheduled within 60 days of the date the appeal is filed with the Board.
- b. The Administrative Officer shall meet and confer with the parties regarding evidence to be used and issues to be resolved by the Board and may create a joint evidence package in coordination with Counsel and the appellant.

4. Conduct of Meetings of Board of Review.

- a. **Open Meeting Law.** All meetings shall be noticed and conducted in accordance with the Nevada Open Meeting Law, NRS Chapter 241, as interpreted and applied by opinions of the Attorney General and courts.
- b. **Election of Chair.** The Board shall elect a Chair who shall preside over the meeting and hearing.
- c. **Rules.** Each Board of Review may adjust these rules to accommodate the circumstances. In absence of a specific rule adopted by the Board, Roberts Rules of Order may be used by the Chair to decide procedural issues, but the Chair may also employ any other rule or procedure that would be useful in obtaining a consensus of the Board. Rules regarding hearings are set forth below.
- d. **Public Comment and disruption of the meeting.** The Board of Review conducts the business of Washoe County and its citizens during its meetings. The Chair may order the removal of any person whose statement or other conduct disrupts the orderly, efficient or safe conduct of the meeting. Warnings against disruptive comments or behavior may or may not be given prior to removal. The viewpoint of a speaker will not be restricted, but reasonable restrictions may be imposed on the time, place and manner of speech. Irrelevant and unduly repetitious statements and personal attacks which antagonize or incite others are examples of speech that may be reasonably limited. If a party to the proceedings is removed from the meeting or hearing, the chairman may continue the hearing to another date.
- e. **Minutes.**
 - i. The Secretary shall keep minutes of the meeting which shall include:
 - a. the date, time and place of the meeting;
 - b. those members of the Board who were present and those who were absent;
 - c. the substance of all matters proposed, discussed or decided and a record of each member's vote on any matter decided by vote;
 - d. the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion; and
 - e. any other information which any member of the Board requests to be included or reflected in the minutes.
 - ii. With respect to hearings to review decisions of the Building Official, the minutes need not be a transcript of the proceedings, but shall describe the order of events and conduct of the hearing, the order of appearance of

witnesses and who examined or cross-examined them, and the general deliberations of the Board. The minutes shall include a list of all exhibits admitted into evidence. Exhibits offered but not admitted shall be retained by the Secretary for purposes of judicial review. The minutes of the hearing shall reflect the vote of each member of the Board.

- iii. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes are deemed to have permanent value and must be retained permanently for public records use.

5. Hearing Procedures. When conducting the hearing to review a decision, the board of review shall follow the following steps.

- a. Introduction and establish parties of record.
- b. Call on the Administrative Officer or counsel to introduce the item with a brief explanation of the issues. This is only an introduction identifying the parties and the general nature of the proceeding.
- c. Jurisdictional/Procedural Issues.
 - i. For items requiring special notice, Chair asks if all notices required by law have been given and if staff has proof of publication and service where required.
 - ii. Chair asks if all parties are present and ready to proceed.
 - iii. Chair asks whether there are any objections or special considerations to going forward with the hearing and decision on this matter. Jurisdictional issues shall be decided before proceeding with the public hearing.
 - iv. Chair announces that in order to have an appropriate record on appeal or for judicial review, an audio or video recording will be kept of this proceeding and exhibits will be numbered and kept with the Recording Secretary. Any party may be allowed to make recordings or have a court reporter present to record the meeting.
- d. Disclosures by Board Members. Chair asks for any disclosures and abstentions required by NRS 281A.420 (*Ethics in Government*) and/or any disclosures under these rules, policies and procedures regarding ex-parte contacts with the applicant or any interested party.
- e. Chair opens the hearing for presentations and public comment. Time limits for each of the following steps may be determined by the Chair.

- f.** Building Official and/or County staff presentation. The Building Official and/or County staff will present evidence and discuss the decision being reviewed. Board members may ask questions.
- g.** Appellant presentation. The Appellant will introduce evidence and discuss reasons why there is error, omission or oversight in the decision. Board members may ask questions.
- h.** Rebuttals. The Building Official and Appellant will each be given one rebuttal period. Board members may ask questions.
- i.** Public Comment and rebuttal. Members of the public will be allowed to comment on the decision being reviewed, and the Building Official and Appellant will be given reasonable rebuttal time.
- j.** Board questions. Board members may ask questions of any party or any person at any time.
- k.** Chair closes the hearing.
- l.** Discussion, deliberations. During deliberation, Board members are encouraged to discuss their views of the evidence and why they are going to vote for or against a motion. If interpretative questions cannot be answered during deliberation, the hearing may be continued and interpretative questions may be referred to counsel or the Board of Adjustment.
- m.** Written Decision. The vote of a majority of the Board of Review will decide the outcome, and a written decision shall be prepared. In more complicated cases, the Board may ask counsel to prepare a decision for the board to review, which may include findings of fact and conclusions. The Chair shall sign the written decision and may call a meeting of the Board of Review to discuss the decision. When the written decision is signed, it shall be sent to the parties of record (by email or regular mail as requested) and a certificate of mailing shall be prepared and kept in the file. The decision shall then be filed with the Building and Safety Department who shall indicate the date received, which starts the time period for appealing to the Board of Adjustment.

6. Hearing Rules

- a.** Any party may be represented by Counsel or another person.
- b.** When possible and practical, hearings shall be conducted around a conference table or other informal arrangement, and to the extent practical, shall be conducted informally.

- c. All parties shall be afforded reasonable time to respond and present arguments on all issues involved, subject to Rule 7 c below.
- d. If required by the Chair in order to resolve disputed facts, witnesses shall declare by oath or affirmation that they will testify truthfully. The Chair may administer oaths.
- e. Notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Board. The experience, technical competence and specialized knowledge of the Board may be utilized in the evaluation of the evidence.
- f. When the Chair determines that new evidence is needed to make a factual determination, each party may call and examine witnesses and introduce exhibits. Cross examination of witnesses shall be allowed at the discretion of the Chair who may direct that questions be asked through the Chair. Board members may ask questions at any time.

7. Documents and Evidence

- a. Any party may comment on the relevance, authenticity, accuracy or probative value of any evidence even if that party did not object to the admission of the evidence.
- b. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted by the Chair. Any relevant evidence is sufficient in itself to support a finding if the evidence is the type on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil court action.
- c. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the Chair. The Board shall observe rules of privilege recognized by law.
- d. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.
- e. Documentary evidence may be received in the form of authenticated copies or excerpts. Upon request, parties must be given an opportunity to review the original, if available.

8. Standards of Review; Decisions of the Board.

- a. **Review of record.** As provided in WCC Chapter 100, Article 112.2, the Board of Review

- e. The Board may not award damages or attorney's fees or costs.
- 9. Appeals of Board of Review Decisions.** When the written decision is filed with the Building and Safety Department, a person aggrieved by the decision may appeal it to the Board of Adjustment in accordance with NRS 278.310, WCC Chapter 110, Article 912; and the rules of the Board of Adjustment.