

Corrected copy

FILED

DEC 01 1998

ARCHIVES DIVISION  
SECRETARY OF STATE

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on **December 1, 1998** by the:

Land Use Board of Appeals (LUBA)  
Christina Basye (Rules Coordinator)  
Public Utility Commission Building  
550 Capitol Street NE  
Salem, Oregon 97310

Administrative Rule Chapter Number: 661  
(503) 373-1265

To become **effective December 13, 1998**. Rulemaking notice was published in the November, 1998 Oregon Bulletin.

**RULEMAKING ACTION**

**AMEND:**

661-10-075(9)

Statutory authority: ORS 197.820(4).

Other Authority: None.

Stat. Implemented: ORS 197.805, 197.828, 197.830, 197.835

**RULE SUMMARY**

661-10-075(9) amends the agency's address.

Virginia S. Gustafson 12/1/98  
Authorized Signer and Date

LUBA 3 - 1998

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

Land Use Board of Appeals (LUBA) Administrative Rule Chapter Number: 661  
Christina Basye (Rules Coordinator) (503) 373-1265  
Public Utility Commission Building  
550 Capitol Street NE  
Salem, Oregon 97310

To become **effective December 1, 1998**. Rulemaking notice was published in the November, 1998 Oregon Bulletin.

**RULEMAKING ACTION**

**AMEND:**

661-10-075(9)

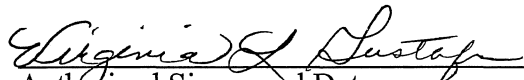
Statutory authority: ORS 197.820(4).

Other Authority: None.

Stat. Implemented: ORS 197.805, 197.828, 197.830, 197.835

**RULE SUMMARY**

661-10-075(9) amends the agency's address.

 12/1/98  
Authorized Signer and Date

## 661-010-0075

### Miscellaneous Provisions

#### (1) Cost Bill and Attorney Fees

(a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

(b) Recoverable Costs: Costs may be recovered only for the items set forth in this paragraph.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 20 cents per page, whether or not the governing body actively participated in the review.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661-010-0015(4) and shall not exceed the amount of that deposit.

(c) Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for review is not filed within the time required by these rules, and the governing body files a cost bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee and deposit required by OAR 661-010-0015(4) shall be awarded to the governing body as cost of preparation of the record. See OAR 661-010-0030(1).

(d) Return of Deposit: After any award of costs under subsection (b) or (c) of this section is made, any amount of the deposit remaining shall be returned to petitioner.

#### (e) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(14)(b); a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under ORS 197.845(2).

(f) Responses and Objections: Any response to a motion for attorney fees, together with any objections to the detailed statement of the amount of attorney fees sought, shall be filed with the Board within 14 days after the date of service of the motion. Objections to the cost bill shall be filed with the Board within 14 days after the date of service of the cost bill.

(g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the cost bill or motion for attorney fees after an appellate judgment is issued and any further Board proceedings necessitated by that judgment are concluded.

#### (2) Filing and Service:

(a) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, and as provided in oar 661-010-0021(5)(b) with regard to a refiled original notice of intent to appeal or an amended notice of intent to appeal, filing a document with the Board is accomplished by:

(A) Delivery to the Board on or before the date due; or

(B) Mailing on or before the date due by first class mail with the United States Postal Service.

#### (b) Service:

(A) Any document filed with the Board, other than the record as provided in OAR 661-010-0025(3), or the record after withdrawal for reconsideration as provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under OAR 661-010-0015(3)(f)(A).

(B) Service may be in person or by first-class mail. Mail service is complete on deposit in the mail.

(C) Service copies of documents other than the Notice or the record shall include a certificate showing the date of filing with the Board (see Exhibit 5).

(D) Documents filed with the Board shall contain either an acknowledgement of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and the names and addresses of the persons served (see Exhibit 6).

(3) Number of Copies Required: Unless these rules provide otherwise, all documents filed with the Board shall be filed with one copy. No copy of a record transmitted pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration transmitted pursuant to OAR 661-010-0021(6), is required.

(4) Copying Fee: The following fees shall be charged for certified copies of Board nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

(a) 20 cents per page for copies of any Board transcript or document of public record that is more than fifty pages.

(b) \$10 for a copy of a cassette tape in the record.

(c) \$20 for a copy of a videocassette tape in the record.

(d) The Board shall also charge the actual cost of copying and mailing oversized exhibits, plans or maps.

(5) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. Conferences may be by telephone. The Board shall provide reasonable notice advising all parties of the time, place and purpose of any conference.

(6) Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar.

(7) Lead Petitioner: A lead petitioner is responsible for notifying the other petitioners of documents received from the Board and other parties, but each petitioner remains responsible for his or her own representation.

(8) Computation of Time: Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other state legal holiday, the act must be performed on the next working day.

(9) "Address and Hours of the Board: The Board's address is Public Utility Commission Building, 550 Capitol NE, Salem, Oregon, 97310. The telephone number is 373-1265. The offices of the Board shall be open from 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday."

(10) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

Unreported Cases: John Doe v. XYZ County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 80-123, February 15, 1981).

(11) Motion to Transfer to Circuit Court:

(a) Any party may request, pursuant to ORS 19.230, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12).

(b) A request for a transfer pursuant to ORS 19.230 shall be initiated by filing a motion to transfer to circuit court not later than ten days after the date a respondent's brief or motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue on its own motion, a motion to transfer to circuit court shall be filed not later than ten days after the date the moving party learns the Board has raised a jurisdictional issue.

(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made.

(12) All briefs and motions filed with the Board shall comply with the rules in OAR 661-10-030(2) with respect to type size, spacing, paper size and printing, numbering and margins.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.805, ORS 197.828, ORS 197.830 & ORS 197.835