

Sec. 18-261. - Procedure for handling complaints.

(a)

Complaint and right to hearing. Any party, including the county, may file a complaint against a registrant under this article for violation of the provisions of this article. The complaint shall be filed in writing on a form prepared by the building official which form shall be completed and sworn to by the person filing the complaint. The building official shall give written notice of a complaint to the registrant being complained against. The building official shall try to resolve the complaint between the complainant and the registrant. If the complaint is not resolved in this manner, the building official shall make a determination as to whether or not the complaint could involve a violation of this article and notify the complainant and the registrant of this determination. If the building official determines that the complaint could involve a violation of this article, the complaint shall be heard by the construction board in an open hearing. The building official shall give the complainant and the registrant notice of the time and place of the hearing which must be mailed at least 30 days before the date fixed for the hearing. The notice of the hearing shall set forth the nature of the complaint being made with reference to any relevant supporting documents that have been provided to the building official by the complainant. The notice must be sufficiently adequate to appraise the registrant of the charges against it.

(b)

Rights of hearing participants. Any participant in the hearing shall be entitled to be accompanied and represented at the hearing by an attorney or other person of the participant's choice. During a hearing, the representatives of each of the participants shall have the right to:

(1)

Call and examine witnesses who voluntarily agree to appear on behalf of the participant calling such witnesses. Notice is given to the participants that the construction board does not have the legal power of subpoena.

(2)

Introduce exhibits and documents relevant to the issues.

(3)

Cross-examine witness of other participants on any matter relevant to the issues.

(4)

Rebut any evidence.

(5)

Request that the record of the hearing be made by use of a court reporter (if such request is made at least ten days prior to the hearing date) or, if the material is to be reduced to writing promptly after the hearing, an electronic recording unit.

If any of the participants in the hearing do not testify in their own behalf, such participant may be called and examined by another participant as if under cross-examination.

(c)

Presiding officer. The chairman of the construction board, or in his absence the vice chairman or in the absence of both the chairman and vice chairman a member of the construction board designated by the members present at the hearing shall be the presiding officer at the hearing. The presiding officer shall act to maintain decorum and to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence. The presiding officer shall be entitled to determine the order of proceedings during the hearing, to promulgate rules of procedure not inconsistent with this article, to exclude or remove any person who is disruptive to an

orderly and professional hearing, and to refuse to admit evidence, which is not relevant to the subject matter of the hearing. Service as the presiding officer shall not in any way prevent the presiding officer from full participation in the deliberations and actions of the construction board on the matter. The presiding officer may in his/her discretion appoint a parliamentarian to serve as an advisor to the presiding officer on procedural matters during the course of the hearing and in preparing the construction board's report. The parliamentarian may in the discretion of the presiding officer be present during deliberations by the construction board, but shall not have a vote on the matters to be determined by the construction board.

(d)

Record. A record of the hearing shall be kept that is of sufficient accuracy to permit the making of an informed judgment by anybody that may later be called upon to review the record and render a decision in the matter. The presiding officer of the hearing shall select the method to be used, such as court reporter, electronic recording unit, details transcription or minutes of the proceedings for making the record, subject to the right of either participant set forth in subsection (b)(5) of this section. If a court reporter is requested by either participant, the take down charge of the court reporter shall be paid equally by the participants to the hearing and each participant shall bear the cost of obtaining copies of the transcript for such participant's use.

(e)

Obligations to present evidence. The complainant shall have the initial obligation to present evidence in support of the complaint. The registrant shall thereafter be responsible for presenting evidence in support of the registrant's response to and defense against the complaint. Following the close of the registrant's evidence, the complainant shall have the right to introduce evidence in rebuttal of that presented by the registrant. The construction board shall base its decision only on the evidence introduced at the hearing. It shall be the function of the construction board to determine whether the complaint involves a violation of this article and if so the corrective action as specified in this article to be taken against the registrant. Such decision must be supported by a preponderance of the evidence presented at the hearing.

(f)

Evidence permitted. The hearing need not be conducted in accordance with the rules of evidence which are followed in a court of law. The presiding officer may permit the admission of any relevant evidence, which at his/her discretion is of the type on which responsible people customarily rely in the conduct of serious affairs.

(g)

Construction board report. Within 21 days after the closing of the hearing, the construction board shall make a written report of its findings and determinations in the matter and shall forward the same together with the hearing record and all other documentation introduced at the hearing to the commission. A copy of the report shall be sent to the participants in the hearing. The construction board report shall concisely state the reasons for the findings and recommendations made in the report and how such findings are supported by the facts and the evidence as presented at the hearing. The construction board report shall specifically recommend any corrective action as specified in this article that the construction board finds should be taken. The construction board may request the participants in the hearing to submit proposed findings and recommendations for its consideration in preparing its report. No participant shall be required to submit proposed findings and recommendations. If requested, proposed findings and recommendations must be submitted to the construction board within 14 days after the closing of the hearing.

(h)

Request for appeal. If any participant in the hearing desires to appeal the findings and recommendations of the construction board, such participant must file a written request for such an appeal with the building official within 15 days after the mailing of a copy of the construction board's

report. Failure to file a timely request for appeal shall constitute waiver by the party of his/her rights to appeal the report of the construction board.

(i)

Hearing of the appeal. Any appeal shall be heard by the commission or by a designated committee. The chairman of the commission or the chairman of the designated committee whichever shall hear the appeal shall set a date and time for the hearing of the appeal and the participants shall be notified in writing thereof. The date of the hearing of the appeal shall be set as soon as possible but not less than 30 days after the date of the notice of the appeal hearing.

(j)

Written statements. The party seeking the appeal shall submit a written statement detailing the findings, conclusions, recommendations and procedural matters with which such participant disagrees and the reasons for such disagreement. The written statement may cover any matters raised at any step in the hearing process and legal counsel may assist in the preparation thereof. The statement shall be submitted to the building official at least ten days prior to the scheduled date for the hearing of the appeal, with a copy being furnished to the other participants. A similar written statement and reply may be submitted by the other participants at least two days prior to the scheduled date of the hearing on the appeal with a copy being furnished to the other participants. Failure of the appealing party to file such written statement in a timely manner shall constitute a waiver of such participant's rights to appellate review.

(k)

Oral arguments. If the participant requesting an appeal desires to have oral arguments before the commission or the designated committee hearing the appeal, he, she or it shall so state in the request for appeal. If the other participants desire oral arguments before the commission or the designated committee hearing the appeal, he, she or it shall file a request with the building official within five days after the filing of the request for appeal. No party shall have a right to oral argument and the decision as to whether or not to permit oral argument shall be entirely within the discretion of the commission or the designated committee hearing the appeal as the case may be. Oral arguments may be required by the commission or the designated committee hearing the appeal as the case may be, even if not requested by any participant. If oral arguments are made, they may be presented for each participant by one representative of such participant.

(l)

Consideration of new or additional matters. New or additional matters or evidence not raised or presented during the hearing before the construction board or in the construction board's report, nor otherwise reflected in the record, shall be introduced during the appellate process only under unusual circumstances. The commission or the designated committee hearing the appeal, in its sole discretion, shall determine whether such matters or evidence shall be considered or accepted.

(m)

Function of commission or designated committee hearing the appeal. The function of the commission or the designated committee hearing the appeal shall be to determine whether or not the hearing procedures set forth in this article have been complied with and whether the construction board has properly carried out its functions in conducting the hearing in accordance with this article and has made a proper determination and recommendations as to the matters considered in the hearing.

(n)

Report of the body hearing the appeal. The commission or the designated committee hearing the appeal shall within 30 days after its hearing of the appeal prepare a written report of its findings and recommendations in regard to the matters before it. The report may recommend affirmation, reversal or modification of the findings and recommendations of the construction board or it may refer the

matter back to the construction board with directions for further consideration or additional hearings. The report shall be furnished promptly to the participants.

(o)

Action by the commission. Once the hearing and appeal process has been completed or the participants involved have waived their rights to any further hearing or appeal hereunder, the commission may act upon the findings and recommendations made to it by the construction board as modified by the findings and recommendations on any appeal which may have been taken thereto and such action by the commission shall be final and subject to no further appeal. Notice of the final action of the commission shall include a statement of the basis for the decision and shall be promptly given to the participants in the hearing.

(p)

Corrective action. The commission upon a majority vote of those present and voting may revoke or suspend for such period of time up to one year as the commission shall specify the registration of the registrant or reprimand the registrant and/or fine the registrant in an amount not to exceed \$1,000.00 if it finds that the registrant:

(1)

Violated the obligations of the registrant in performing construction services as provided for in this article;

(2)

Committed fraud or deceit in obtaining registration under this article.

The building official or commission may require the forfeiture of the surety bond if the registrant fails to make necessary repairs required by the commission after the hearing and appeal process have been completed. The property owner will be paid an amount to cover documented costs up to the amount of the repairs or the amount of the surety bond, whichever is lower. County funds will not be used to pay the cost of repairs.

(Ord. No. 03-14, § 1, 12-16-2003)