



City of Lowell - Law Department

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MEMORANDUM

TO: Thomas A. Golden, Jr., City Manager 

FROM: Corey F. Williams, City Solicitor

CC: Yovani Baez-Rose, Assistant City Manager/DPD Director
Francesca Cigliano, Senior Planner

DATE: June 30, 2023

SUBJECT: MOTION RESPONSE: May 30, 2023 Motion was made by Councilor – Gitschier – Request City Manager have the City Solicitor Provide the City Council with a Report Outlining how a resident can appeal a zoning Board Decision with estimated Cost to the Resident

The rules for the appeal of zoning board decisions are contained in Massachusetts. General Laws Chapter 40A Section 17. For further reference I read, *Handbook of Massachusetts Land Use and Planning Law, Third Edition*, Mark Bobrowski, Wolters Kluwer Law & Business (2011) for this Motion Response. This following is provided in response to Council Gitschier’s motion to provide accurate and authoritative information regarding the procedure to appeal a board of appeals decision but not a specific decision or matter. Professor *Emiritus* Bobrowski warns, “These procedures are quite complicated and may pose problems for the unwary practitioner.” Residents should seek the services of a competent professional if legal advice or other professional assistance is required. The City Solicitor’s Office does not have an estimate of cost to the resident.

A. Parties

- a. Plaintiffs are limited to any person “aggrieved” by the decision of, or failure to act by the Board of Appeals “whether or not previously a party to the proceeding,” and any municipal officer or board.”
- b. Mass, Gen, L. ch. 40A sec. 17 states the defendants shall include the “original applicant, appellant or petitioner” if the complaint is file by someone other than this party, and all members of the Board of Appeals.

B. Notice

- a. Mass, Gen, L. ch. 40A sec. 17 states “Notice of the action” with a copy of the complaint shall be given to the city or town clerk so as to be received within the 20 day appeal period.
 - b. The Court has rigidly held that failure to comply with the time limit for notice within the time limit is fatal error.
- C. Complaint is required to include
- a. An allegation that the decision exceeds the authority of the board or authority.
 - b. Any facts pertinent to the issue
 - c. A prayer that the decision be annulled
 - d. A certified copy of the Decision being appealed must be attached to the complaint.
- D. Jurisdiction
- a. Land Court
 - b. Superior Court
- E. Statute of Limitations
- a. The time limit to file an appeal is 20 days after the decision of the granting authority has been filed in the office of the Clerk.
 - b. If the appeal alleges that the notice of the public hearing was defective, the appeal may be filed in 90 days after the decision has been filed in the office of the clerk. This is the only type of defect that serves to extend the otherwise applicable 20-day period.
 - c. Failure to file the complaint within the applicable 10- or 90- day appeal period is a fatal error. This requirement is policed in the strongest way.
- F. Service
- a. Within 14 days after filing the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including all members of the granting authority.
 - b. Within 21 days after the filing of the complaint, file an affidavit with the Court clerk stating that such notice has been given.

DPD will include the information summarized above as a link on the land use board pages (Planning, Zoning & Conservation Commission), so the public can get a broad sense of the process for filing appeals on board decisions.