

**IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
GEAUGA COUNTY, OHIO**

IN RE:	)	CASE NO.
	)	
Geauga County Sewage Treatment	)	JUDGE TIMOTHY J. GRENDALL
System Appeals Board	)	
	)	<b>JUDGMENT ENTRY</b>
	)	<b>ENACTING DUE PROCESS</b>
	)	<b>RULES OF PROCEDURE</b>

The Probate Court for Geauga County hereby enacts the following as the Due Process Procedures for the Sewage Systems Treatment Appeals Board (“Board”) pursuant to Ohio Revised Code (ORC) § 3718.11 et seq.

**1. FILING OF APPEAL AND FILING FEE**

A. A property owner who requested a hearing with the board of health for any reason described in division (A)(18) of section 3718.02 of the Ohio Revised Code may appeal the results of such hearing to either the court of common pleas of the county in which the property owner’s land is located or to the Board as set forth herein. [ORC §3718.11(A)]

B. A property owner that wishes to appeal to the Board shall file the appeal with the board of health within whose jurisdiction the property owner’s land is located. [ORC §3718.11(B)] In order to be timely, the appeal shall be filed within thirty (30) days of the board of health’s decision. The appeal shall be in writing, contain the property owner’s name, address, and telephone number, generally set forth the grounds for appeal, and include a copy of the board of health’s decision or order that is being appealed. The board of health shall certify that the Board provided a copy of the Warning-Acknowledgement disclosure form to any property owner who has a right (standing) to appeal a decision of the board of health regarding any grounds set forth in Ohio Revised Code §3718.02(A)(18) at the time the property owner is notified of the board of health’s decision.

C. A property owner shall submit a filing fee of \$100.00 to the board of health at the same time it files the appeal to the board of health’s decision or order. [ORC §3718.11(C)(5)] The fee shall be used to cover the administrative costs of hearing the appeal including but not limited to: the board of health’s costs of preparing the required copies of the administrative record and the chairperson’s costs related to scheduling the hearing and issuing the final decision. Members of the Board shall serve without compensation. [ORC § 3718.11(C)(3)]

D. Upon receipt of the filing, the board of health shall immediately send notice of the filing of the appeal to the chairperson of the Board for the county in which the board of health has jurisdiction. [ORC §§3718.11(B) and 3718.11(C)(4)]

## **II. HEARING NOTICES AND SCHEDULING**

A. The person appointed by the judge of the probate court shall serve as chairperson of the Board and shall schedule appeals for hearing before the Board. The chairperson shall designate the time and location for a hearing before the Board; provided that such hearing date must be no sooner than fifteen (15) days after the record of the board of health proceedings is served pursuant to subdivision III.A. below. [ORC §3718.11(C)(3)]

B. A written notice stating the date, time, and place of the hearing shall be sent by regular mail to all parties of the appeal not less than fourteen (14) days prior to the hearing. In addition to serving the written notice by regular mail, the chairperson may also use telephone, facsimile, and/or electronic mail to provide notice.

C. Along with the notice a copy of these rules shall be provided to each party to the appeal.

D. The Board, in its discretion, may grant a request to reschedule the hearing date received from either the property owner or the board of health. The request to reschedule shall be in writing, either mailed to, or faxed to the chairperson so it is received by the chairperson at least five (5) days prior to the scheduled hearing date.

E. The party requesting to reschedule shall notify all parties affected by the request and allow for objections to such request, before the request may be granted.

F. The Board may, in its discretion, reschedule any hearing date provided reasonable notice is given to the parties.

## **III. ADMINISTRATIVE RECORD AND EVIDENCE**

A. The board of health shall provide three copies of the administrative record to the chairperson within thirty (30) days of the date the appeal is filed. The board of health shall provide one copy of the administrative record to the property owner.

B. The hearing shall not be confined to solely a review of the record of the board of health's decision or order. The Board may request additional information or evidence from the board of health representatives or property owner at or prior to the hearing. The property owner and board of health may submit additional information or evidence at the hearing.

## **IV. APPEARANCE BEFORE THE SEWAGE TREATMENT SYSTEM APPEALS BOARD**

A. Any person who is a party to the appeal may appear at the hearing in person or by legal counsel. However, unless otherwise required under Ohio law, there is no requirement that a property owner retain an attorney.

B. Failure to appear before the Board at the scheduled hearing time and date shall constitute failure to prosecute and may be grounds for dismissal of the party's appeal or the granting of default judgment in the property owner's favor, as applicable.

C. The chairperson shall preside over the hearing, determine the relevance and admissibility of evidence, and make procedural decisions as appropriate. The procedural process shall be less formal than a legal proceeding.

D. No member of the Board shall participate in proceedings in any case in which the member has an interest which might prevent him or her from giving a fair hearing or reaching an impartial decision. In the case of a recusal of a Board member for a potential conflict of interest, the appointing authority for that specific member shall appoint a substitute member for that specific appeal. The original appointed member of the Board shall resume his/her duties at the next appeal.

E. All hearings before the Board shall be open to the public.

#### **IV. WITNESS AND TESTIMONY**

A. Each party may offer appropriate witnesses to provide testimony or arguments concerning the matter on appeal.

B. A party's attorney may appear in lieu of the party to present the party's position.

C. The Board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, other than those rules set forth herein.

D. Witnesses, who shall be giving testimony on the appeal, need not be qualified as experts pursuant to Ohio Rules of Evidence, but shall be sworn. An opposing party may ask questions of witnesses who testify against the party's position.

E. Hearsay evidence is a statement by one person as to what another person says or thinks. Any testimony must be relative and drawn from a person with actual and personal knowledge of these matters in order to present this evidence before the Board. The Board may, in its discretion, accept hearsay evidence in the form of documents or oral testimony.

#### **VI. INDEPENDENT OR OUTSIDE EXPERTS**

A. While not required, a party may retain an expert witness at his/her own expense to provide documents and/or testimony at the hearing in support of the party's position.

B. Any party may rely on a document prepared by an expert witness and shall not be required to have the expert witness be present at the hearing to testify before the Board. The Board may weigh the document as evidence by itself, and may question the expert, if present at the hearing, regarding the opinion or exhibits, which have been submitted, or at the request of the Board or opposing party, direct that the expert witness appear before the Board to answer questions from the Board or opposing party.

C. A party to the appeal intending to introduce evidence involving expert opinion shall file with the Board a summary of that opinion and a summary of the expert's qualifications at least five (5) days prior to the time of the hearing on the appeal, a copy of which shall be sent to any opposing party at least five (5) days prior to that hearing.

## **VII. RECORD OF HEARING**

A. The proceedings of each hearing shall be recorded either using a tape recording system, digital recording system, or stenographic means.

## **VIII. FINAL DECISION**

A. A majority vote of the members of the Board is necessary to take action on any matter, including final written decisions. [ORC §3718.11(C)(3)]

B. Upon the presentation of arguments and evidence at the hearing, the Board shall render its decision either affirming the board of health's decision or ruling in favor of the property owner. The Board's final decision shall be in writing and shall give the reasoning for the decision, and shall be issued within forty-five (45) days after the completion of the hearing.

C. Pursuant to section 3718.11(D) of the Ohio Revised Code, the written decision of the Board is final and no further appeal may be taken.

IT IS SO ORDERED.

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TIMOTHY J. GRENDALL, Judge

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Date

cc: Geauga County Bar Association  
Gauga County Board of Health  
Gauga County Board of Commissioners