

MAR 26 2018

Judge Robert N. Rusu, Jr.

IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
MAHONING COUNTY, OHIO

IN RE: ADOPTION OF DUE PROCESS ) CASE NO: 2018 MC 00-28  
RULES OF PROCEDURE FOR THE )  
MAHONING COUNTY SEWAGE ) JUDGE ROBERT N. RUSU, JR.  
TREATMENT APPEALS BOARD )  
) JUDGMENT ENTRY  
)

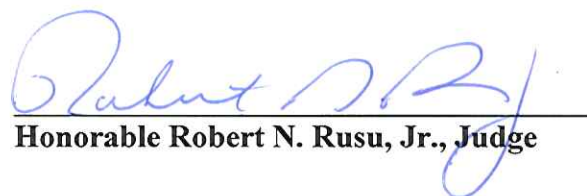
Upon notification by the *Mahoning County Health Department* that an appeal has been filed to the *Mahoning County Sewage Treatment Appeals Board* with the *Mahoning County Board of Health* and requesting the Court to provide the *Due Process Rules of Procedure* for said appeal as authorized by R.C. §3718.11(C)(5). Upon review of the Court records, the Court finds that a *Judgment Entry* was issued by **Judge Mark A. Belinky** on December 16, 2010 to establish said *Rules of Procedure*; however, upon further review the “Exhibit A” – *Rules of Procedure* were not attached to said December 16, 2010 *Entry*, not docketed by the Court in its records and there is no evidence that service of the *Rules of Procedure* was served on the required parties. As such, there is no evidence that the *Rules of Procedure* are in existence at this time.

Therefore, the Court upon its own *Motion* and as required by Ohio Revised Code §3718.11(C)(5), I, **Judge Robert N. Rusu, Jr.**, as Judge of the Common Pleas, Probate Division, Mahoning County, Ohio, hereby adopt, as attached hereto, the *Rules of Procedure* (see attached Exhibit A) for the *Mahoning County Sewage Treatment Appeals Board* effective March 26, 2018.

The Clerk is directed to serve a copy of the foregoing *Judgment Entry* upon *Mahoning County Health Department* and *Ohio Department of Health*, by regular United States mail, and to note the fact of such service upon the docket of the Court.

**IT IS SO ORDERED.**

Dated: March 26, 2018

  
Honorable Robert N. Rusu, Jr., Judge

**SEWAGE TREATMENT SYSTEM APPEALS BOARD**  
**RULES OF PROCEDURE**  
**OHIO REVISED CODE §3718.11**

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

**I. 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 *Sewage Systems Treatment Appeals Board* (hereinafter referred to as "*Board*") as set forth herein. [RC §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. [RC. § 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 the *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 One Hundred Dollars (\$100.00), made payable to the *Mahoning County Treasurer*; to the *Board of Health* at the same time they file the appeal of the *Board of Health's* decision or order. [RC §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. [RC §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. [RC§3718.11(B) and §3718(C)(4)].

## II. HEARING NOTICES AND SCHEDULING

- A. The person appointed by the Judge of the *Mahoning County 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. [RC § 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 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 (3) 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.

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- B. The hearing shall not be confined solely to 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 failure, 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 or her duties at the next appeal.
- E. All hearings before the *Board* shall be open to the public.

**V. WITNESSES 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 that 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 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 the 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 the opposing party at least five (5) days prior to that hearing.

**VII. RECORD OF HEARING**

- A. The proceedings of each hearing shall be recorded using a tape recording system or by other stenographic means in which to prepare an accurate record.

**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. [RC §3718.11 (C)(3)].

- B. Upon 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 §3718.11 (D) of the *Ohio Revised Code*, the written decision of the *Board* is final and no further appeal may be taken.

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**WARNING-ACKNOWLEDGMENT**

By selecting an appeal to the *Sewage Treatment System Appeals Board* pursuant to *Ohio Revised Code* §3718.11(A)(2), rather than appeal to the *Common Pleas Court* pursuant to *Ohio Revised Code* §3718.11(A)(1), you acknowledge that the *Sewage Treatment System Appeals Board* decision is final and that you cannot further appeal or request Court review of the *Sewage Treatment System Appeals Board* decision.

I certify that a copy of this form has been provided to an affected property owner who has a right to appeal a decision of the *Board of Health* regarding any grounds set out in *Ohio Revised Code* §3718.02(A)(18).

By: \_\_\_\_\_  
*Mahoning County Board of Health*

At \_\_\_\_\_, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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