

SEWAGE TREATMENT SYSTEM APPEALS BOARD

CLERMONT COUNTY, OHIO

RULES OF PROCEDURE

Ohio Revised Code Section 3718.11

The Court of Common Pleas of Clermont County, Probate Division (“Probate Court”), hereby enacts the following as the Due Process Procedures for the Sewage Treatment Systems Appeals Board (“Board”), pursuant to Ohio Revised Code (ORC) Section 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 ORC Section 3718.02 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 Section 3718.11(A).
- B. A property owner who 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 decision of the Board of Health. The appeal shall be in writing, shall contain the property owner’s name, address, and telephone number, and 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 appeal shall be filed at the location of the Board of Health, either in person or by certified mail.
- C. A property owner shall submit a filing fee of One Hundred Dollars (\$100.00) to the Board of Health at the same time it filed the appeal of 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, issuing notices thereof, and issuing the final decision. The cost schedule shall be approved by the Judge of the Probate Court. (ORC 3718.11(C)(3). The filing fee shall be nonrefundable.
- D. Upon receipt of the filing of the appeal, 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 has jurisdiction. (ORC 3718.11(B) and (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 the hearing before the Board, provided that such

hearing shall 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 to 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, from either the property owner or the Board of Health, to reschedule the hearing. The request to reschedule the hearing shall be in writing, either mailed to, or faxed to the Chairperson so that 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 all 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.
- 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 legal counsel.
- B. Failure of a party to appear before the Board at the scheduled hearing may be grounds for dismissal of the party's appeal or the granting of the appeal in the property owner's favor, in the absence of a showing that there were reasonable grounds for the party's failure to so appear, if applicable.
- C. The Chairperson shall preside over the hearing, swear in the witnesses, determine the relevance and admissibility of evidence, and make procedural decisions as appropriate. The procedural process shall be less formal than a legal proceeding. Any party may object to an alleged improper procedure or improper evidence that is being introduced at the hearing. The Chairperson shall be responsible for ruling on such objection.

- 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 the recusal of a Board member due to a potential conflict of interest, the appointing authority for that specific member may 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. The recusal shall be made in writing, and a copy sent to all parties, no later than seven (7) days prior to the scheduled hearing date.
- 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 concerning the matter and issue on appeal.
- B. A party's legal counsel may appear on behalf 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, are not required to be qualified as experts pursuant to the Ohio Rules of Evidence, but shall be sworn under oath. An opposing party may ask questions of witnesses who testify against that party's position.
- E. Any testimony must be relevant and drawn from a person with actual and personal knowledge of these matters in order to present evidence before the Board. The Board may, in its discretion, accept hearsay evidence in the form of documents or oral testimony, or both.

VI. INDEPENDENT OR OUTSIDE EXPERTS

- A. While not required, a party may retain an expert witness, at his or her own expense, to provide documents and/or testimony at the hearing in support of that 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 the opposing party, direct that the expert witness personally 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 hearing; a copy shall be sent to any and all opposing parties at least five (5) days prior to the hearing.

VII. RECORD OF HEARING

- A. The proceedings of each hearing shall be recorded by either using a tape recording system or by other stenographic means to preserve an accurate record.
- B. Any party to a proceeding may request a transcript of the hearing. The expense of the transcript shall be paid by the party requesting the transcript.

VIII. FINAL DECISION

- A. A majority vote of the members of the Board is necessary to take action on any matter, except procedural matters, including the final written Decision on the appeal. (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 may give the specific reasons for its decision. The Decision shall be issued no later than forty-five (45) days after the completion of the hearing.
- C. Pursuant to ORC Section 3718.11(D), the written Decision of the Board is final, and no further appeal may be pursued.