HOUSE DOCKET, NO. 2466 FILED ON: 1/15/2015

HOUSE . . . . . No. 1342

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas A. Golden, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to streamline the judicial review of local land use decisions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas A. Golden, Jr.	*16th Middlesex*
David M. Nangle	*17th Middlesex*

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HOUSE . . . . . No. 1342

By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 1342) of Thomas A. Golden, Jr., and David M. Nangle for legislation to streamline the judicial review of local land use decisions. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to streamline the judicial review of local land use decisions.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The second paragraph of Section 17 of chapter 40A, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following paragraphs:-

If the complaint is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant, or petitioner and all members of the board of appeals or special permit granting authority shall be named as parties defendant with their addresses. To avoid delay in the proceedings, instead of the usual service of process, the plaintiff shall within fourteen days after the filing of the complaint, send written notice thereof, with a copy of the complaint, by delivery or certified mail to all defendants, including the members of the board of appeals or special permit granting authority and shall within twenty-one days after the entry of the complaint file with the clerk of the court an affidavit that such notice has been given. If no such affidavit is filed within such time the complaint shall be dismissed. No answer

13 shall be required but an answer may be filed and notice of such filing with a copy of the answer
14 and an affidavit of such notice given to all parties as provided above within seven days after the
15 filing of the answer. Other persons may be permitted to intervene, upon motion. The clerk of the
16 court shall give notice of the hearing as in other cases without jury, to all parties whether or not
17 they have appeared.

18 The board of appeals or special permit granting authority shall transmit to the reviewing
19 court the record of its proceedings, including its minutes, findings, decisions, and, if available, a
20 true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of
21 that tape recording is a true and correct transcript for purposes of establishing the record. The
22 court may not accept or consider any evidence outside the record of the board of appeals or
23 special permit granting authority unless that evidence was offered to the board of appeals or
24 special permit granting authority, respectively, and the court determines that it was improperly
25 excluded from the record.

26 The court shall examine the record upon which the decision of the board of appeals or
27 special permit granting authority is based, and upon such record determine only whether or not
28 the decision is arbitrary, capricious, or illegal. A decision of a board of appeals or special permit
29 granting authority is valid if the decision is supported by substantial evidence in the record and is
30 not arbitrary, capricious, or illegal.

31 The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of
32 notice other than notice by publication, mailing or posting as required by this chapter, and the
33 validity of any action shall not be questioned for matters relating to defects in procedure or of
34 notice in any other proceedings except with respect to such publication, mailing or posting and

35 then only by a proceeding commenced within ninety days after the decision has been filed in the
36 office of the city or town clerk, but the parties shall have all rights of appeal and exception as in
37 other equity cases.

38 SECTION 2. Section 17 of chapter 40A, as so appearing, is hereby amended by striking
39 out the sixth paragraph and inserting in place thereof the following paragraph:-

40 A non-municipal plaintiff seeking to reverse approval of a project under this section shall
41 post a bond in an amount to be set by the court that is sufficient to cover twice the estimated: (1)
42 annual carrying costs of the property owner, or a person or entity carrying such costs on behalf of
43 the owner for the property, as may be established by affidavit; plus (2) an amount sufficient to
44 cover the defendants attorney's fees, all of which shall be computed over the estimated period of
45 time during which the appeal is expected to delay the start of construction. The bond shall be
46 forfeited to the property owner in an amount sufficient to cover the property owner's carrying
47 costs and legal fees less any net income received by the plaintiff from the property during the
48 pendency of the court case in the event a plaintiff does not substantially prevail on its appeal.