HOUSE DOCKET, NO. 2316 FILED ON: 1/19/2023

# HOUSE . . . . . No. 1670

## The Commonwealth of Massachusetts

PRESENTED BY:

***Joseph W. McGonagle, 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 relative to streamline the judicial review of local land use decisions.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Joseph W. McGonagle, Jr.* | *28th Middlesex* | *1/19/2023* |

HOUSE DOCKET, NO. 2316 FILED ON: 1/19/2023

# HOUSE . . . . . No. 1670

By Representative McGonagle of Everett, a petition (accompanied by bill, House, No. 1670) of Joseph W. McGonagle, Jr., relative to judicial review of local land use decisions. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1611* OF 2021-2022.]

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court**
**(2023-2024)**

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

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

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

The foregoing remedy shall be exclusive, notwithstanding any defect of procedure or of notice other than notice by publication, mailing or posting as required by this chapter, and the

validity of any action shall not be questioned for matters relating to defects in procedure or of notice in any other proceedings except with respect to such publication, mailing or posting and then only by a proceeding commenced within ninety days after the decision has been filed in the office of the city or town clerk, but the parties shall have all rights of appeal and exception as in other equity cases.

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

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