

My Client Just Received a Zoning Violation Notice – Now What?

Suburban Edition

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I. The Zoning Violation Notice

a. What is it?

A zoning violation notice, also known as an enforcement notice, is a written notice issued by a municipality to notify a property owner that a property violates the municipal zoning ordinance.

b. Statutory Authority

Section 616.1 of the MPC¹ contains the procedures by which a municipality can bring enforcement proceedings for a claimed zoning ordinance violation.

c. Statutory Requirements for an Enforcement Notice

Under MPC Section 616.1, the following are required for a valid enforcement notice:

- The enforcement notice must be sent to the owner of record of the property on which the violation occurred AND sent to any person who has filed a written request to receive enforcement notices regarding the property AND sent to any other person requested in writing by the owner of record
- Required contents of the enforcement notice:
 - Name of the owner of record AND any other person against whom the municipality intends to take action
 - Location of the property that is in violation

¹ The Pennsylvania Municipalities Planning Code, 53 P.S. Section 10101 et seq. (“MPC”), which governs planning, zoning, subdivision and related matters. The MPC applies only to cities of the second class A, cities of the third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes; the cities of Philadelphia and Pittsburgh are not subject to the MPC. The word “municipality” as used in these materials refers to a municipality which is subject to the MPC.

- o The specific violation, including a description of the requirements not met, citing, in each instance, to the applicable provisions of the ordinance
 - o The date before which the steps for compliance must be commenced AND the date before which the steps must be completed.
 - o That the recipient of the notice has a right of appeal to the zoning hearing board within a specified period of time, under the procedures set forth in the ordinance
 - o That failure to comply with the notice within the required time, unless extended by an appeal to the zoning hearing board, constitutes a violation, with possible sanctions clearly described.
- d. Practice Note: If your client receives an enforcement notice, always review the notice against the requirements of Section 616.1 of the MPC, to see whether the municipality has met the legal requirements for the notice. Noncompliance with the legal requirements does not allow the owner to disregard the notice, but it does provide the basis for a challenge on appeal.
- II. What if the Notice does not comply with the requirements of MPC Section 616.1?
- a. Even though, technically, a noncomplying enforcement notice is not valid, the Courts have held that the only way to challenge the enforcement notice is to file an appeal within the required time period.
 - b. The prudent practitioner, for the reasons discussed below, should always elect to appeal the enforcement notice to the Zoning Hearing Board if the property owner does not wish to comply with the notice; failing to appeal results in a conclusive determination that a violation occurred, which cannot be challenged before a magisterial district judge or the Court of Common Pleas.
- III. Appealing a Zoning Violation Notice
- a. If the property owner decides not to comply with the enforcement notice, then the owner should file an appeal with the Zoning Hearing Board of the municipality in which the property is located. Section 909.1 of the MPC gives the Zoning Hearing Board exclusive jurisdiction “to hear and



render final adjudications” in matters involving appeals from the determination of the zoning officer.

- b. The appeal must be filed within thirty (30) days after the enforcement notice is issued, pursuant to MPC Section 914.1.
 - c. Following the filing of the appeal, the Zoning Hearing Board should schedule a hearing on the matter. The Zoning Hearing Board must conduct the hearing in accordance with Section 908 of the MPC.
 - d. Bases for appeal – the possible bases for appeal to the Zoning Hearing Board can include the following:
 - i. Noncompliance of the “enforcement notice” with the requirements of MPC Section 616.1.
 - ii. The property in fact complies with the ordinance(s) cited in the enforcement notice.
 - iii. The property is entitled to legal nonconforming use status such that the condition is not a violation of the ordinance.
 - iv. The zoning officer improperly interpreted the ordinance in issuing the enforcement notice.
 - v. The property is entitled to relief in the form of a variance or a special exception, to allow the condition cited as a violation.
 - e. For each basis for appeal, the appeal should include the supporting information; for example, if an owner claims entitlement to a variance, then the appeal should include a variance application.
 - f. Practice Note: Once the bases for appeal have been decided, check with the municipality in advance to confirm the required appeal format, supporting documentation to be submitted with the appeal, and the amounts of any required filing fee and escrow. You don’t want to be trying to file an appeal on the final day for appeal, and have the municipality reject the filing.
- IV. Municipal Enforcement of an Enforcement Notice (When an appeal is not filed)
- a. In order to bring enforcement proceedings for a zoning violation, a municipality first must send an enforcement notice conforming to Section 616.1 of the MPC.



- b. If the property owner does not appeal an enforcement notice, and does not bring the property into compliance, then the municipality has a right to begin enforcement proceedings under MPC Section 617.2.
- c. Additionally, the municipality, as well as property owners and/or tenants of properties substantially affected by the violation, can bring an action to “prevent, restrain, correct or abate” the action constituting the violation, under MPC Section 617. Since magisterial district judges do not have the authority to grant equitable relief such as this, such an action would need to be filed with the Court of Common Pleas.
- d. Enforcement proceedings under MPC Section 617.2 are brought by the municipality before the local magisterial district judge, pursuant to MPC Section 617.1.
- e. When an owner has not appealed an enforcement notice to the Zoning Hearing Board, the case law has held that the owner cannot challenge the enforcement notice in an enforcement action before the magisterial district judge. See the case summaries at the end of the materials.
- f. An owner can be found liable for the following fines and costs in a Section 617.2 enforcement action:
 - i. Not more than \$500.00 for each violation, each day constituting a separate violation.
 - 1. Exception – if the magisterial district judge makes a specific finding that there was a good faith basis for the owner to believe that there was no violation of the ordinance, then there will be deemed to have been only one violation until the fifth day following the district judge’s determination that a violation had occurred. After the fifth day, each day constitutes a separate violation.
 - ii. All court costs.
 - iii. Reasonable attorney’s fees incurred by the municipality.
 - iv. Practice Note: A judgment cannot be imposed or payable until the date the magisterial district judge makes the determination that a violation had occurred. In other words, fines do not accrue for the period before the municipality files the enforcement action, or while the hearing is pending.



- g. Standard of Review before the Magisterial District Judge
 - i. A magisterial district judge does not have the authority to determine whether or not a zoning violation has occurred, because that determination is exclusively within the jurisdiction of the municipal zoning hearing board pursuant to MPC Section 909.1.
 - ii. The owner's failure to appeal the enforcement notice results in a conclusive finding that a zoning violation occurred; the magisterial district judge's fact-finding authority is limited to (a) a determination of the amount of fines and costs to be awarded, and (b) a determination of whether the owner had a good faith belief that there was no violation of the ordinance, to determine whether each day following the judgment constitutes a separate violation. (see MPC Section 617.2).
 - iii. Practice Note: If representing a property owner before a magisterial district judge on a zoning enforcement action, always consider whether you can present evidence demonstrating the owner's good faith belief that there was no violation of the ordinance. A finding of good faith belief will reduce the possible fines to be paid by the owner.
- h. Appeal from Judgment of the Magisterial District Judge
 - i. An appeal from the MDJ judgment is taken to the Court of Common Pleas. The appeal is filed using the standard form Notice of Appeal from Magisterial District Judge Judgment.
 - ii. If the Appellant is the property owner, the Notice of Appeal will include the Praecipe to Enter Rule to File Complaint and Rule to File issued against the municipality.
 - iii. Copies of the Notice of Appeal must be served on the magisterial district judge, and upon the appellee, by certified or registered mail, or by personal service, and a proof of service filed with the Court of Common Pleas.
 - iv. The case will proceed in accordance with the Rules of Civil Procedure before the Court of Common Pleas, as the municipality must file a Complaint. NOTE: Even though the case is before the Court of Common Pleas, the case law indicates that the question of



whether a violation occurred cannot be considered de novo by the Court – see City of Erie and Township of Penn, cited at the end of the materials.

CASES

City of Erie v. Freitas, 681 A.2d 840 (Pa. Cmwlth., 1996). An owner’s failure to file an appeal from an enforcement notice is fatal, “and results in a conclusive determination of guilt for which a district justice may impose sanctions under Section 617.2 of the MPC.” The Commonwealth Court further held that a district justice may not hold a de novo hearing on the merits of a violation notice when the owner has not appealed to the Zoning Hearing Board.

Loganville Borough v. Godfrey, 59 A.3d 1149 (Pa. Cmwlth. 2012). MPC Section 617.2(a) authorizes a range of potential fines from \$0 to \$500.00 per day, and therefore a fine of \$0 is permitted. An award of attorney’s fees to the municipality can be made even when no fines are awarded.

Lower Southampton Township v. Dixon, 756 A.2d 147 (Pa. Cmwlth. 2000). If an owner does not appeal an enforcement notice to the zoning hearing board, the owner is precluded from challenging the constitutionality of the zoning hearing board’s filing fees in the enforcement action brought by the municipality.

Township of Maiden Creek v. Stutzman, 642 A.2d 600, 164 Pa. Cmwlth. 207 (Pa. Cmwlth. 1994). A municipality is required to send an enforcement notice in compliance with Section 616.1 of the MPC in order to commence enforcement proceedings. Failure to comply with Section 616.1 precludes a municipality from seeking penalties under Section 617.2 of the MPC.

Township of Penn v. Seymour, 708 A.2d 861 (Pa. Cmwlth. 1998). When a property owner does not appeal to the zoning hearing board after receiving an enforcement notice, and the municipality files an enforcement action, “neither the district justice nor a Common Pleas Court may conduct a de novo review of the question of whether the landowner violated the zoning ordinance. In that circumstance, the only question before the district justice and the Common Pleas Court is whether the penalty imposed for the violation was proper.”

STATUTES

Pennsylvania Municipalities Planning Code, 53 P.S. Section 10101 et seq.

Section 616.1 – Requirements of a municipal enforcement notice.

Section 617 – Causes of action by a municipality, or aggrieved owner or tenant, to prevent, restrain, correct or abate zoning violations.

Section 617.1 – Jurisdiction of district justices over proceedings brought under Section 617.2.

Section 617.2 – Enforcement remedies for violation of the zoning ordinance.

Section 908 – Requirements of zoning hearing board hearings.

Section 909.1 - Exclusive jurisdiction of the zoning hearing board to hear appeals from the determination of the zoning officer.

Section 914.1 - Appeals from decisions adverse to the property owner must be filed within 30 days after notice of the determination is issued.

Magisterial District Judge Rules of Civil Procedure - Appeal to the Court of Common Pleas from a magisterial district judge judgment

Rule 1002 – Time and Method for appeal – appeal from a magisterial district judge judgment is taken by filing “with the Prothonotary of the court of common pleas a notice of appeal on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge.” Appeals must be filed within thirty (30) days after the date of entry of the judgment (except for appeals from a judgment for the delivery of possession of real property arising out of a residential lease).

Rule 1004 – Filing the Complaint following the appeal – when claimant is appellant and when claimant is appellee.

Rule 1005 – Service of the Notice of Appeal and filing the Proof of Service.

Rule 1007 – Procedure on appeal is conducted de novo under the Rules of Civil Procedure that would have been applicable if the action was initially commenced in the court of common pleas.

