

Standing Against Your Neighbor: Abutter Appeals One Year After the Affordable Homes Act

By Ryan Clemens on August 4, 2025



We have previously reported on the Legislature's **August 2024 amendments to the Massachusetts Zoning Act, G.L. c. 40A**, which significantly limit the right of abutters and others to challenge special permits and other zoning relief awarded by local zoning and planning boards. The 2024 amendments include a new requirement in Section 17 of Chapter 40A that any third-party who challenges a zoning decision must "*sufficiently allege and must plausibly demonstrate... measurable injury... through credible evidence.*"

The new statutory "credible evidence" and "measurable injury" standards borrow from court decisions that define an abutter's standing under Section 17 of the Zoning Act, which prescribes the procedure to challenge a zoning decision. Section 17 previously created a rebuttable presumption of aggrievement in favor of abutters – and thus standing – allowing project abutters to bring and maintain appeals without any clear requirement to produce actual evidence that a project would negatively impact those abutters in any way.

The Legislature's recent addition of the "*measurable injury*" and "*credible evidence*" pleading requirements to Section 17 now mandates that those who oppose a development describe a specific, measurable injury, with reference to actual, credible evidence, in their complaint. The new pleading requirement allows courts to evaluate the merits of a claim earlier in the appeals process, thereby expediting dismissal of frivolous appeals. Developers and project proponents can also seek to impose an appeal bond under Section 17 to secure costs and delay damages incurred if the court ultimately determines that an appeal was frivolous and brought in bad faith simply to delay or deter a development.

One year has passed since the amendment's effective date on August 6, 2024, and we now have some insight as to how Massachusetts courts will interpret this new amendment. Thus far, courts have notably declined to retroactively apply the new standard to cases filed before the amendment's effective date or otherwise in cases where standing was already established. *See Cogliano v. Griffin*, 33 LCR 227 (2025) (proceeding from a decision and trial in the same case that already established standing and preceded the amendments); *Bartolomeu v. Oak Bluffs Plan. Bd.*, 33 LCR 47, 51 n. 2 (2025) (applying pre-amendment standards because defendants challenged standing before the amendments' effective date); *Ross v. Boulay*, 33 LCR 38, 42 n. 16 (2025) (applying pre-amendment standard because case tried and briefed before amendments' effective date); *Silverio v. North Andover*, 32 LCR 585, 597 n. 4 (2024); *Bonanno v. Gloucester Zoning Bd. App.*, 32 LCR 558, 564 n. 4 (2024).

A few cases have substantively applied Section 17's new standing procedures to appeals brought after the amendment's effective date. The available decisions reveal a mixed approach with some more strictly construing the law than others. First, the Land Court in *Kavanaugh v. Newton Zoning Board of Appeals* evaluated the plaintiff abutter's complaint

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filed November 8, 2024, under the new credible evidence / measurable injury standard, upon the defendant developer's motion for bond. 33 LCR 121, 122 (2025). The complaint challenged a Chapter 40B, 295-unit housing development based how the defendant zoning board conducted the public hearing, claiming that the board did not give the plaintiffs enough time to speak at the hearing and infringed upon their rights to free speech, as well as general claims of statutory and local zoning violations. *Id.* The Court accordingly found the plaintiffs' complaint to be insufficient and that their appeal was not "highly meritorious" because the complaint did not allege an injury to the plaintiffs' "own personal legal interests and that the injury is to a specific interest" which the local zoning ordinance intends to protect. *Id.*

The Court then evaluated the defendant developer's motion for a maximum \$250,000 bond under Section 17 in the context of the Court's finding that the complaint was not "highly meritorious." The defendant developer submitted evidence of cost estimates, specifically in the form of affidavits, based on which the Court found that the developer's damages and costs exceeded the maximum allowable bond amount. *Id.* at 122-23. The Court noted that the abutters were retired, however, and after balancing interests and exercising discretion, imposed a "modest" bond of \$25,000. *Id.* at 123. The Court ordered the plaintiffs to provide the adjusted bond amount within 20 days of the decision. *Id.* The Land Court docket, 25 PS 000013, shows that the abutters did not file their bond in the prescribed time, and so the developer moved to dismiss the appeal. The parties then filed a stipulation of dismissal with prejudice, closing the case.

Second, the Land Court in *Van Read v. Schultberg* applied the new standard of credible evidence of a measurable injury to another plaintiff abutter's complaint, filed October 16, 2024, upon that defendant developer's motion for summary judgment. 33 LCR 286, 286 (2025). In evaluating the challenge to the proposed expansion of the defendant's landscaping material business, the Court in *Van Read* interpreted the new Section 17 requirements to require that "a complaint must identify the private legal interest affected, whether and how that interest is one protected by the relevant bylaw and G.L. c. 40A, what injury the challenged permit would do to that interest, and how that injury is special and different to the plaintiff." *Id.* at 291.

Applying that interpretation, the Court first found that *Van Read's* injury in the complaint was noise. *Id.* Second, the Court determined that Chapter 40A protects against injuries from noise. *Id.* Third, the Court highlighted how the complaint alleged that the challenged permit would allow the developer to blast rock, mechanically crush rock, and transport earth and rock. *Id.* at 291-92. Fourth and finally, the Court also highlighted how that injury from noise is specific to the plaintiff, not just the community at large, because the complaint alleged that the challenged permitted activity would occur 400 feet from the plaintiff's shared property line and 800 feet from the plaintiff's residence. *Id.* at 292. The Court found that these allegations were sufficient for Section 17's new standard, noting that "Specific measurement or expert sound tracing is properly left for trial." *Id.*

The Land Court's attempt in *Van Read* to distinguish when "credible evidence" factors into a challenge to standing under Section 17 creates an imprecise precedent. The Court interpreted the new standard specifying "credible evidence" to mean that "a third-party plaintiff must first set forth in the complaint allegations of harm sufficient to support a claim for standing. Then, when it comes time to prove standing either at summary judgment or trial, the third-party plaintiff must present credible evidence to plausibly demonstrate the alleged harms. In other words, the plaintiff is not required to present evidence at the complaint stage." *Id.* at 291. But the Court then bases its Section 17 standing interpretation on the complaint's allegations alone in its analysis of the *summary judgment motion* in question. The Court in *Van Read* based its interpretation on analogizing Section 17 to Rule 9(b) of the Massachusetts Rules of Civil Procedure because, in that

Court's view, Section 17's "heightened pleading standard is akin to" Rule 9(b)'s requirements for "Fraud, Mistake, Duress, Undue Influence, Condition of the Mind," rather than Section 17's own caselaw. *Id.* at 290.

In contrast, the Land Court in *Gates v. Gaddis* considered both the allegations in the challenged complaint *and* whether the plaintiffs proffered credible evidence, under the previous rebuttable presumption standard. 33 LCR 119, 119-20 (2025). There, in a Section 17 appeal of a special permit to construct a two-family home and upon a motion to dismiss for lack of standing *prior* to any trial, the Court first found the complaint insufficient for its lack of "protected interests under the bylaw, nor particularized injuries." *Id.* at 120. The Court then reviewed and determined that the plaintiffs had not "alleged facts or proffered credible evidence that they will be harmed by the proposed changes" because they did not demonstrate "any specific factual support for their concerns, nor have they submitted evidence from an engineer, architect, or other professional that could support a finding that they will suffer some cognizable harm to a legal interest sought to be protected by the local zoning bylaw." *Id.* Although *Gates* did not specifically cite Section 17's amended language, the complaint was filed on September 10, 2024, after the amendment's effective date, and *Gates* applied the caselaw on standing that the amendment incorporated into Section 17, ultimately requiring credible evidence at the motion stage. *Id.*

The disparity between *Van Read* and *Gates* and the few cases substantively interpreting Section 17's new language signal that the new requirements for standing in appeals under Chapter 40A are still developing. The Appeals Court will likely weigh in soon to clarify what abutter plaintiffs must demonstrate at the complaint stage. RIW's land use attorneys will continue to monitor and report on this critical development in Massachusetts zoning.

Ryan S. Clemens is an associate in the firm's Commercial Real Estate Group. He brings a wealth of experience in zoning, land use, environmental permitting and approvals, and related litigation. You can reach him at rsc@riw.com or (617) 570-3530. RIW's **Commercial Real Estate Group** serves as business counsel cross a range of industries, including commercial real estate and construction. Our team helps clients navigate complex administrative law matters and land use regulations and he has successfully represented clients in administrative proceedings before federal, state, and local agencies.

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