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To accompany the petition of Thomas E. Watman for legislation to require the mailing to parties in interest of certain records of meetings of boards of appeal relative to zoning ordinances and further regulating the reconsideration of appeals or petitions for variance after unfavorable action. Mercantile Affairs.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Fifty-Eight.

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AN ACT REQUIRING THE MAILING TO PARTIES IN INTEREST OF CERTAIN RECORDS OF MEETINGS OR BOARDS OF APPEAL RELATIVE TO ZONING ORDINANCES AND FURTHER REGULATING THE RECONSIDERATION OF APPEALS OR PETITIONS FOR VARIANCE AFTER UNFAVORABLE ACTION.

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

1 SECTION 1. Chapter 40A of the General Laws is hereby  
2 amended by striking out section 18, as appearing in section 2 of  
3 chapter 368 of the acts of 1954, and inserting in place thereof  
4 the following section: —

5 *Section 18.* The board of appeals of each city or town shall  
6 adopt rules, not inconsistent with the provisions of the zoning  
7 ordinance or by-law of such city or town, for conducting its  
8 business and otherwise carrying out the purposes of this chap-  
9 ter. Meetings of the board shall be held at the call of the chair-  
10 man, and also when called in such other manner as the board  
11 shall determine in its rules. Such chairman, or in his absence  
12 the acting chairman, may administer oaths, summon witnesses  
13 and call for the production of papers. All hearings of the board  
14 shall be open to the public. The decision of the board shall be  
15 made within a reasonable time. The board shall cause to be  
16 made a detailed record of its proceedings, showing the vote of

17 each member upon each question, or, if absent or failing to vote,  
18 indicating such fact, and setting forth clearly the reason or rea-  
19 sons for its decisions, and of its other official actions, copies of  
20 all of which shall be immediately filed in the office of the city or  
21 town clerk and shall be a public record, and notice of decisions,  
22 **together with the decision, the reason or reasons for the**  
23 **decisions, and statement of evidence given at the hearing,**  
24 shall be mailed forthwith to parties in interest as designated in  
25 section seventeen, to the planning board, and to every person  
26 present at the hearing who requests that notice be sent to him  
27 and states the address to which such notice is to be sent.

1 SECTION 2. Said chapter 40A is hereby further amended by  
2 striking out section 20, as so appearing, and inserting in place  
3 thereof the following section:—

4 *Section 20.* After acceptance of this section or corresponding  
5 provisions of earlier laws as provided in section four of chapter  
6 four, no appeal or petition under paragraph three of section fif-  
7 teen for a variance from the terms of such an ordinance or by-law  
8 with respect to a particular parcel of land or the building thereon,  
9 and no application under paragraph two of section fifteen for a  
10 special exception to the terms of any such ordinance or by-law,  
11 which has been unfavorably acted upon by the board of appeals  
12 **or which was denied by the court upon appeal,** shall be  
13 considered on its merits by said board within two years after  
14 the date of such unfavorable action **by the board of appeals**  
15 **or denial by the court upon appeal,** except with the consent  
16 of all of the members of the planning board, or of the board of  
17 selectmen in a town having no planning board.

1 SECTION 3. Section 21 of said chapter 40A, as amended by  
2 section 1 of chapter 199 of the acts of 1957, is hereby further  
3 amended by striking out the third and fourth paragraphs and  
4 inserting in place thereof the following paragraphs:—

5 If the aggrieved person who appeals to the superior court is the  
6 petitioner before the board of appeals, his appeal shall be against  
7 said board and the persons set forth in section eighteen, as en-  
8 titled to notice, etc. If said appeal to superior court is made by  
9 any other aggrieved persons, the appeal shall be against the  
10 board of appeals and the petitioner before the board.

11 No costs shall be allowed to any party in appeal to the su-  
12 perior court if such party was the petitioner before the board  
13 of appeals, unless it shall appear to the court that the other  
14 parties acted in bad faith or with malice.

15 If the losing party upon appeal to the superior court was the  
16 petitioner before the board of appeals, costs and reasonable  
17 counsel fees shall be allowed against him, payable to the other  
18 aggrieved parties or their counsel, but not to the board of  
19 appeals.

