

72-10-411 Appeals to district courts -- Procedure -- Findings, judgment, and costs -- Regulations invalid as to one structure or parcel of land.

- (1)
 - (a) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board, which is of the opinion that a decision of a board of adjustment is illegal, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.
 - (b) The petition shall be presented to the court within 30 days after the decision is filed in the office of the board.
- (2)
 - (a) Upon presentation of the petition the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board.
 - (b) The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
- (3)
 - (a) The board of adjustment may not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers or of any portions as may be called for by the writ.
 - (b) The return shall concisely set forth any other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (4)
 - (a) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if necessary, to order further proceedings by the board of adjustment.
 - (b) The findings of fact of the board shall be considered by the court unless an objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.
- (5) Costs may not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.
- (6) In any case in which airport zoning regulations adopted under this part, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to an extent, or to be so onerous in their application to a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, the holding shall not affect the application of the regulations to other structures and parcels of land.

Renumbered and Amended by Chapter 270, 1998 General Session