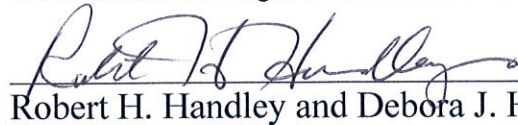
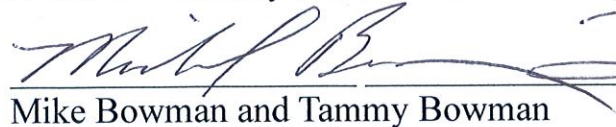


1. Last year the Board of Zoning Adjustment rendered a Decision in this case, ruling “the decision of the City Engineer ... is hereby REVERSED and REMANDED to the City Engineer for such further action as may be appropriate....”.
2. Since that date, to the best of Appellants knowledge, no action has been taken, appropriate or otherwise, to implement the Board’s directive.
3. Boards of Adjustment in Missouri, including the Lee’s Summit BZA, are established by state law and possess all powers and authorities conferred by state law. The Lee’s Summit Board of Zoning Adjustment, like all Boards of Adjustment in Missouri, is empowered to do more than simply affirm or reverse an appealed decision. Among those powers (see §89.090.2RSMo) the Board “may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.”
4. The City Engineer has a variety of discretionary tools at his disposal, and seventeen months of professional courtesy to exercise his discretion would seem sufficient.

WHEREFORE, Appellants respectfully request the Board of Zoning Adjustment to schedule a hearing at its convenience to (1) receive evidence from the City Engineer regarding what actions, if any, have been taken to implement the Board's Decision and directive; (2) receive evidence as to what actions are within the City Engineer's powers to implement the Decision and directive of the Board; and (3) to "make such order, requirement, decision or determination as ought to be made..." to implement the Board's Decision and directive.


Robert H. Handley and Debora J. Handley,


Mike Bowman and Tammy Bowman


Cheryl J. Lyon and Barry Lyon,


Jolene K. Johnson, Trustees of the Gerald and Jolene Johnson living trust
dated June 9, 2015,

Certificate of Service

The Undersigned hereby certifies that a copy of the above and foregoing was filed with the Secretary of the Board of Zoning Adjustment and delivered to the following by hand-delivery this 5th day of October, 2017.

Jeremy V. Cove, Esq.
Attorney for the City of Lee's Summit
(acting by and through its Board of Zoning Adjustment)

Brian Head, Esq.
Attorney for George Binger, Cty Engineer


Robert H. Handley

**CITY OF LEE'S SUMMIT, MISSOURI
BOARD OF ZONING ADJUSTMENT**

IN THE MATTER OF:

**City Engineer's January 25, 2016 Approval of
Floodplain Development Permit/Application
Submitted by Lakeside View Properties, L.L.C.
On January 23, 2016.**

ROBERT H. HANDLEY, et al.,

Appellants.

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**City of Lee's Summit
Development Center**

Application #PL2016-031

**Floodplain Development
Permit/Application (#Unknown)**

OBJECTIONS TO MOTION TO SHOW CAUSE

City Engineer, George Binger, III, hereby objects to Appellants' Motion to Show Cause

Why Further Actions Should Not Be Ordered for the following reasons:

1. This Board entered its Findings of Facts and Conclusions of Law on the underlying appeal on June 23, 2016. Pursuant to Sections 89.110, RSMo., Appellants had 30 days thereafter to seek circuit court review of that decision. They did not seek review, so the decision became final on July 23, 2016.
2. This Board was vested with jurisdiction of the appeal from the time it was filed until the decision became final. *Rosedale-Skinker Improvement Assn. v. Board of Adjustment*, 425 S.W.2d 929, 931-932 (Mo. 1968)(may only open for reconsideration while still having jurisdiction before the thirty day appeal time runs).
3. There is no statutory authority that would provide this Board with continuing jurisdiction over the subject matter of the appeal, or the power to reopen, reexamine or enforce its decision. As an administrative body, this Board is a creature of statute and cannot exercise any more authority than has been provided by statute. *State ex*

rel. Laidlaw Waste Systems, Inc. v. City of Kansas City, 858 S.W.2d 753, 757 (Mo. App. 1993)(when the limit expires the agency loses jurisdiction) and *Peerless Fixture Co. v. Keitel*, 195 S.W.2d 449, 451 (Mo. 1946).

4. Appellants' motion asks this Board to act outside its statutory authority and should not be entertained.
5. With respect to the City's own UDO, Section 4.510 of the UDO requires a decision be rendered within thirty (30) days of the date of the application which time has expired. The UDO grants no additional jurisdiction to the Board.
6. In addition, the Appellants are not without a remedy independent of this Board's actions which they may pursue. See e.g. *Lee v. Osage Ridge Winery*, 727 S.W.2d 218, 222-223 (Mo.App. 1987).

Therefore, the hearing and other relief requested by Appellants should be denied.

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City of Lee's Summit
Development Center

Respectfully submitted,



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Litigation

Brian W. Head, MO #45782 City
Attorney

Jacqueline S. McCormick Heanue, MO #
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