

**INSTRUCTIONS FOR COMPLETING THE APPLICATION TO APPEAL PROFESSIONAL SERVICE BILLS UNDER PROVISIONS OF THE “MUNICIPAL LAND USE LAW,” N.J.S.A. 40:55D-1ET SEQ.**

**SECTION ONE**

1. The Applicant shall complete his name and address. If more than one party has a 10%, or greater interest in the project, list all the parties with a 10%, or greater interest on a separate sheet. The Applicant listed should be the principal officer or partner who will participate in the hearing. The address listed shall be a residence address
  
2. The name of the project – subdivision if any, (a) the block and lot of the subject property along with the (b) address and (c) municipality. Furnish the business address of the applicant if different from that shown in (a) and (b)
  - (d) the nature of the appeal shall list the particular professional service being contested, architectural, planning, legal, engineering, etc. Name the professional service being challenged. Name of the individual and professional license of that person
  
  - (e) furnish the amount of escrow posted
  
  - (f) permit number: the number of the UCC permit, or Planning Board/Zoning Board of Adjustment application number along with the date of issuance.
  
3. Complete The Appeal Application Form
  - (a) furnish a copy of the written notification to the municipality disputing the charges made by the professional as outlined in 40:55D-53.2a. Provide copies of other pertinent documentation regarding the municipal appeal and a narrative setting forth the circumstances and events surrounding said appeal
  
  - (b) furnish a certified copy of the resolution or ordinance which establishes a schedule of engineering service fees to be used by the approving agency. Fees for project review and inspection for development projects shall be at the same rate used for similar work for the approving agency.
  
  - (c) furnish a copy of the Developers Agreement between the applicant and the approving agency and a copy of the Board Resolution.
  
  - (d) furnish a copy of the professional service bills being contested. The professional service bills must have been submitted to the applicant prior to payment by the approving agency (C.40:55D-53.2c).
  
  - (e) provide a legal brief stating the facts in law, if any, that the applicant proposes to use in the hearing. The brief shall also include why the applicant feels that specific bills should be contested. The brief shall reference the specific provision(s) of a statute or rule upon which the applicant is relying and shall set forth the extent and nature of the applicant’s reliance upon such provision(s). The brief shall have a

cover page which shall provide the statute under which the appeal is being brought, the nature and date of the action appealed from, the date the appeal was filed and the basis of the appeal.

- (f) provide a report that shows what fees are being contested, how much of the fee is in question, what the revised fee should be and the reason for the change, eq., hourly rate, number of hours, etc.
- (g) provide copies of the site plan/subdivision plan showing the extent of the proposed improvements complete with the signature and impression seal of the professional of record. Provide copies of the completed application checklist and the Municipal Land Use Law Ordinance pertaining to the application.
- (h) provide a chronological description of the work. The applicant shall prepare a chronological description of the extent and the progress of the work constructed each day. The description shall include all phases of the work done each day, eq., clearing site, survey layout, excavation, construction of forms, installation of reinforcing steel, casting of concrete, removal of forms, site restoration, and municipal acceptance. The daily description shall include the quantity of each item completed and the time of the day construction was active on each item, eq., all day, all morning, first two hours in morning, between coffee and lunch, etc., to establish the number of hours worked.

Where the appeal is for fees incurred during the planning and zoning process necessary to secure approval by the municipality, the following chronological description shall be followed. The applicant shall prepare a chronological description of the approval process. This shall include the date and time required for each meeting or hearing where the applicant had contact with the professional. The total length of the meeting and that portion of the meeting devoted to the subject applicant shall be listed. Letters, telephone, fax, email, etc., correspondence shall be listed. Time required to obtain permits and approvals from NJDEPE or other similar agencies which required input from the subject professional shall also be listed in detail.

**Written testimony not subject to cross-examination will not be allowed.**

- 4. (a) The applicant shall include with the application the certified mail, green card, return receipt requested (RRR) addressed to the professional whose service bill is being contested and the subject municipality. The notice to the contested party and the municipality shall include a copy of all the data required for this application, including a copy of these instructions, to inform the professional and municipality of the application to contest the bill.
- (b) The professional service bills whose bills are being challenged shall have an opportunity to review the scope and extent of the challenge. Not later than 30 working days after receipt of the certified RRR notice, the professional shall file a reply with the municipality and with the secretary of this Board who will then schedule a hearing date. The professional service firm shall prepare a reply to the bills being contested. Furnish copies of daily reports, time sheets, diary entries, survey records, etc., to verify and support the bills subject to appeal.

5. The Applicant shall provide an original and 15 copies of each required document prepared for the subject application, application form and the required application fee. An application shall not be considered complete unless accompanied by the fee, the correct number of copies and the required documents. Simultaneously with the filing of any application for a hearing, the person filing the application shall provide a copy thereof to the municipality, the approving authority and any professional whose charge is the subject of the appeal. Proof of compliance with this requirement shall be filed with the Board Secretary.

The professional service firm shall file 15 copies of the reply including all supporting data.

## **SECTION II**

For the purpose of clarifying portions of P.L.1995 Chapter 54, the following procedures and definitions are provided:

1. Licensed professional engineer with municipal site improvement construction experience: a member of the Construction Board of Appeals who is a professional engineer licensed by the State under RS 45:8, and has earned the Certified Municipal Engineer (CME) designation as authorized by the New Jersey Municipal Engineering Institute (NJMEI). The NJMEI has established a series of instructional seminars comprising 60 contact hours which are devoted to municipal construction and municipal government operations.
2. Builder: A member of the New Jersey Builders Association.

## **SECTION III – HEARING PROCEDURE**

The hearing will be held observing Robert's Rules of Order. The Chairperson shall state for the Record the statute under which the appeal is being brought, the nature and date of the action appealed from, the date the appeal was filed and the basis of the appeal.

1. The professional will present his case as succinctly as possible. Using the previously submitted documents. Each entry being contested shall be highlighted. The chronological outline of the progress of the work shall be used to show how the work completed fits into the time line. The presentation of witnesses is allowed to provide testimony germane to the contested fees.
2. The applicant shall have the right to cross-examine the witnesses testimony.
3. The applicant may present his appeal of the record as succinctly as possible.
4. The professional shall have the right to cross-examine the appeal witnesses testimony.
5. The Members of the Board may ask questions of either party or any witness at the conclusion of that witnesses questioning by the opposing parties.

6. The municipality may make a statement.
7. The professional may make a closing statement.
8. The applicant may make a closing statement.
9. The Board will close the hearing and may require an accounting analysis of the record to determine the extent that the contested charges are justified or are excessive. An integration of the time lines provided by both parties may be necessary to make a factual determination of the charges. A decision on the appeal will be rendered within ten (10) business days.
10. The decision shall include a statement of the reasons to affirm or modify the original professional charges which are the subject of the appeal.
11. Copies of the decision shall be filed with the Department of Community Affairs and with the Bureau of Regulatory Affairs of the Division of Codes and Standards within 10 business day of the issuance of the decision. Copies shall be filed with the municipality and any other governmental agency that is party to this case. Copies of the decision shall be sent to the applicant and the professional service firm that are subject of the appeal.

#### **SECTION IV – AUTHORITY**

**P. L. 1995 Chapter 54 (C.40:55D-53.2) authorizes the Board to provide rules for its procedure in accordance with this section. The Board shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, and the provisions of the “County and Municipal Investigations Law” P.L. 1953, c.28 (C.2A:6AA-1 et seq.) shall apply.**