

HUNTERDON COUNTY CONSTRUCTION BOARD OF APPEALS

Rules for Escrow Appeals

1. Special Application Form. Applications appealing land use escrow charges shall be submitted on a special form substantially similar to the form annexed hereto.
2. Provisional Appeals. Because of uncertainty inherent in the provisions of N.J.S.A. 40:55D-53.2, regarding the length of time a municipal governing body may take to remediate an escrow appeal, an applicant may file what shall be called a "provisional appeal" with the board. Such provisional appeals may be filed any time after the applicant has notified the governing body in writing that professional charges are disputed. The hearing on such an appeal shall not be scheduled until the applicant notifies the Board Secretary of the applicant's intent to have a hearing, give the governing body more time to remediate or withdraw the appeal. The applicant shall notify the Board Secretary within 45 days of the date the appeal is filed as to the option chosen. If an applicant determines to give the governing body additional time to remediate, a hearing will be scheduled for the Board's regular monthly meeting no earlier than 35 days from the date of the applicant's notification to the Board Secretary. If the applicant fails to notify the board Secretary within the first 45 day time limit, the Board shall have the authority to dismiss the appeal without prejudice at its next meeting. Similarly, if the applicant does not appear at the meeting scheduled after the expiration of the 35 day time limit, the Board may dismiss the appeal without prejudice.
3. Initial and Subsequent Submissions of Information. The information required from an applicant in connection with a provisional appeal shall be less than what is normally required. Once the applicant seeks a hearing date, the applicant shall submit all required information.
4. Single Municipal Attorney. The municipality, the land use board and the professional whose charges are being disputed shall each have the right to appear and to have separate counsel. However, for purposes of administrative convenience, the municipal attorney, or someone designated by the municipal attorney, shall be the sole attorney entitled to notice from the Board and to handle such administrative details as scheduling and evidentiary submissions.
5. Pre-Hearing Conference. The parties shall hold a pre-hearing conference in the board's hearing room one hour before the commencement of the hearing. If both sides represent to the Board Secretary that they will be able to proceed without delay in submitting marked copies of evidentiary materials to the board, this conference may be waived or shortened in time.

**APPLICATION TO HUNTERDON COUNTY CONSTRUCTION
BOARD OF APPEALS REGARDING PROFESSIONAL ESCROW FEES**

PART I

Name of Applicant _____ Municipality _____
Applicant's Address _____ Street Address _____
Of Property _____

Property Owner _____ Block _____ Lot _____
Owner's Address _____ Land Use Body Involved:

Agent/Attorney: _____
Address: _____

Telephone: _____
Fax: _____

Board of Adjustment
 Planning Board
 Combined Land Use Board
 Other (specify on Continuation Sheet)
Nature of Development
 Subdivision (# of Lots _____)
 Site Plan (Acreage _____)
 Variance
 Other (specify on Continuation Sheet)

PART II

In addition to completing the top portion of this form, please provide the following information and, where applicable, annex copies of documents.

(1) Name, title and address of the professional whose fees you are disputing. (If you are disputing the charges of more than one professional, you must file a separate appeal for each professional.)

(2) N.J.S.A. 40:55D053.2 requires that you notify the governing body in writing that you dispute a professional's charge(s) and that the governing body have the opportunity to remediate within a "reasonable time." Before your matter can be heard by this board, you must have first notified the governing body. Please attach a copy of the written notice to the governing body to this application, making sure that the date of mailing appears. If the governing body has responded in writing, attach a copy of that response.

(3) Because of the uncertainty regarding the length of a "reasonable time" and when the 45 or 560 day appeal periods begin and end, you are entitled to file a provisional appeal. If you choose to do that, then your matter will be scheduled for a hearing no later than the Board's next regular meeting at least two months from the date this appeal is received. If you do not contact the Board Secretary within 45 days regarding the need to perfect the appeal or have an extension of the hearing date, your appeal will be dismissed without prejudice. Please check and initial the procedure you wish to follow:

- _____ This is a provisional appeal. I agree to give the governing body at least 45 more days to remediate this matter to my satisfaction.
- _____ This is a regular appeal because I am either not satisfied with the remedial action by the governing body or I believe that more than a reasonable time has elapsed since my dispute has been brought to the attention of the governing body.

PART III

IF THIS IS A PROVISIONAL APPEAL, YOU DO NOT NEED TO COMPLETE THIS PART OF THE APPLICATION AT THIS TIME. YOU MUST, HOWEVER, COMPLETE PART IV OF THIS FORM.

- (1) Attach hereto copies of the professional service bills you are disputing.
- (2) On the Continuation Sheet, please prepare a chronological description of the progress of your application and/or construction of the development giving rise to this appeal.
- (3) Please indicate the reason for your objection to the professional's bill(s):
 - Some services performed were unnecessary.
 - The time expended was excessive.
 - Deductions from the escrow account were made prior to the receipt of the required voucher.
 - Other. Set forth on the Continuation Sheet.
- (4) On the Continuation Sheet, please set forth the details of your dispute with the professional's billing(s).

PART IV

(1) To perfect your appeal, you must serve a copy of this Application and the attachments upon the following parties:

- (a) The governing body of the municipality;
- (b) The land use body before which your application was heard; and
- (c) The professional whose fees you are contesting.

Service shall either be made by certified mail, return receipt requested, or by personal delivery. If delivered personally, you must obtain a written document attesting to the receipt of the application.

(2) At the time of the hearing, you must bring the following:

- (a) Proof that you have served this application to the proper parties.
- (b) Plat(s) or survey maps which illustrate the nature of your project.

(3) If you wish to submit legal briefs supporting your position, you may do so up to ten days before the scheduled hearing. The original brief shall be submitted to the Board's attorney (contact the Board Secretary for name and address) with a copy to the Municipal attorney or that attorney's designee.

Dated: _____

Signature (Print Name and Capacity Below)

NOTICES

(A) If this is a provisional appeal (see Part II), the municipality and the professional are not obliged to respond until the applicant notifies you that remediation is not satisfactory. This notice shall be given in the same manner as the original appeal to the Board. Along with that notice, the applicant must complete Part III of this application and provide copies.

(B) At the time of the hearing, the municipality must submit to the Board a certified copy of the Ordinance or Resolution establishing the fee and escrow payments relied upon as well as a copy of the Contract with the professional establishing the professional's rate of compensation.

(C) The municipality and the professional may submit legal briefs in the same manner as the applicant. A reply brief may be submitted up to five days before the scheduled hearing.

(D) The governing body, land use body and professional shall agree upon a single attorney to be responsible for the procedural aspects of the appeal. While each of these parties may have their own attorney appear at the hearing, the applicant and the Board will communicate with the Municipal attorney only unless that attorney designates another attorney to be the coordinating counsel.

