COUNTY OF GLOUCESTER
STATE OF NEW JERSEY
CONSTRUCTION BOARD OF APPEALS
WOODBURY, NEW JERSEY 08096

MEMORANDUM

To: All Administrators, Clerks and Land Use Officials

From: Jeanne Giampola, Secretary

Date: August 23, 2010

Enclosed are the new forms to be used for all escrow appeals.

These rules were formally adopted on July 14, 2010 and memorialized by Resolution at the August meeting. July 14, 2010.

If you have any questions please call the number listed below. Thank you for your cooperation.

Jeanne Giampola, Secretary
856 853-3395 Office

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GLOUCESTER 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 application 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 forty five (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 thirty five (35) days from the date of the applicant's notification to the Board Secretary, assuming the applicant's application is complete. If the applicant fails to notify the Board Secretary within the first forty five (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 thirty five (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. Submission Requirements. The applicant shall provide an original and sixteen (16) 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 with the Board, the applicant shall provide a copy thereof to the governing body of the municipality, the land use body before which any application was heard, and the professional whose fees you are contesting.

5. Application Completeness. The Board Secretary will provide written notice to the applicant, municipality, and professional when the Board has determined that the application is complete; and this said notice of completeness will set out the date and time for a hearing on the applicant's appeal.

6. Pre-Hearing Conference. The parties shall hold a pre-hearing conference in the Board's hearing room one half (1/2) 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 GLOUCESTER COUNTY CONSTRUCTION BOARD OF APPEALS REGARDING PROFESSIONAL ESCROW FEES

PART I

Name of Applicant: _____

Applicant's Address: _____

_____

_____

Property Owner: _____

Owner's Address: _____

_____

_____

Agent/Attorney: _____

Address: _____

_____

_____

Telephone: _____

Fax: _____

Email: _____

Municipality: _____

Street Address Of Property: _____

_____

_____

Block: _____ **Lot:** _____

Land Use Body Involved:

☐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. 40:55D-53.2 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 forty five (45) or sixty (60) 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 (2) months from the date this appeal is received. If you do not contact the Board Secretary within forty five (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 forty five (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) Furnish the following data with this appeal application form:

(a) Copy of resolution or ordinance of the municipality which establishes the schedule of fees for a project review and inspection of development projects.
(b) Copy of any Developers Agreement between the applicant and the land use body before which your application was heard and a copy of the land use body's Resolution(s).
(c) Copy of the professional service bills you are disputing.
(d) Legal brief stating the facts in law, if any, that you propose to use in the hearing. The brief should include why you feel that specific bills should be contested. The brief shall reference the specific provision(s) of a statute or rule upon which you are relying, and set forth the extent and nature of 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.
(e) A report detailing 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, e.g. hourly rate, number of hours, etc. This report should include an accounting analysis showing the extent to which the contested charges are excessive, unnecessary, or were deducted from the escrow prior to a proper voucher. The report shall integrate chronological description of your project, which is part of this application.
(f) A copy of the Plan(s), Plat(s), or survey maps which illustrate the nature of your project (8½x11 only).
(g) A copy of any and all other submittals received by the land use body before which your application was heard, that may assist the Board in reviewing 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 least ten (10) days prior to the hearing, you shall submit to the Board the following:

(a) Proof that you have served this application, and the attachments, upon the proper parties.

(3) The required application fee is One Hundred Dollars and Zero Cents ($100.00) (Check payable to the "**COUNTY OF GLOUCESTER**"). Application fees are non-refundable. Cash is not accepted.

I, _____, certify that the information contained in this application is true and correct to the best of my knowledge, information and belief; and all parties have been properly served.

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 shall submit to the Board a certified copy of the Ordinance or Resolution establishing the fee schedule and escrow payments relied upon as well as a copy of the Contract with the professional establishing the professional's rate of compensation.

(C) At the time of the hearing, the municipality shall submit to the Board a resume/curriculum vitae for each person who has charged for services on any professional service bills that applicant is disputing. The resume/curriculum vitae shall set out the educational experience and qualifications of each such person.

(D) The municipality and the professional may submit legal briefs up to ten (10) days before the scheduled hearing in the same manner as the applicant. A reply brief may be submitted up to five (5) days before the scheduled hearing.

(E) The chronology of your project to be provided on the Continuation Sheet shall provide 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, e.g. 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, e.g., all day, all morning, first two hours in the morning, between coffee and lunch, etc. to establish the number of hours worked.

Where the appeal for fees incurred during the planning and zoning process necessary to secure approval by the municipality, the following chronological description shall be provided. The applicant shall prepare a chorological description of the approval process. This shall include the date and time required for each hearing or meeting 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 any and all outside agencies which required input from the subject professional shall also be listed in detail.

(F) No application shall be scheduled for a hearing unless the application is deemed complete by the Board, and proof of service has been submitted to the Board Secretary that all proper parties have been served with the application, and all attachments thereto.

HEARING PROCEDURE FOR ESCROW APPEALS

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 applicant shall present his appeal as succinctly as possible. The presentation of witnesses is allowed to provide testimony germane to the contested fees.

2. The professional and municipality shall have the right to cross examine the applicant's witness testimony.

3. The professional will present his/her case, if any, as succinctly as possible.

4. The applicant shall have the right to cross examine the professional's witness testimony.

5. The members of the Board may ask questions of either party, or any witness at the conclusion of the witness's 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. A decision on the appeal will be rendered by the Board within twenty (20) 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 decisions shall be filed with the Department of Community Affairs and with the Bureau of Regulatory Affairs of the Division of Codes and Standards within twenty (20) business days of the issuance of the decision. Copies shall be filed with the municipality and any other governmental agency that is a party to the appeal. Copies of the decision shall be sent to the applicant and the professional that are subject of the appeal.

APPEAL CONTINUATION SHEET

Land Use body involved if other than the three types listed: ☐ N/A ☐ See Below

_____

_____

Nature of the development if other than the three listed: ☐ N/A ☐ See Below

_____

_____

Amount of escrow previously posted $_____

Chronology of your project:
(If more space is needed, attach rider.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Basis for disputing the professional's charges:
(If more space is needed, attach rider.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____