



**MUNICIPALITIES AND THEIR LAND USE OFFICIALS MUST PROVIDE FOR THE  
ESTABLISHMENT OF AN ESCROW TO ENSURE THE PAYMENT OF  
PROFESSIONALS RENDERING SERVICES ON APPEALS FROM THE  
DETERMINATIONS OF A ZONING OFFICER**

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Applications for a permit to a municipal Zoning Officer (“Zoning Officer” or “Officer”) involve submission of required forms and materials and payment of a fee, followed by consideration and approval or denial of the permit by the Officer. In the event the permit is denied, pursuant to N.J.S.A. 40:55D-72, recourse may be had before the municipal Zoning Board of Adjustment for an interpretation of the zoning ordinance, variance or other relief under N.J.S.A. 40:55D-70, with an escrow established pursuant to N.J.S.A. 40:55D-53.2 to pay for professional legal, planning, engineering or other services provided during review and adjudication of the application.

But what of the situation in which a permit is granted or denied by the Zoning Officer and an appeal of the Officer’s determination is sought from the Board of Adjustment by an unsuccessful applicant or, in the alternative, a property owner aggrieved by an Officer’s approval? Such appeals can be lengthy, requiring significant work by Board professionals. Unfortunately, the Municipal Land Use Law (“MLUL”) has historically provided no guidance on escrows for professionals handling such appeals.

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The Municipal Land Use Law (“MLUL”), at N.J.S.A. 40:55D-3, defines an “application for development” as follows:

“...the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).”

Notably, an appeal of the decision of a Zoning Officer is not included in the definition of an “application for development”, even though review of a Zoning Officer’s decision is often integral to the prosecution of - or opposition to - a development application.

N.J.S.A. 40:55D-53.2, entitled “Payments to professionals serving municipality; deposits towards expenses”, Subparagraphs (a) and (b), excerpted below, address in detail the establishment of professional escrows for applications for development as defined in the MLUL and the payment of same:

a. The chief financial officer of a municipality shall make all of the payments to professionals for services rendered to the municipality or approving authority for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.). Such fees or charges shall be based upon a schedule established by resolution. The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality. The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements....

b. If the municipality requires of the developer a deposit toward anticipated municipal expenses for these professional services, the deposit shall be placed in an escrow account pursuant to section 1 of P.L.1985, c.315 (C.40:55D-53.1). The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development. The amount of the initial deposit required shall be established by ordinance. For review of applications for development proposing a subdivision, the amount of the deposit shall be calculated based on the number of proposed lots. For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for circulation-intensive sites, such as those containing drive-through facilities. Deposits for inspection fees shall be established in accordance with subsection h. of section 41 of P.L.1975, c.291 (C.40:55D-53).”

Again, however, no language in N.J.S.A. 40:55D-53.2 addresses the establishment of escrows or

payment for services rendered by municipal professionals in the event of an appeal from a Zoning Officer's decision.

N.J.S.A. 40:55D-72, "Appeals and applications to board of adjustment", is also silent on professional escrows in for an appeal of the decision of a Zoning Officer:

"a. Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

b. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to an administrative officer."

The foregoing legislative review reveals a problem with the MLUL when a Zoning Officer's decision requires an appeal and, in some cases, an extended hearing process before a Board of Adjustment. As the appeal process will not entail the posting of an escrow by the challenger to the Zoning Officer's decision, municipal professionals could potentially be obliged to handle such matters without compensation for their work. This is an arbitrary, unfair resolution of a long-standing legislative oversight which must be corrected, either through MLUL amendment by the Legislature or enactment by individual municipalities of provisions in their zoning ordinances to establish an escrow for the payment of professionals providing services in connection with the appeal.