



# Home Builders Associations of Southeastern PA

## EXECUTIVE SUMMARY - ACT 206

### Reforming Municipal Engineering Fee Arbitration



#### KEY PROVISIONS:

- ❖ Increases the amount of time available to examine & dispute a bill for municipal review and/or inspection fees
- ❖ Permits the dispute of all invoices at one time versus piecemeal
- ❖ Allows developer to “flag” disputed invoices for arbitration upon conclusion of the review/inspection phase
- ❖ Requires municipality to include greater detail in their invoice
- ❖ Prohibits municipality from billing for duplicative inspections conducted by other agencies
- ❖ Prohibits municipality from delaying approvals & permits due to dispute
- ❖ Takes effect Feb 1, 2005

#### SUMMARY OF ACT 206 of 2004

This legislation amends the “Pennsylvania Municipalities Planning Code” by providing for review fees and inspection fees charged by municipalities and the procedure to dispute such fees, including arbitration.

#### Professional Consultants

“Professional Consultants” are defined as “persons who provide expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects or planners.”

#### Review Fees

“Review fees” are currently authorized for the review and processing of “plats” (development plans.)

#### Review fees:

- May include reasonable & necessary charges by “professional consultants” for the review of plats & reporting to the municipality
- Shall be based upon a fee schedule established by ordinance
- Shall be in accordance with ordinary & customary charges for similar services
- Shall not exceed the cost charged by the professional consultant for comparable services when the municipality is not reimbursed
- Relating to an appeal may not be charged to an applicant

#### Itemized Bill for Review Fees

The governing body shall submit an itemized bill to the applicant which shall:

- Show the work performed
- Identify the person performing the work
- Indicate the time & date spent for each task

Interim itemized billing, municipal escrow & other security requirements are not prohibited.

After a decision on an application, the governing body shall submit an itemized bill for review fees incurred through the date of decision, designated as a final bill. If additional reviews are required after the decision, the review fees shall be charged as a supplement to the final bill.

#### Dispute Over Review Fees

If the applicant disputes the amount of any review fees the applicant shall notify the municipality and the professional consultant no later than 45 days after the date of transmittal of the bill to the applicant. The applicant shall explain the basis of their objections to the fees charged. The municipality shall not delay or disapprove an application due to a dispute over fees. Failure to dispute a bill within 45 days shall be a waiver of the applicant’s right to arbitration.

If the applicant and the professional consultant cannot agree on the amount of review fees, the applicant and the municipality shall follow the provisions for arbitration.

### **Inspection Fees**

“Inspection fees” are fees currently established to reimburse the municipality for expenses incurred in connection with the inspection of required improvements (sidewalks, streetlights, fire hydrants, water mains, etc.)

The applicant shall not be required to reimburse the governing body for inspections that duplicate inspections performed by other government agencies or public utilities. The burden of proving an inspection is duplicative lies with the applicant.

Inspection fees shall be based on a fee schedule established by ordinance. Inspection fees shall be in accordance with ordinary and customary charges for similar services. They shall not exceed the cost charged by the professional consultant for comparable services when the municipality is not reimbursed.

### **Itemized Bill for Inspection Fees**

The governing body shall submit an itemized bill to the applicant which shall:

- Show the work performed.
- Identify the person performing the work.
- Indicate the time and date spent for each task.

After the final release of financial security (held to insure the completion of improvements), the professional consultant shall submit to the governing body a bill for inspection services, designated as a final bill.

### **Dispute Over Inspection Fees**

If the applicant disputes the amount of any inspection fees the applicant shall notify the municipality and the professional consultant no later than 30 days after the date of transmittal of the bill to the applicant. The applicant shall explain the basis of their objections to the fees charged. The municipality shall not delay or disapprove a request for release of financial security due to a dispute over fees. Failure to dispute a bill within 30 days shall be a waiver of the applicant’s right to arbitration.

### **Arbitration**

If the professional consultant and the applicant cannot agree on the amount of review fees or inspection fees, the applicant may, within 45 days of the transmittal of the final bill (or supplements), request the appointment of an arbitrator.

The applicant and the professional consultant shall by mutual agreement appoint another professional consultant to review any disputed bills and determine the amount which is reasonable and necessary. The arbitrator shall be of the same profession as the professional consultant whose fees are being challenged.

If the municipality’s professional consultant and the applicant cannot agree upon the arbitrator within 20 days of the request for appointment, then, upon application of either party, the president judge of the court of common pleas shall appoint such arbitrator, who shall be neither the municipality’s professional consultant nor any professional consultant who has performed services for the municipality or the applicant within the preceding five years.

The arbitrator shall review such evidence as the arbitrator deems necessary. The arbitrator shall render a decision no later than 50 days after the date of appointment.

Within 60 days of the decision the applicant or the professional consultant whose fees were challenged shall pay any amount necessary to implement the decision.

If the municipality has paid the professional consultant an amount in excess of the amount determined to be reasonable and necessary, the professional consultant shall reimburse the excess payment within 60 days.

The arbitrator shall be paid by the applicant if the fee is sustained by the arbitrator, otherwise it shall be divided equally between the parties. If the disputed fees are found to be excessive by more than \$5,000, the arbitrator shall have the discretion to assess the arbitration fee in whole or in part against either the applicant or the professional consultant.

The governing body and the professional consultant whose fees are the subject of the dispute shall be parties to the proceeding.