

No. 2004-206

AN ACT

SB 892

Amending the act of July 31, 1968 (P.L.805, No.247), entitled, as amended, "An act to empower cities of the second class A, and third class, boroughs, incorporated towns, townships of the first and second classes including those within a county of the second class and counties of the second through eighth classes, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances, planned residential development and other ordinances, by official maps, by the reservation of certain land for future public purpose and by the acquisition of such land; to promote the conservation of energy through the use of planning practices and to promote the effective utilization of renewable energy sources; providing for the establishment of planning commissions, planning departments, planning committees and zoning hearing boards, authorizing them to charge fees, make inspections and hold public hearings; providing for mediation; providing for transferable development rights; providing for appropriations, appeals to courts and penalties for violations; and repealing acts and parts of acts," providing for the definition of "professional consultants"; and further providing for contents of subdivision and land development ordinance and for release from improvement bond.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 107(a) of the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, reenacted and amended December 21, 1988 (P.L.1329, No.170), is amended by adding a definition to read:

Section 107. Definitions.—(a) The following words and phrases when used in this act shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

* * *

"Professional consultants," 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.

* * *

Section 2. Section 503(1) of the act, amended June 22, 2000 (P.L.495, No.68), is amended to read:

Section 503. Contents of Subdivision and Land Development Ordinance.—The subdivision and land development ordinance may include, but need not be limited to:

(1) Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plats, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development. Such plats and surveys shall be prepared in accordance with the act of May 23, 1945 (P.L.913, No.367), known as the "Engineer, Land

Surveyor and Geologist Registration Law,” except that this requirement shall not preclude the preparation of a plat in accordance with the act of January 24, 1966 (1965 P.L.1527, No.535), known as the “Landscape Architects’ Registration Law,” when it is appropriate to prepare the plat using professional services as set forth in the definition of the “practice of landscape architecture” under section 2 of that act. Review fees may include reasonable and necessary charges by the municipality’s professional consultants **[or engineer]** for review and report thereon to the municipality. Such review fees shall be based upon a schedule established by ordinance or resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges **[by the municipal engineer or consultant]** for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the **[engineer or consultant to the municipalities when fees]** *professional consultant for comparable services to the municipality for services which* are not reimbursed or otherwise imposed on applicants. *Fees charged to the municipality relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.*

(i) *The governing body shall submit to the applicant an itemized bill showing work performed, identifying the person performing the services and the time and date spent for each task. Nothing in this subparagraph shall prohibit interim itemized billing or municipal escrow or other security requirements.* In the event the applicant disputes the amount of any such review fees, the applicant shall, **[within 14 days of the applicant’s receipt of the bill] no later than 45 days after the date of transmittal of the bill to the applicant**, notify the municipality *and the municipality’s professional consultant* that such fees are disputed *and shall explain the basis of their objections to the fees charged*, in which case the municipality shall not delay or disapprove a subdivision or land development application due to the applicant’s **[request over disputed] dispute over fees. Failure of the applicant to dispute a bill within 45 days shall be a waiver of the applicant’s right to arbitration of that bill under section 510(g).**

(ii) In the event that the **[municipality] municipality’s professional consultant** and the applicant cannot agree on the amount of review fees which are reasonable and necessary, then the applicant and the municipality shall follow the procedure for dispute resolution set forth in section 510(g), provided that the **[professionals] arbitrator** resolving such dispute shall be of the same profession or discipline as the **[consultants] professional consultant** whose fees are being disputed.

(iii) *Subsequent to a decision on an application, the governing body shall submit to the applicant an itemized bill for review fees, specifically designated as a final bill. The final bill shall include all*

review fees incurred at least through the date of the decision on the application. If for any reason additional review is required subsequent to the decision, including inspections and other work to satisfy the conditions of the approval, the review fees shall be charged to the applicant as a supplement to the final bill.

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Section 3. Section 510(g) of the act is amended to read:

Section 510. Release from Improvement Bond.—* * *

(g) The municipality may prescribe that the applicant shall reimburse the municipality for the reasonable and necessary expense incurred **[for] in connection with** the inspection of improvements. *The applicant shall not be required to reimburse the governing body for any inspection which is duplicative of inspections conducted by other governmental agencies or public utilities. The burden of proving that any inspection is duplicative shall be upon the objecting applicant.* Such reimbursement shall be based upon a schedule established by ordinance or resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the **[municipal engineer or consultant]** *municipality's professional consultant* for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the **[engineer or]** *professional consultant* to the **[municipalities]** *municipality for comparable services* when fees are not reimbursed or otherwise imposed on applicants.

(1) *The governing body shall submit to the applicant an itemized bill showing the work performed in connection with the inspection of improvements performed, identifying the person performing the services and the time and date spent for each task.* In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, **[within ten working days of the date of billing]** *no later than 30 days after the date of transmittal of a bill for inspection services,* notify the municipality *and the municipality's professional consultant* that such *inspection* expenses are disputed as unreasonable or unnecessary *and shall explain the basis of their objections to the fees charged,* in which case the municipality shall not delay or disapprove a *request for release of financial security,* a subdivision or land development application or any approval or permit related to development due to the applicant's **[request over disputed engineer expenses.]** *dispute of inspection expenses. Failure of the applicant to dispute a bill within 30 days shall be a waiver of the applicant's right to arbitration of that bill under this section.*

(1.1) *Subsequent to the final release of financial security for completion of improvements for a subdivision or land development or any phase thereof, the professional consultant shall submit to the governing body a bill for inspection services, specifically designated as*

a final bill. The final bill shall include inspection fees incurred through the release of financial security.

(2) If, within 20 days from the date of billing, the municipality] *the professional consultant* and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant [and municipality] *shall have the right, within 45 days of the transmittal of the final bill or supplement to the final bill to the applicant, to request the appointment of another professional consultant to serve as an arbitrator. The applicant and professional consultant whose fees are being challenged* shall [jointly], by mutual agreement, appoint another professional [engineer licensed as such in the Commonwealth of Pennsylvania] *consultant to review [the said expenses] any bills the applicant has disputed and which remain unresolved* and make a determination as to the amount thereof which is reasonable and necessary. *The arbitrator shall be of the same profession as the professional consultant whose fees are being challenged.*

(3) The [professional engineer] *arbitrator* so appointed shall hear such evidence and review such documentation as the [professional engineer] *arbitrator* in his or her sole opinion deems necessary and *shall* render a decision [within] *no later than* 50 days [of the billing date. The applicant] *after the date of appointment. Based on the decision of the arbitrator, the applicant or the professional consultant whose fees were challenged* shall be required to pay [the entire amount determined in the decision immediately.] *any amounts necessary to implement the decision within 60 days. In the event the municipality has paid the professional consultant an amount in excess of the amount determined to be reasonable and necessary, the professional consultant shall within 60 days reimburse the excess payment.*

(4) In the event that the [municipality] *municipality's professional consultant* and applicant cannot agree upon the [professional engineer] *arbitrator* to be appointed within 20 days of the [billing date] *request for appointment of an arbitrator*, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such [engineer] *arbitrator*, who, in that case, shall be neither the [municipal engineer] *municipality's professional consultant* nor any professional [engineer] *consultant* who has been retained by, or performed services for, the municipality or the applicant within the preceding five years.

(5) [The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by \$1,000 or more, the municipality shall pay the fee of the professional engineer,

but otherwise the municipality and the applicant shall each pay one-half of the fee of the appointed professional engineer.] *The fee of the arbitrator shall be paid by the applicant if the review fee charged 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 consultant whose fees are the subject of the dispute shall be parties to the proceeding.*

Section 4. This act shall take effect in 60 days.

APPROVED—The 30th day of November, A.D. 2004.

EDWARD G. RENDELL