



A Primer on the Construction Board of Appeals

by Matthew Sontz

The New Jersey State Uniform Construction Code Act¹ applies to construction projects in New Jersey. That statute is implemented by regulations promulgated by the New Jersey Department of Community Affairs (DCA) titled “Regulations for the New Jersey Uniform Construction Code” (UCC).² Enforcement of the UCC is implemented locally by New Jersey’s municipalities. Each municipality has a construction official, as well as individual subcode officials for each of the major subcodes (i.e., building, electrical, plumbing, and fire protection). It is not uncommon for one official to wear multiple hats.

Any construction project that requires permits will also be subject to inspections by the officials. If an official finds a violation of the UCC and/or any subcodes, he or she will issue a violation and possibly a stop-work order. A client who has received a violation or stop-work order has the right to appeal. Appeals of such violations go before the applicable construction board of appeals, which can be a municipal, multi-municipal, or county body. An attorney or client can locate the appropriate board of appeals by contacting the official who issued the violation, the local building department or the county construction board of appeals, which should have a record of each municipal or multi-municipal board of appeals within the county.

The DCA has issued “Rules Governing Construction Boards of Appeals,” which can be found at N.J.S.A. 5:23A-1.1, *et. seq.*³ The rules govern all aspects of the boards of appeals, and should be reviewed prior to any appearance.

The rules provide for the number of

board members and, more importantly, the qualifications of the board members.⁴ An attorney should make sure the board at which he or she is appearing is properly constituted. This is generally done through a discovery request to the board’s secretary or board’s counsel, if it has one, requesting sufficient information to permit the attorney to protect the client from impermissible conflict situations.⁵

An attorney should also make sure that the board member with the relevant subcode qualifications is present for the hearing. That is, if the client has been cited for violating the electrical subcode, then the attorney should make sure the board’s member who is qualified as an electrical subcode official is present at the hearing. Interestingly, if a quorum of board members or if a required board member is not present, the case shall not be heard and the appeal shall be deemed to be denied.⁶ The attorney should be prepared to seek an adjournment in such an instance, as opposed to missing the opportunity to present at the board of appeals.

The rules provide for the hearing procedures.⁷ The attorney and client may present testimony and examine and cross-examine witnesses consistent with reasonable rules of procedure and due process. A representative of the municipality that issued the violation presents first, followed by the appellant. Board members are permitted to question witnesses following questioning by the parties. Board members are also permitted to visit the construction site that is the subject of the appeal.

The attorney should confirm with the board’s secretary in advance whether the

proceeding will be recorded. If not, then the attorney may want to make arrangements for a court reporter to be present at the hearing.

The rules provide for how the board should make its decision and what that decision should contain.⁸ The board’s decision is generally due within 10 days. Interestingly, if the board fails to hear an appeal and render a decision within the regulations’ time periods then the appeal shall be deemed denied. The attorney should diligently monitor the board’s progress on a decision, and be prepared to petition the board and the adversary for an extension of time, to avoid the default result of denial. The attorney should also work to ensure that the board’s decision complies with the rules, because those decisions will be the basis of any further appeal. ■

Endnotes

1. N.J.S.A. 52:27D-124, *et. seq.*
2. Remember that in the construction context the UCC means the Uniform Construction Code and not the Uniform Commercial Code. N.J.A.C. 5:23-1.1, *et. seq.*
3. The rules are scheduled to expire on Oct. 26, 2011, but the DCA extended them until Oct. 26, 2013.
4. N.J.A.C. 5:23A-1.3.
5. N.J.A.C. 5:23A-1.5(d).
6. N.J.A.C. 5:23A-2.2(d).
7. N.J.A.C. 5:23A-2.2.
8. N.J.A.C. 5:23A-2.3.

Matthew H. Sontz is an associate editor of *Dictum* and an associate at Norris, McLaughlin & Marcus, P.A., in Bridgewater.