

Chapter

Escrow Deposits

[HISTORY: Adopted by the Town Board of the Town of Forestburgh 12-7-2006 by L.L. No. 7-2006. Repealed and Replaced by L.L. No.2-2022. Amendments noted where applicable.]

GENERAL REFERENCES

Building Code administration — See Ch. **68**.

Freshwater wetlands — See Ch. **96**.

Subdivision of land — See Ch. **148**.

Wireless communications facilities — See Ch. **176**.

Zoning — See Ch. **180**.

§ 82-1 Purpose.

- A. The Town Board enacts this chapter to put in place a uniform system for the reimbursement of engineering, planning, legal and stenographic expenses and fees reasonably necessary to aid in the review and determination of projects as defined in § **82-3** of this chapter which would otherwise be raised by assessments of the taxpayers of the Town. It is the intention of this chapter that the reasonably necessary costs of such consultants ultimately be paid by those who seek and benefit from such approvals, rather than from general Town funds.
- B. The Town also wishes to establish a procedure to be followed requiring the deposit of those funds in the Town's Special Trust and Agency Account or similar account established by the Town Board and requiring that payments from that account be made only upon receipt and approval by the Town Board of itemized vouchers from its consultants following the determination by the Town Board as set forth in § **82-5** of this chapter.

§ 82-2 Statutory authority; supersession of Town Law.

This chapter is enacted under the authority of Subparagraphs a (1), (2), d (3) of Municipal Home Rule Law § 10(1) (ii), and Municipal Home Rule Law § 22. To the extent Town Law §§ 274-a, 276 and 277 do not authorize the Town to require the reimbursement to the Town for its consultants' expenses incurred by the Town in connection with the review and consideration of projects as hereinafter defined in this chapter, it is the expressed intent of the Town Board to change and supersede such statutes. More particularly, such statutes do not authorize the deferral or withholding of such approvals in the event such expenses are not paid to the Town. It is the expressed intent of the Town Board to change and supersede Town Law §§ 274-a, 276 and 277 to empower to the Town to require such payments as a condition of such approvals to the maximum extent allowable under the law.

§ 82-3 **Definitions.**

As used in this chapter the following terms shall have the meanings indicated:

APPLICANT

Any person, firm, partnership, association, corporation or entity of any type, kind or nature, who requests the Town, the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Inspector, or any other board, agency, employee or official of the Town for approval of a Land Use Project or application.

CONSULTANT

Any person or entity of any type who is retained by the Town to provide consulting or professional services for any project, including, engineering, planning, legal and stenographic expenses.

CONSULTANT SERVICES

Professional services or consulting related to engineering, planning, legal, technical, environmental sciences, or such other professionals services Reviewing Boards or Officials shall deem reasonably necessary to assist in the review of Land Use Project applications, including professional services for the inspection and approval of any installations, infrastructure or improvements after final approval of such application, or to review applications for consistency with prior related approvals.

LAND USE PROJECT

Means and includes an application, petition or request to the Town Board, Planning Board, Zoning Board of Appeals, or Building Inspector for zoning, rezoning, subdivision, site plan, special use permit, variance, interpretation, appeals, improvement district formation or extension of such, applications for building permits, any related environmental review, or other similar actions related to the use or alteration of land situated in the Town of Forestburgh.

REVIEWING BOARD OR OFFICIAL

The Town of Forestburgh Town Board, Planning Board, Zoning Board of Appeals, Building Inspector, Code Enforcement Officer, or Zoning Enforcement Officer, in the review of any Land Use Project application.

§ 82-4 **Reimbursement of fees and expenses.**

A. Reasonably Necessary Consultant Services

1. A Reviewing Board or Official may retain such Consultant Services as such board or official shall deem reasonably necessary to assist in the review of Land Use Project applications or in the inspection and approval of any installations, infrastructure or improvements after final approval of such applications.

2. The Applicant shall reimburse the Town for the cost of such reasonably necessary consultant services incurred by the Town in connection with the review and consideration of such Land Use

Project in accordance with this chapter.

3. The Reviewing Board or Official seeking consulting services shall review and audit all vouchers submitted by such consultants and shall charge such consulting fees and disbursements against an Applicant's escrow if they are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the proposed project or in the inspection and approval of any installations, infrastructure or improvements after final approval of such applications.

(a) For purposes of the foregoing, a fee or expense, or part thereof, is necessarily incurred if it is charged by the engineer, attorney, planner, or other professional consultant for a service which was rendered in order to ensure or assist in compliance with laws, regulations, standards or codes which govern the orderly development and sound planning in connection with Applicant's Land use Project. For the avoidance of doubt, a fee, expense, or cost incurred for general governmental functions not directly related to the review of Land Use Project application shall not be charged against an Applicant's escrow. Reimbursement for expenses incurred in the course of an appeal to the Zoning Board of Appeals shall be limited to costs for physical accommodations, if not held in Town facilities; publishing any required notices; and any necessary stenographic transcriptions.

(b) A fee, or part thereof, shall be deemed a reasonable amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review and approval of similar projects in the Town, and if there are no similar projects in the Town, then for similar projects located in Sullivan County and the surrounding area, to the extent that such similar projects may exist. In determining whether the fee is reasonable, the Reviewing Board or Official may take into consideration the size, type and nature of the project, together with such special features including, but not limited to, topography, soil conditions, water, drainage conditions and any special conditions or considerations considered relevant. A fee may also be deemed reasonable if it is assessed or estimated on the basis of reliable factual studies, statistics, or professional opinion, and limited thereto.

(c) As a general guideline, the Town's aggregate consultant costs shall be deemed reasonable if:

(i) For Land Use Projects involving the construction or development of residential dwellings, including subdivision, site plan approval, review of any application for consistency with prior approvals, post-approval inspections, and any associated environmental review, fees for consulting services chargeable to the Applicant does not exceed 2% of the total project value. The total project value shall be calculated based on the actual purchase price of the land or the fair market value of the land, whichever is higher, plus the cost of all required improvements, including construction of all proposed dwellings or structures, and the development of roads, utilities and other infrastructure as based on demonstrable evidence.

(ii) For Land Use Projects involving commercial and industrial uses or development, the total project value shall be calculated based on the actual purchase price of the land or the fair market value of the land, whichever is higher, plus the cost of all supplying utility service to the project, the cost of site preparation and the cost of

labor and materials as determined with reference to a current cost data publication in common use. In the case of such projects, for consulting services chargeable to the Applicant shall not exceed 2% of the total project value.

(iii) For all other Land Use Projects, consulting services chargeable to the Applicant shall be determined in accordance with section 4 (A) (3) (b) and subject to the procedures set forth in section 4 (B) of this chapter.

(d) Notwithstanding the guidelines above, consultant fees that exceed the limits in (i) and (ii) due to the scope, nature or circumstances of a particular project may be nevertheless still be reasonable if consistent with the section 4 (A) (3) (b) or otherwise agreed upon by the Applicant and Town in an escrow agreement under section 5 (A) of this chapter.

4. All such charges shall be paid on submission of a town voucher. In the event an application requires review by more than one Reviewing Board or Official, all reviewing boards or officials shall use the same consultant(s) to the extent practicable. In all instances, duplications of consultants' reports or services shall be avoided wherever possible in order to minimize the cost of such consultants' reports or services to the applicant.

B. Procedure

1. At the time a Reviewing Board or Official determines consulting services are reasonably necessary for the review of a Land Use Project application, such board or official shall prepare a scope of services to be performed and request a maximum fee proposal from the professional(s) to whom the referral is made.

2. At the time the maximum fee proposal is received by the Reviewing Board, it shall be placed on that Board's next available agenda for review with the Applicant. Maximum fee proposals requested by the Building Inspector shall be referred to the Planning Board for review with the Applicant. If the Applicant agrees with the maximum fee proposal, the Reviewing Board may approve the same, and Applicant shall be required to execute an escrow agreement in a form approved by the Town, in consultation with the Town Attorney. If the Applicant disagrees with the maximum fee proposal, the Reviewing Board may adjourn the matter until such time as the professional is available to attend a board meeting to further review its fee proposal with the Applicant or some other arrangement is agreed upon among all parties. Where no agreement is reached, the Applicant may appeal in accordance with section 8 of this chapter.

3. A Land Use Project application shall not be deemed complete until the Reviewing Board and the Applicant are in agreement with the scope of services and fee proposal, have executed an escrow agreement in a form approved by the Town, and Applicant has provided an initial escrow deposit. All relevant time periods shall be tolled pending resolution of the same. No review shall be undertaken by the Reviewing Board or Official, or its consultants, on any Land Use Project application until the procedure herein is complete and an initial fee and escrow deposit as set forth herein is paid.

4. In the event the professional providing consulting services submits a request to the Reviewing Board to amend the scope of services or otherwise increase the maximum fee proposal, the procedure described above shall be utilized for its approval.

5. An applicant may waive the above procedure, execute an escrow agreement in a form approved

by the Town, and deposit funds to the escrow account pursuant to such agreement and § 5 of this chapter.

§ 82-5 Deposit of funds; payments of fees.

- A. After completion or waiver of the procedure set forth in section 4 (B) of this chapter, the Applicant shall tender the initial deposit set forth in the escrow agreement with the Town, which sum shall be used to pay the costs described in § 4 (A) herein.
- B. All deposits, fees or reimbursements required pursuant to this chapter shall be paid to and collected by the Town Clerk.
- C. Upon receipt of such monies, the Town shall cause such monies to be placed in the Town's Special Trust and Agency account or similar account established by the Town Board, without interest accruing to the applicant, and shall keep a separate record of all such monies so deposited and the name of the applicant and project for which sums were deposited.
- D. Each professional providing consulting services pertaining to the subject application shall submit monthly itemized vouchers to the Town Clerk and Building Department reasonably setting forth the services performed and amounts charged for such services. Copies of said itemized vouchers shall be transmitted to the Applicant simultaneously with their delivery to the Town, together with a statement notifying the Applicant that the failure to object to payment of the amount of the charges contained in said itemized voucher out of escrow funds within 15 days of the delivery of said notice shall constitute an agreement by the Applicant as to the reasonableness of the charges and a waiver of all appeal rights hereunder or under applicable law.
 - 1. Vouchers for consulting services not objected to by the Applicant shall be transmitted to the Town Board for review, audit and approval consistent with section 4 of this chapter. Upon receipt and approval by the Town Board, the Town Supervisor shall cause such voucher to be paid out of the monies so deposited and shall debit the separate record of the account accordingly, and shall be deemed paid by the Applicant.
 - 2. If Applicant objects to the reasonableness of an itemized voucher within the 15 day review period, the Reviewing Board or Official shall review such vouchers for consulting services for consistency with section 4 of the chapter and determine, in its discretion, the engineering, legal and planning fees which are reasonable in amount and necessarily incurred by the Town in connection with the review and/or approval of the Land Use Project application, and shall communicate its determination of same to the Applicant and Town Supervisor. Consulting services fees and costs that the Reviewing Board or Official determines to be reimbursable by the Applicant shall be limited to those that are reasonable in amount and are necessary for the Town's review and action in accordance with section 4 of this chapter and under applicable law, and all other fees and costs shall remain chargeable against the Town.
 - (a) If Applicant does not object to the Reviewing Board or Official's determination within 15 days of notice of such decision, such voucher shall be transmitted to the Town Board for

review, audit and approval in accordance with section 5(D)(1), above.

(b) If Applicant objects to the Reviewing Board or Official's determination, Applicant may appeal such determination within 15 days of notice of such decision in accordance with section 8 of this chapter.

§ 82-6 Deposit amounts.

- A. If at any time during or after the review of any project there shall be insufficient monies on hand to the credit of such Applicant to pay the approved vouchers in full, or if it shall reasonably appear to the Town that such monies will be insufficient to meet vouchers yet to be submitted, the Town shall notify the Applicant who shall deposit additional sums as the Town deems necessary in order to meet such expenses or anticipated expenses. An Applicant may object to the notice for additional deposit funds by commencing an appeal within 15 days for such notice in accordance with section ___ of this chapter.
- B. The Reviewing Board or Official shall suspend review of Applicant's application if Applicant fails to deposit such additional monies within 30 days from the delivery of the notice for additional funds. An approval, building permit, certificate of occupancy or other final decision on a Land Use Project shall not be issued unless all professional review fees charged in connection with the Applicant's project have been reimbursed to the Town. Unless otherwise first appealed in accordance with section ___ of this chapter, Applicant's payment of all reimbursable costs constitutes an agreement by the Applicant as to the reasonableness of the charges and shall act as a waiver of all appeal rights hereunder or under applicable law
- C. After conclusion of the review of the project and after payment of all approved vouchers submitted, any sums remaining on account to the credit of such applicant shall be returned to such applicant. At such time as the Reviewing Board or Official issues a final determination, or in the event inspections are to be made by consultants after approval is granted and the work is performed, such final inspections are made and the work is determined to be satisfactory, the Town shall refund to the applicant the deposit required pursuant § 5, less any sums expended by the Town for such consultant services relating to said project after final audit of the consultant vouchers by the Town Board and payment of such consultant fees. A copy of the computation of said sums so expended shall be provided to the applicant at the time that the Town shall calculate the refund, if any, due the applicant.

§ 82-7 Deposits in addition to application fees.

The deposits required by this chapter shall be in addition to any application fees that may be required by any other rule, regulation or enactment of the Town.

§ 82-8 Appeals.

An Applicant aggrieved in whole or in part by any determination made under section 4 (B) or section 5 (D) (2) (b) may appeal, in writing, to the Town Board for a reduction in the required reimbursement amount. An appeal must be filed with the Town Board no later than 15 days after notification of such adverse decision. Commencement of an appeal under this section stays the review of any underlying

application. Upon such appeal, the Town Board, in its discretion, may determine that an applicant is not required to reimburse the Town for that part of an engineering, legal or planning fee incurred by the Town for consulting services performed in connection with Land Use Project application for which the Town Board determines is not reasonably necessary and consistent with section 4 of this chapter or under applicable law. The Town Board's determination shall be in writing and shall be made no later than 60 days after receipt of the Applicant's appeal. Any Applicant aggrieved by such determination of the Town Board may bring a proceeding in the Supreme Court of the State of New York, in and for the County of Sullivan, pursuant to Article 78 of the Civil Practice Law and Rules of New York, within 30 days of the filing of such decision with the Town Clerk.

§ 82-9 Nonpayment of fees.

Any fee imposed pursuant to this chapter that remains unpaid shall become a lien against the real property for which the application was filed if not paid within 30 days after demand and/or exhaustion of the administrative remedies under this chapter. Such unreimbursed fees shall thereupon be levied against the said premises in the same manner as a tax on real property, in addition to all other taxes, fees, rents or charges that would otherwise be so levied. In the event an application is filed in connection with more than one tax lot, then the Town Receiver of Taxes shall distribute such levy equally among each such tax lot without regard to assessed value or any other factor.