

TOWN OF RHINEBECK

LOCAL LAW NO. 2 OF 2006

BE IT ENACTED by the Town Board of the Town of Rhinebeck as follows:

SECTION 1. **Legislative Finding, Intent, and Purpose.**

The Town Board enacts this Local Law to provide a mechanism for the reimbursement of fees and expenses which would otherwise be paid by the assessment of the Taxpayers of the Town of Rhinebeck to defray the cost to the Town for the retention of competent engineering, planning, legal and other consultants to review projects before the Town of Rhinebeck Planning Board, Zoning Board of Appeals and Town Board for which Special Permit, Variance, Site Plan Review and Approval, subdivision review and approval or other approvals are sought by an applicant and to assist those Boards and Town officials in the inspection and approval of any installations, infrastructure or improvements after final approval of such applications. The Town Board finds that it is essential for the Town to be able to retain the services of competent engineers, planners, lawyers and other professional consultants to assist the boards in the review of such applications. The Town Board also finds that it is necessary and proper to establish a procedure to be followed requiring the deposit of those funds in a separate account and requiring that payments from that account be made only upon receipt and approval by the Town Board of itemized vouchers from its consultants, and that such fees of the consultants be reasonable and necessary.

SECTION 2. **Professional Fees.**

A. The Rhinebeck Planning and Zoning Boards and the Town Board, in the review of any applications pending before said Boards, may retain such engineering, planning, legal, technical or environmental consultants, or professionals (“consultant services”) as such Boards shall deem reasonably necessary to assist the Boards in their review of such applications and in the inspection and approval of any installations, infrastructure or improvements after final approval of such applications.

B. The applicant shall reimburse the Town of Rhinebeck for the cost of such consultant services.

C. The Town Board shall review and audit all vouchers submitted by such consultants and shall approve payment only if such consulting fees and disbursements as 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. For purposes of the foregoing, 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 Columbia and Dutchess Counties and the surrounding area, to the extent that such similar projects may exist. The Town Board 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 as the Town Board may consider relevant.

D. A fee or expense, or part thereof, is necessarily incurred if it was charged by the engineer, attorney, planner or other professional consultant for a service which was rendered in order to assist in the protection or promotion of the health, safety or welfare of the Town or its residents; to assist in the protection of public or private property or the environment from potential damage which otherwise may be caused by the proposed land use or development; to insure or assist in compliance with laws, regulations, standards or codes which govern land use and development; to insure or assist in the orderly development and sound planning of a land use or development; to insure the proper and timely construction of public improvements, parks, and other facilities which affect the public welfare; to protect the legal interests of the Town; to avoid claims against, and liability of, the Town; or to promote such other interest that the Town Board may specify as relevant.

E. At such time as the application is approved or denied by the Planning Board,

Zoning Board or Town Board, 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 to Section 3 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.

SECTION 3.

Escrow Accounts.

A. As soon as possible after submission of any application, an escrow account shall be established, from which withdrawals shall be made to reimburse the Town for the costs of consultant services. The applicant shall then provide funds to the Town for deposit into such account in an amount to be determined by the reviewing board with the advice and recommendation of the Town's Engineer, Attorney and/or Planner based on their evaluation of the nature and complexity of the application and their estimation of the project's total value, using the following schedule as a general guideline, with the decision of the reviewing board to be final and conclusive on the applicant:

1. For residential projects, 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 site improvements. In the case of such projects, the initial escrow deposit shall be no more than two percent of the total project value.

2. For commercial and industrial projects, the total project value shall be calculated on the actual purchase price of the land or the fair market value of the land, whichever is higher, plus the cost of supplying utility service to the project, the cost of site preparation and the cost of labor and material as determined with reference to a current cost data publication in common use. In the case of such projects, the initial escrow deposit shall be no more than two percent of the total project value.

3. For projects involving the extraction of minerals, the total project value shall be calculated on the cost of site preparation for mining. Site preparation cost means the cost of clearing and grubbing and removal of over-burden for the entire area to be mined plus the cost of utility services and construction of access roads. Such costs are determined with reference to a current cost data publication in common use. The escrow deposit shall be no more than two percent of the total project value. For those costs to be incurred for phases occurring three or more years after issuance of a permit, the project value shall be determined using a present value calculation.

B. At the time of submission of any application, the applicant shall, in addition to the application fee, submit an initial escrow account funding fee in accordance with a fee schedule adopted by the Town Board by Resolution and an estimate of the total project value prepared by an engineer, architect, surveyor or other qualified professional. The initial escrow account funding fee shall be in an amount sufficient to cover the consultant services costs necessary to review the application and plans upon submission, and to offer recommendations to the reviewing board as to the amount of the initial escrow deposit. The balance of any unexpended portion of that initial escrow account fee shall be applied by the Town towards the applicant's required initial escrow deposit.

C. After the amount of the initial escrow deposit is determined by the reviewing board, the applicant shall be notified of the amount of the initial escrow deposit and how that amount was calculated. In the event that the applicant disagrees with the amount of the initial escrow deposit, the applicant shall have the right to file written objections with the reviewing board specifying the applicant's objections to the amount of the initial escrow deposit. The reviewing board shall, within a period of thirty (30) days after receipt of the objections, make a final determination as to the amount of the initial escrow deposit. The applicant shall then be required to sign a written Escrow Agreement with the Town specifying, in relevant part, the amount of the initial escrow deposit and the protocol for payment of consultant's fees, and the auditing of the same and the requirement of additional funds to be deposited in the escrow account as specified by this Local Law. The application shall not be deemed complete for purposes of commencement of review of the same by the reviewing board until such time as the Escrow Agreement is signed by the applicant and the initial escrow amount is deposited by the applicant with the Town.

D. The applicant shall be provided with copies of vouchers submitted for payment by the consultants for such services as they are submitted to the Town for payment.

E. All sums paid by the applicant shall be deposited in a separate account by the Town from which withdrawals as provided in this local law shall be made.

F. When the balance in such escrow account is reduced to one-third (1/3) of its initial amount, the Town shall advise the applicant and the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such account is not replenished within ten (10) business days after the applicant is notified, in writing of the requirement for such additional deposit, the reviewing board may suspend its review of the application.

G. A building permit, certificate of occupancy, or other permit, approval or action being sought shall not be issued unless all professional review fees charged in connection with the applicant's project have been reimbursed to the Town by the applicant.

H. All fees required pursuant to this Local Law shall be collected by the Town through its bookkeeper or Town Clerk.

I. This Local Law shall be applicable to applications pending at the time it shall become effective unless a prior agreement concerning such fees between the applicant and the Town has been executed.

SECTION 4. **Severability.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Rhinebeck Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 5.

Supercession.

This Local Law is enacted under the authority of subparagraphs (a)(1)(2)(d)(iii) of the Municipal Home Rule Law Section 10(1)(ii), and Municipal Home Rule Law Section 22. To the extent that Sections 274-a, 276 and 277 of the Town Law or any Local Law of the Town of Rhinebeck are inconsistent with this Local Law, it is the intent of the Town Board to supercede these Sections of the Law by virtue of this Local Law.

SECTION 6.

SEQRA Review.

In the event that a Positive Declaration is made in accordance with the New York State Environmental Quality Review Act (SEQRA), all subsequent consultant review fees that are necessary for the preparation or review of an EIS shall be reimbursed to the Town in accordance with the procedures established under SEQRA. The applicant shall maintain the basic escrow account for the continued review of the application that is not directly related to the preparation or review of an EIS. The Town may require the applicant to establish a separate escrow account for the consultant services costs necessary for the preparation or review of an EIS. All deposits, reimbursements and refunds shall be made in accordance with the provisions of this Local Law.

SECTION 7.

Effective Date.

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.