

TOWN OF BEEKMAN
LOCAL LAW NO. X OF THE YEAR 2020

A LOCAL LAW OF THE TOWN OF BEEKMAN, NEW YORK AMENDING CHAPTER 75 OF THE TOWN CODE REGARDING DEVELOPMENT CONSULTING- FEES POST DEVELOPMENT APPROVAL

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

Section I: Title

This Local Law shall be known and cited as Town of Beekman “A Local Law Amending Chapter 75 of the Town Code Requiring Post Approval Consulting fees.”

Section II. Legislative Intent

This local law is determined to be an exercise of the police powers of the Town to protect the public health, safety and welfare of its residents. The Town recognizes the need to require applicants who have received certain approvals that are contingent on future conditions continue to post monies in escrow for post development consulting fees. It has become more prevalent for applicants to receive a final conditional approval which is contingent on the applicant satisfying certain requirements during and even after the applicants development phase. Often the Town incurs consulting fees from ongoing inspections, legal review, enforcement and engineer of these conditions. The amendment would require any applicant that receives a final conditional approval to maintain an escrow account for consulting fees until all development conditions have been met to the satisfaction of the Town.

Section III. Chapter 75 of the Town Code entitled, “Fees and Bonds”, Section 75-6 entitled “Consulting Fees; reimbursement” shall be amended as follows (bold and underline indicates additions):

§ 75-6 Consultant fees; reimbursement.
[Added 3-20-2000 by L.L. No. 1-2000]

- A. When an action subject to the State Environmental Quality Review Act SEQRA, Environmental Conservation Law, § 8-0101 et seq., involves an application before the Town Board, the Planning Board or the Zoning Board of Appeals (hereinafter, the

"permitting authority"), the permitting authority shall, if such permitting authority is the lead agency of the review under the SEQRA, charge a fee to the applicant to recover the actual cost to the Town of preparing and reviewing the environmental assessment form (EAF), environmental impact statement (EIS), the SEQRA findings, notices and all other requirements that are incidental to the SEQRA review process. Such fees may be imposed on the applicant by the lead agency and shall not exceed the amounts allowable under 6 NYCRR 617.13(b) through (d) (the SEQRA regulations). Such fees may be imposed on an applicant for costs incurred by the Town for environmental and planning services, professional engineering services, historic preservation services, legal services and such other professional services as, in the judgment of the lead agency, are appropriate.

- B. Where an applicant submits an application for a rezoning, site plan, subdivision, area or use variance or special use permit to the Town Board, Planning Board or the Zoning Board of Appeals for an action or approval that is exempt or excluded from SEQRA, the Town Board, the Planning Board and the Zoning Board of Appeals shall impose a fee on the applicant to compensate the Town for the actual cost of professional environmental, engineering, planning, historic preservation, legal and other services rendered to the permitting authority prior to a final determination of the application by the permitting authority.
- C. In all cases where the Town Board, the Planning Board or the Zoning Board of Appeals approves a negative declaration in connection with an action governed by SEQRA, the actual cost of professional environmental, planning, engineering, historic preservation, legal and other services provided to the permitting authority between the time of receipt of the application and the final determination on the requested action by the permitting authority may be imposed on the applicant in the same manner as prescribed in Subsection **B** herein. The costs to the applicant imposed under this subsection shall not exceed the limit set forth in 6 NYCRR 617.13(b) through (d).
- D. Where the permitting authority possesses authority under SEQRA or this section to impose costs or fees on an applicant as described in this section and where such permitting authority determines that an applicant will be required to make payments to the Town as provided in this section, such permitting authority shall approve a resolution establishing the amount of money that the applicant is initially required to deliver to the Town Supervisor for deposit in a Town of Beekman non-interest-bearing escrow account maintained by the Town of Beekman for custody of funds collected pursuant to this section.
- E. The applicant may be required by the permitting authority from time to time to deliver additional funds to the Town Supervisor for deposit in the escrow account if such additional funds are required to pay for services rendered to the Town or anticipated to be rendered.
- F. The Town Board, the Planning Board or the Zoning Board of Appeals, as applicable, shall

not make any final determination in a matter pending before it until all applicable fees and reimbursable costs imposed by the permitting authority on the applicant under authority of this section have been paid to the Town Supervisor with reasonable written proof of such payment delivered to the Chairman or Secretary of the permitting authority.

- G. Escrow funds may be refunded to the applicant when the applicant formally withdraws the application from consideration by the permitting authority or receives a final determination from the permitting authority and all actual reimbursable fees incurred by the Town are first deducted from the escrow account, leaving an unencumbered balance that is not required by the permitting authority to pay consulting costs attributable to the application being withdrawn or being finally acted on.
- H. The imposition of fees authorized in this section is in addition to, and not in place of, such other fee schedules currently in force.
- I. This section shall not apply to area variance applications for residential uses on property entirely in a residential zone.
- J. In the event of an applicant's failure to reimburse to the Town funds expended to consultants as provided herein, the following remedies may apply:
 - (1) The Town may seek recovery of billed and unreimbursed fees by bringing an action commenced in a court of appropriate jurisdiction, and the applicant shall be responsible to pay the Town's reasonable attorney fees in prosecuting such action in addition to any judgment.
 - (2) Alternatively, and at the sole discretion of the Town Board, an applicant's failure to reimburse the Town for consultant fees expended by the Town shall be collected by charging such sums against the real property that is subject to the permit application and by adding that charge to and making it a part of the next real property tax bill associated with the subject property. Such charges shall be levied and collected at the same time and in the same manner as general Town taxes, and such fees shall be paid by the Receiver of Taxes to the Town Supervisor to be applied to the escrow fund from which the costs for consultants' fees are paid. Prior to incorporating such delinquent fees into the real property tax bill, the Town shall send written notice to the applicant's address as contained in the permit application and to the property owner, if other than the applicant, at the owner's address of record as contained in the current assessment roll. Such written notice shall be sent by the Town Supervisor by certified mail, return receipt requested. Such notice shall inform the owner and applicant of the delinquent amount of fees owed to the Town and shall set a date for the owner-applicant's objections to be heard by the Town Supervisor. Such notice shall be mailed or delivered no later than 10 calendar days from the hearing date set forth in the notice unless such time period is waived by the owner-applicant in writing. After the

hearing, the Supervisor shall be empowered to correct any errors in the fees owed by the owner or applicant and to extend terms of payment and adequate security of the debt and enter into a written agreement with the owner or applicant to facilitate the payment in full of the fee.

K. Determination of payment.

- (1) In the event of adoption of a local law rezoning a property by request of the owner, the Town Clerk shall determine from the Town Supervisor if all outstanding consultant fees have been paid by the applicant prior to submitting such rezoning local law to the New York State Secretary of State. Such local law shall not be filed with the Secretary of State until such outstanding fees have been reimbursed to the Town or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees.
- (2) In the event of a site plan approved by the Planning Board pursuant to § 274-a of the Town Law of New York State, the Planning Board Chairman shall determine from the Town Supervisor if all outstanding consultant fees have been paid by the applicant or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees prior to affixing his signature to the site plan. All such outstanding consultant fees billed to the applicant during the application process shall be paid in full to the Town prior to the Planning Board Chairman affixing his signature to the site plan.
- (3) In the event of a subdivision plat approved by the Planning Board pursuant to § 276 of the Town Law of New York State, the Planning Board Chairman shall determine from the Town Supervisor if all outstanding consultant fees have been paid by the applicant or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees, prior to affixing his signature to the final plat.
- (4) In the event the subdivision plat approved by the Planning Board pursuant to §276 of the Town Law of New York State or a site plan approved by the Planning Board pursuant to §274 of the Town Law of New York State contains any conditions of final approval (final conditional approval), the applicant shall be required to maintain the escrow account in the amount initially required, until such time as all conditions are met to the satisfaction of the Town.**

- L. The Town Supervisor shall set up escrow funds as part of the trust and agency budget line items whereby consultant fees incurred by the Town pursuant to this section shall be audited and paid against such special fund and not the general fund. The Supervisor is empowered to delegate to the Planning Board Secretary, the Zoning Board Secretary and the bookkeeper the functions of having custody of escrow account records.

M. This section shall apply to all land use permit applications pending before the Town Board, Planning Board or Zoning Board of Appeals when this section is filed with the Secretary of State. All consulting fees incurred by the Town thereafter shall be paid as provided herein.

Section IV. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 75 of the Town Code entitled “Fees and Bonds” is otherwise to remain in full force and effect and otherwise ratified, readopted and confirmed.

Section V. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section VI. Effective Date

This local law shall take effective 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.

