

Village of Allegany
Local Law ___ of the year 2005

Adopted March 7, 2005

A Local Law providing for the reimbursement of consultant, engineering, and attorney fees.

Be it enacted by the Board of Trustees of the Village of Allegany as follows:

Section 1. Title

This local law shall be known as "A Local Law for the Village of Allegany providing for the reimbursement of consultant, engineering, and attorney fees."

Section 2. Legislative Findings and Intent

The Village Board of Trustees of the Village of Allegany, Cattaraugus County, New York is concerned about the orderly development of land in the Village of Allegany. The Village Board hereby finds and determines that in order to protect and safeguard the Village of Allegany, its residents and their property with respect to land development within the Village, all buildings, structures, streets, highways, drainage facilities, sanitary sewer facilities, water supply facilities, utilities, and parks within the Village should be designed and constructed in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations. In order to assure the foregoing, it is essential for the Village to have competent consultants, planners, engineers and attorneys, as appropriate, to review and analyze plans and designs and to make recommendations to the Village Board of Trustees, Planning Board, and Zoning Board of Appeals. The Village Board further finds that the cost of retaining such competent consultants, planners, engineers and attorneys should be paid by those who seek to profit from such developments rather than from general Village funds, which are raised by assessments generally paid by taxpayers of the Village.

This local law is enacted under the authority of New York State Municipal Home Rule Law. To the extent Village Law Sections 7-708, 7-712, 7-712-a, 7-712-b, 7-725-a, 7-725-b, 7-728, and 7-730, do not authorize the Village Board, Planning Board, or Zoning Board of Appeals to require the reimbursement to the Village of consultant, legal and engineering expenses incurred by the Village in connection with the review and consideration of any of the application for the permits or approvals described in those statutes, it is the expressed intent of the Village Board of Trustees 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 Village. It is the expressed intent of the Village Board to change and supersede these provisions of New York State Village Law and any other provision of New York State Village Law or General Municipal Law to empower the Village to require such payment as a condition to such approvals.

Section 3. Consultant Review

A. Applicability

In connection with any application for a special permit, site plan or subdivision approval, zoning amendment, and/or variance or other appeal, the reviewing board may employ consultants, legal counsel, professional engineers, professional planners, and/or other qualified professionals to provide assistance and advice in the review of any application, including on-site investigation, evaluation and inspection; verification of the accuracy of information submitted; evaluation of the adequacy of plans and the sufficiency of submitted reports; study of the impact of proposals upon the resources and environment of the Village, preparation and/or review of environmental impact statements; review of the design and layout of improvements, inspection of installed improvement; and other services or technical assistance as the reviewing board deems necessary for its review of the application.

B. Escrow Deposit

1. All costs incurred for the consulting services enumerated in Section 3 A shall be borne by the applicant. A deposit shall be required in advance to cover the estimated cost of these services.
2. The amount of money initially deposited shall be based on the estimated cost to the Village of reviewing the particular type of application. The reviewing board may consider the professional review expenses incurred by neighboring municipalities in reviewing similar applications. The reviewing board may also consider the Village's past cost in reviewing similar applications. In establishing the amount of the deposit, the reviewing board may take into consideration the size, type and number of buildings to be constructed; the number of lots proposed; the topography, soil conditions, and other environmental conditions at such site; the infrastructure proposed in the application; and any special conditions the reviewing board may deem relevant.
3. If at any time during the processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay incurred costs, or if it shall reasonably appear to the reviewing board that such monies will be insufficient to meet anticipated costs, the reviewing board shall cause the applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.
4. The review expenses provided for herein are in addition to application and other fees required pursuant to other applicable provisions of the Village of Allegany's laws, rules and regulations.
5. Monies deposited by applicant pursuant to this section shall not be used to offset the Village's general expenses for the several boards or its general administrative expenses. Staff costs are not reimbursable. In no event shall the applicant's required responsibility be greater than the actual cost to the Village of such engineering, planning, legal or other consulting services.

6. Fees charged as a result of a SEQR review shall in no event exceed the maximum amounts that can be charged pursuant to SEQR regulations 6 NYCRR Part 617, adopted pursuant to Article 8 of the Environmental Conservation Law.

B. Administration of Escrow Account

1. The applicant shall deposit the required amount with the Village Clerk in the form of a certified check made payable to the Village of Allegany. Upon receipt, the Village Clerk shall cause such monies to be placed in a separate non-interest bearing account in the name of the Village and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.
2. Upon receipt and approval by the Village Board of itemized vouchers from consultants for services rendered on behalf of the Village regarding a particular application, the Mayor shall cause such vouchers to be paid out of the monies so deposited. The record of such account shall be debited accordingly. The consultant shall make copies of all vouchers available to the applicant at the same time the vouchers are submitted to the Village; copies of the vouchers may be redacted to protect proprietary information and/or legally privileged communications between the Village officials and the consultants.
3. The Village Board of Trustees shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the Village in connection with the review and consideration of the applications. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Village for services performed in connection with the review of a similar application. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Village, and/or to protect public or private property from damage.
4. In no event shall an applicant make direct payment to any Village consultant.
5. After the reviewing board has rendered its decision on an application, or upon the withdrawal of an application by the applicant, the remaining balance of the deposit in excess of actual incurred costs, if any, shall be returned to the applicant without payment of interest within sixty days of the date of the decision or date of the withdrawal. The Village will also provide a statement of the costs paid from the escrow account.

C. Failure to comply

1. In the event the applicant fails to deposit the requested consultant review costs with the Village, any application review, approval, permit or certificates of occupancy shall be withheld or suspended by the reviewing board, officer or employee of the Village until such monies are deposited in full with the Village Clerk.

2. The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Village of Allegany for costs associated with consultant review pursuant to this Local Law. In order for an application to be complete, the applicant shall provide the written consent of all owners of the subject real property, authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this Local Law, for engineering, legal and other consulting fees incurred by the Village for the review of the application.
3. In the event of failure to reimburse the Village for such fees, the following shall apply:
 - (a) The Village may seek recovery of unreimbursed engineering, legal and consulting fees by action venued in a court of appropriate jurisdiction, and the defendants shall be responsible for the reasonable and necessary attorney's fees expended by the Village in prosecuting such action.
 - (b) Alternatively, and at the sole discretion of the Village Board, a default in reimbursement of such engineering, legal and consulting fees expended by the Village shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Village. Such charges shall be levied and collected at the same time and in the same manner as Village-assessed taxes and shall be applied in reimbursing the fund from which the costs for the engineering, legal and consulting fees were defrayed. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Village Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than thirty (30) days after its mailing.

Section 4. Severability

If any word, clause, sentence, paragraph section or part of this local law shall be adjudged to be invalid, it shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to that portion directly involved in the controversy in which such judgement was rendered.

Section 5. Effective Date

This local law shall take effect immediately.