

## **Town of Spafford Local Law 2008-4:**

### **A Local Law Pertaining to Professional Services Reimbursement**

1. Title.

The title of this local law shall be the "Professional Services Reimbursement Local Law."

2. Legislative findings, intent, and purpose.

The Town Board hereby finds and determines that in order to protect and safeguard the Town, its residents and their property, with respect to certain land developments within the Town, all should be designed and constructed in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations and dedicated and conveyed to the Town in a legally sufficient manner. In order to assure the foregoing, it is essential that the Town have available to it all necessary professional expertise to assist in the review of plans, designs and applications and make recommendations to the Town Board, Planning Board and the Zoning Board of Appeals. The Town takes great pride in the skill and professionalism of its land use and zoning boards and review staff. However, from time to time, the boards and staff are called upon to review and evaluate matters outside the range of their training and/or expertise. These situations may require the Town to seek out skills not possessed by the Town officials but which are not required frequently enough to justify the hiring of new, specialized staff. At the same time, the cost of retaining such outside expertise should not be borne by the taxpayers of the Town, but rather by those who seek to profit from the decisions of the Town and its boards. Therefore, it is the intent of this chapter to establish a mechanism whereby the Town may utilize necessary expertise for a particular project without imposing the cost on its taxpayers.

3. Statutory authority.

This chapter is enacted under the authority of Subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law § 10(1)(iii) and Municipal Home Rule Law § 22. To the extent that the Town Law of the State of New York does not authorize the Town Board, Town Planning Board or Zoning Board of Appeals to require the reimbursement to the Town of expenses incurred by the Town in connection with the professional review of applications for land use approvals, 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 §§ 64(17-a), 264, 265, 267, 267-a, 267-b, 274-a, 274-b, 276, 277, 278, and 280-a to empower the Town to require such payment as part of the approval process.

4. Definitions.

As used in this local law, the following terms shall have the meanings indicated:

APPLICANT -- Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests the Town Board, the Planning Board or the Zoning Board of Appeals to approve a land use application.

LAND USE APPLICATION -- An application for subdivision approval, site plan approval, area variance, use variance, special permit and any additional review for those as needed to comply with the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, and regulations adopted pursuant thereto, and the Town Code, as amended.

5. Retention of professional services; reimbursement by applicant.
  - A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing a land use application, including, but not limited to, technical or engineering consultants or legal counsel.
  - B. Except as otherwise provided in the Town Code, if, prior to the completion of a review of a land use application, the Town discovers the need to retain consultant and/or expert services, the applicant shall deposit with the Town funds sufficient to reimburse the Town for the reasonable costs of consultation and/or evaluation in connection with review of the application. The Town will maintain a separate escrow account for such funds.
  - C. Upon receipt of such funds, the Town Clerk shall cause the money to be placed in an account in the name of the Town and shall keep a separate record of all money so deposited and the name of the applicant and the project for which the sums were deposited.
  - D. The Town's consultants and experts shall invoice the Town for services rendered in reviewing the application. The Town shall furnish a copy of each invoice received to the applicant upon receipt of the invoice by the Town.
  - E. The Town shall review and audit all invoices received and shall approve payment only of such fees as are reasonable in amount and necessarily incurred by the Town in connection with a review of a land use application. For purposes of this chapter, a fee is reasonable in amount if it bears a reasonable relationship to the average charge by such an expert to the Town or others for services performed in connection with the review of a project similar to that involved in the land use application. In this regard, the Town may take into consideration the size and type of project involved in the land use application and any special conditions or considerations as the Town may deem relevant in connection with review of the particular land use application.
  - F. Contracts for the retention of experts shall be let pursuant to the purchasing policy of the Town unless the contract is one that must be competitively bid.

G. After payment of all outstanding invoices, any funds held by the Town upon completion of a review of a land use application shall be returned to the applicant.

6. Exception.

Notwithstanding anything to the contrary contained in this chapter, an applicant or developer shall not be required to reimburse the Town for any part of a fee incurred by the Town for services performed in connection with matters, including but not limited to those resulting from complaints by third parties, as to which the Town determines the applicant had no responsibility or were beyond the reasonable control of the applicant.

7. Severability.

If any section, clause or provision of this chapter or the application thereof to any persons is adjudged invalid, the adjudication shall not effect other sections, clauses or provisions or the application thereof that can be sustained or given effect without the invalid section, clause or provision or application, and to this end the various sections, clauses or provisions of this chapter are declared to be severable.

8. Effective date.

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State.