

A LOCAL LAW OF THE TOWN OF JOHNSBURG, WARREN COUNTY, NEW YORK, ESTABLISHING A FEE STRUCTURE FOR ENGINEERS AND ATTORNEYS OF THE TOWN OF JOHNSBURG

Be it enacted by the Town Board of the Town of Johnsburg as follows:

Section 1 - PREAMBLE AND ENACTING CLAUSE

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Johnsburg, its residents and their property with respect to certain land development within the Town, all buildings, highways, drainage facilities, water and sewer facilities, other utilities and parks within developments should be designed and constructed in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations and to insure that (a) land to be subdivided is suitable for building purposes without creating dangers to health, or peril from fire, flood, traffic hazard, or other hazard, (b) lots are created such that adequate provision can be made for sewage disposal, water supply, emergency vehicle access, storm water drainage, utility service, and other needed improvements, (c) roads are constructed to Town standards and are suitable to accommodate the expected volume of traffic, (d) the rural and scenic character of the Town is preserved, and (e) goals and objectives of the Town of Johnsburg Comprehensive Plan are furthered. To insure that the above is accomplished and that all dedications are conveyed to the Town in a legally sufficient manner, it is essential for the Town to have competent engineers retained by the Town to review and approve plans and designs, make recommendations to the Town Board and Subdivision Review Board, inspect the construction of highways, drainage, water and sewer, other facilities and parks to be dedicated to the Town and to recommend their acceptance by the Town, and to have competent attorneys retained by the Town to negotiate and draft appropriate agreements with developers, obtain, review and approve necessary securities, insurance and other legal documents, review proposed deeds and easements to assure the Town is obtaining good and proper title and to generally represent the Town with respect to legal disputes and issues with respect to developments, and that the cost of retaining such competent engineers and attorneys should ultimately be paid by those who seek to profit from such developments rather than from general Town funds which are raised from taxes paid by taxpayers of the Town.

This local law is enacted under the authority of Municipal Home Rule Law Section 10(1)(ii)(a)(12) and (d)(3) and Municipal Home Rule Law Section 22. To the extent that Town Law Sections 276, 277 and 278 do not authorize the Town Board or Subdivision Review Board to require the reimbursement to the Town of legal and engineering expenses incurred by the Town in connection with the review and consideration of applications for subdivision approval, it is the express 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 express intent of the Town Board to change and supersede Town Law Sections 276, 277 and 278 to empower the Town to require such payment as a condition to such approvals.

Section 2 - **TITLE**

This Local Law shall be known and cited as the *A Local Law Establishing A Fee Structure For Engineers And Attorneys Of The Town Of Johnsburg*

Section 3 - **DEFINITIONS**

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

- A. **APPLICANT** - Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests the Town through its Subdivision Review Board or Town Board to approve a development or application.
- B. **DEVELOPER** - Any person, firm, partnership, association, corporation, company or organization of any kind who or which constructs or proposes to construct one or more highways, drainage facilities, water, sewer or other facilities, utilities or parks within or in conjunction with a development and to convey or dedicate same to the Town.
- C. **DEVELOPMENT** - Shall mean and include an application for subdivision approval, site plan approval and/or special use permit.
- D. **DRAINAGE FACILITY** - All surface water drainage facilities, including, but not limited to, detention and retention basins, storm sewers and their appurtenances, drainage swales and ditches, and any easements through or over land on which said facilities may be constructed or installed in or in connection with a development.
- E. **HIGHWAY** - The term "highway" includes a street, avenue, road, square, place, alley, lane, boulevard, concourse, parkway, driveway, overpass and underpass and also includes all items appurtenant thereto, including but not limited to bridges, culverts, ditches, shoulders and sidewalks in or in connection with a development.
- F. **PARK** - An area of land located within a development, which is open to the public and devoted to active or passive recreation.
- G. **SUBDIVISION** - A subdivision of land pursuant to the Subdivision Regulations of the Town (including environmental review pursuant to the New York State Environmental Quality Review Act).
- H. **TOWN** - The Town of Johnsburg.
- I. **UTILITIES** - All water, sewer, drainage, gas, electric, telephone, cable television facilities and any easements through or over which said facilities may be constructed or installed in or in connection with a development.

Section 4 - **REIMBURSEMENT OF FEES AND EXPENSES**

1. The applicant, in connection with an application for approval of a development in the Town, shall reimburse the Town for all reasonable and necessary legal and engineering expenses incurred by the Town in connection with the review and consideration of such application.
2. A developer who constructs, or proposes to construct, one or more highways, drainage facilities, utilities or parks within or in conjunction with an approved subdivision by the Town shall reimburse the Town for all reasonable and necessary legal and engineering expenses incurred by the Town in connection with the inspection and acceptance by the Town of such highways, drainage facilities, utilities and parks and the dedication of same to the Town.

Section 5 - **EXCEPTIONS**

1. The following developments are hereby excepted from the application of this local law: Any division of land that does not meet the definition of subdivision in the Subdivision Regulations of the Town.
2. Notwithstanding anything to the contrary contained in this local law, an applicant or developer shall not be required to reimburse the Town for any part of a legal or engineering 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 Board determines the applicant or developer had no responsibility or was beyond the reasonable control of the applicant or developer.

Section 6 - **DEPOSIT AND PAYMENT OF FEES**

1. Simultaneously with the filing of an application for approval of a development and prior to the commencement of any construction of buildings, highways, drainage facilities, utilities or parks therein, the applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in Section 7 of this local law, which sum shall be used to pay the costs incurred by the Town for engineering and legal services as described in Section 4 of this local law.
2. Upon receipt of such sums, the Town Supervisor shall cause such monies to be placed in a separate non-interest bearing account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant or developer and project for which such sums were deposited.
3. Upon receipt and approval by the Town Board of itemized vouchers from an engineer and/or attorney for services rendered on behalf of the Town pertaining to the development, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town.

4. The Town Board shall review and audit all such vouchers and shall approve payment of only such engineering and legal fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of developments and inspection and acceptance of highways, drainage facilities, utilities and parks within or in conjunction with such developments. For purpose of the foregoing, a fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by engineers or attorneys to the Town for services performed in connection with the approval or construction of a similar development and in this regard the Town Board may take into consideration the size, type and number of buildings to be constructed, the amount of time to complete the development, the topography of the land on which such development is located, soil conditions, surface water, drainage conditions, the nature and extent of highways, drainage facilities, utilities and parks to be constructed and any special conditions or considerations as the Town Board may deem relevant; and a fee or part thereof is necessarily incurred if it was charged by the engineer or attorney for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, protect public or private property from damage from uncontrolled, surface water run-off and other factors, assure the proper and timely construction of highways, drainage facilities, utilities and parks, protect the legal interests of the Town including receipt by the Town of good and proper title to dedicated highways and other facilities and avoidance of claims and liability, and such other interests as the Town Board may deem relevant.
5. If at any time during or after the processing of such application or in the construction, inspection or acceptance of buildings, highways, drainage facilities, utilities or parks there shall be insufficient monies on hand to the credit of such applicant or developer to pay the approved vouchers in full, or if it shall reasonably appear to the Town Supervisor that such monies will be insufficient to meet vouchers yet to be submitted, the Town Supervisor shall cause the applicant or developer to deposit additional sums as the Supervisor deems necessary or advisable in order to meet such expenses or anticipated expenses.
6. In the event that the applicant or developer fails to deposit such funds or such additional funds, the Town Supervisor shall notify as applicable, the Chairperson of the Subdivision Review Board, Town Board and/or Town's Code Enforcement Officer of such failure, and any review, approval, building permit or certificates of occupancy may be withheld by the appropriate Board, officer or employee of the Town until such monies are deposited.
7. After final approval, acceptance and/or issuance of a certificate of occupancy relating to any specific development, and after payment of all approved vouchers submitted regarding such development, any sums remaining on account to the credit of such applicant or developer shall be returned to such applicant or developer, along with a statement of the vouchers so paid.

Section 7 - **DEPOSIT AMOUNTS**

The amount of the initial deposit for the various developments covered by this local law shall be as set forth in a schedule of deposits established from time to time, by resolution of the Town Board. Said schedule shall remain in effect and shall apply to all applicants and developers until amended or revised by subsequent resolution.

Section 8 - **APPLICATION FEES**

The deposits required by this local law shall be in addition to any application fees as may be required by other laws, rules, regulations or ordinances of the Town, and shall not be used to offset the Town's general expenses of legal and engineering services for the several Boards of the Town, nor its general administration expenses.

Section 9 - **CONSTITUTIONALITY**

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 Town Board of the Town of Johnsburg hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 10 - **REPEALER**

All ordinances, Local Laws and part thereof inconsistent with this Local Law are hereby repealed.

Section 11 - **EFFECTIVE DATE**

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

SCHEDULE A
Town of Johnsburg
Escrow Funds

Type of Application	Initial Deposit	Depleted to	Redeposited to Level
Subdivisions			
No. of lots:			
1 to 5 lots		Exempt unless planning board makes a determination that the unique nature of the project requires legal or engineering review	
5 to 25 lots	\$2,500	\$500	\$2,500
26 and over	5,000	1,000	5,000
Realignments	500	100	500
 Site Plans			
Square footage:			
Up to 1,000		Exempt unless planning board makes a determination that the unique nature of the project requires legal or engineering review	
1,001 to 10,000	\$2,500	\$500	\$2,500
10,001 and over	5,000	1,000	5,000
 Cluster development plans	\$5,000	\$2,000	\$5,000
 Higher density plans	\$5,000	2,000	\$5,000
 Special use permits			
Square footage:			
Up to 1,000		Exempt unless planning board makes a determination that the unique nature of the project requires legal or Engineering review	
1,001 to 10,000	\$2,500	\$500	\$2,500
10,001 and over	5,000	1,000	5,000
 Rezoning	\$2,500	\$500	\$2,500



Town of Johnsburg

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1.

RESOLUTION NO. 83

Mr. Goodspeed presented the following resolution and moved its passage with a second from Mrs. VanKeuren that whereas the Town Board has held Public Hearings on proposed Local Law #1 of 2007 establishing a Fee Structure for the Town of Johnsburg Planning Board and Zoning Board of Appeals on January 2, 2007 and March 6, 2007 and as the proposed law was changed in accordance with comments from the January 2nd Public Hearing and that there was no negative comment at the March 6th Public Hearing; therefore, the Town Board of the Town of Johnsburg approves the enactment of Local Law #1 of 2007 (copy attached to the minutes). With all members voting in favor the resolution is declared carried.

Ayes-5 (Arsenault, Goodspeed, Stevens, VanKeuren, Thomas) Nays - 0

STATE OF NEW YORK)
COUNTY OF WARREN)
TOWN OF JOHNSBURG)

I, William E. Rawson, Town Clerk of the Town of Johnsburg, Warren County, New York, hereby certify that I have compared the foregoing copy of Resolution Number 83, adopted by the Town Board of the Town of Johnsburg, Warren County, New York, at a meeting held at the Town of Johnsburg Library, North Creek, New York on the 6th day of March, 2007, and that the foregoing is a true copy of said resolution entered in the minutes of said meeting.

In witness whereof, I have set my hand and seal on the 6th day of March, 2007.

SEAL

William E. Rawson
Town Clerk
Town of Johnsburg