

LOCAL LAW NO. 5 -2023 TO AMEND THE CONESUS TOWN CODE BY ADDING PROVISIONS RELATING TO THE REIMBURSEMENT OF CONSULTANT FEES.

BE IT ENACTED, by the Town Board of the Town of Conesus, Livingston County, State of New York, as follows:

Section 1. Authorization.

This Chapter is enacted by local law pursuant to the authority of New York Municipal Home Rule Law Section 10. To the extent that Town Law, including Town Law §§ 265, 267-b, 274-a, 274-b, 276, 277 and 278, does not directly authorize the Town, including the Town Board, Planning Board, or Zoning Board of Appeals, to require reimbursement to the Town of reasonable and necessary legal, engineering and other professional consulting fees, expenses and costs incurred by the Town in connection with engineering, scientific, land use planning, environmental, legal or other similar professional reviews/assessment/advice concerning the adequacy, procedural or substantive aspects of applications or of the issues raised during the course of review/consideration of such applications, including for special/conditional use permit approvals, site plan approvals, subdivision approvals, use or area variances, appeals to and requests for interpretation by the Zoning Board of Appeals, applications for rezoning of parcels to accommodate site-specific land development proposals or otherwise, building permit applications or for any other land use or development permits or approvals required by the Town, it is the express intent of the Town to change and supersede such statutes to permit the same. Moreover, to the extent that such statutes do not authorize the withholding of acceptance, issuance or approvals in the event that such fees, expenses and costs are not paid to the Town, it is the express intent of the Town to supersede such laws to empower the Town to require such payment as a condition to such acceptance, issuance or approvals.

Section 2. Title.

This law shall be known as and may be cited as Local Law No. ____-2023, to Amend the Conesus Town Code by Adding Provisions Relating to the Reimbursement of Consultant Fees and may also be referred to as the “Consultant Fee Reimbursement Law.”

Section 3. Legislative Finding, Purpose and Intent.

The Town Board hereby finds and determines that in order to ensure the proper government, protection, order, conduct, safety, health and well-being of persons and property in the Town, particularly with respect to certain land developments and projects within the Town, it is necessary to obtain the reasonable and necessary counsel of legal, engineering and other professionals in connection with engineering, scientific, land use planning, environmental, legal or other similar professional reviews/assessment/advice concerning the adequacy, procedural or substantive aspects of applications or of the issues raised during the course of review/consideration of such applications, including for special/conditional use permit approvals, site plan approvals, subdivision approvals, use or

area variances, appeals to and requests for interpretation by the Zoning Board of Appeals, applications for rezoning of parcels to accommodate site-specific land development proposals or otherwise, building permit applications or for any other land use or development permits or approvals required by the Town. Such counsel ensures that projects are developed, constructed and operated in a safe and workmanlike manner in conformity with all applicable governmental laws, codes, rules, regulations and procedures, ensuring the proper and necessary government, protection, order, conduct, safety, health and well-being of persons and property in the Town of Conesus.

The cost of retaining such competent engineers, attorneys and other professional consultants should primarily be paid by those who initiate and seek to benefit from such developments and projects, rather than by general Town funds which are raised by assessments and/or general taxes paid by taxpayers of the Town.

Section 4. Implementation of the Reimbursement Requirements

The following provisions, which are hereby enacted, shall comprise a new chapter of the Conesus Town Code, which is hereby established as Chapter 117, which shall be entitled "Reimbursement of Consultant Fees," and which shall provide as follows:

A. Legislative Finding, Purpose and Intent.

The Town Board of Trustees hereby finds and determines that in order to ensure the proper government, protection, order, conduct, safety, health and well-being of persons and property in the Town of Conesus, particularly with respect to certain land developments and projects within the Town, it is necessary to obtain the reasonable and necessary counsel of legal, engineering and other professionals in connection with engineering, scientific, land use planning, environmental, legal or other similar professional reviews/assessment/advice concerning the adequacy, procedural or substantive aspects of applications or of the issues raised during the course of review/consideration of such applications, including for special permit approvals, site plan approvals, subdivision approvals, use or area variances, appeals to and requests for interpretation by the Zoning Board of Appeals, applications for rezoning of parcels to accommodate site-specific land development proposals or otherwise, building permit applications or for any other land use or development permits or approvals required by the Town. Such counsel ensures that projects are developed, constructed and operated in a safe and workmanlike manner in conformity with all applicable governmental laws, codes, rules, regulations and procedures, ensuring the proper and necessary government, protection, order, conduct, safety, health and well-being of persons and property in the Town of Conesus.

The cost of retaining such competent engineers, attorneys and other professional consultants should primarily be paid by those who initiate and seek to benefit from such developments and projects, rather than by general Town funds which are raised by assessments and/or general taxes paid by taxpayers of the Town.

B. Definitions

Consultant Fees (or “Fees”): Reasonable and necessary legal, engineering and other professional consulting fees, expenses and costs incurred by the Town in connection with engineering, scientific, land use planning, environmental, legal or other similar professional reviews/assessment/advice/services concerning the adequacy, procedural or substantive aspects of applications or issues addressed during the course of decision-making/review/approval/inspection function(s) of the Town and rendered relative to and in connection with a particular application, including for special/conditional use permit approvals, site plan approvals, subdivision approvals, use or area variances, appeals to and requests for interpretation by the Zoning Board of Appeals, applications for rezoning of parcels to accommodate site-specific land development proposals or otherwise, building permit applications or for any other land use or development permits or approvals required by the Town.

C. Reimbursement Requirements

Consultant Fees incurred by the Town, including those resulting from the Town’s engagement of legal counsel, professional engineers, professional planners, and/or other qualified professionals or consultants, which are reasonable, necessary to the decision-making/review/approval/inspection function(s) of the Town and incurred relative to and in connection with a particular application, shall be reimbursed to the Town by the subject applicant and/or owner, all in accordance with this Chapter.

D. Audit Requirement

1. Town Board Review. Upon review of itemized invoices submitted by consultants/professionals for Consultant Fees and prior to payment thereof, the Town Board will review such to confirm they are reasonable and necessary to the decision-making/review/approval/inspection function(s) of the Town relative to and in connection with a particular application.
2. Reasonableness. In determining reasonableness, it must be ensured that fees bear a reasonable relationship to the customary and/or average fees charged by consultants within the region in connection with comparable matters, including for example, similar applications for land use, development, etc. Reasonable fees shall not comprise idiosyncratic or atypical charges given the particular matter. In no event shall reimbursable Consultant Fees exceed the actual cost to the Town relative to such services.
3. Necessary. In determining necessity, the Board must find that the subject Consultant Fees are necessary to the decision-making/review/approval/inspection function of the Town as it relates to the particular application. A Fee and expense or part thereof is necessarily incurred, including if it 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

that otherwise may be caused by the proposed land use or development; to assure or assist in compliance with laws, regulations, standards or codes which govern land use and development; to assure or assist in the orderly development and sound planning of a land use or development; to assure 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 interests that the Town may identify as relevant. Expenses that are merely convenient to the Town's objectives shall not be considered necessary.

E. Reimbursement of Consultant Fees

1. Only after audit by the Town Board as described herein, and after actual payment by the Town of the Consultant Fees to the subject consultant/professional, shall such Consultant Fees be billed to the applicant. Such bill for reimbursement of Consultant Fees will be issued on a monthly basis and shall be paid by the applicant to the Town within 30 days. Where funds are available in an escrow account established per this Chapter in connection with an application, Fees will be paid from such funds in said account.
2. In no event shall an applicant make direct payment to any Town consultant.
3. The reimbursement of Consultant Fees required by this Chapter is in addition to application and other fees required pursuant to other applicable provisions of the Town of Conesus's laws, rules and regulations, including those fees set forth on any Town fee schedule, Code section or application.
4. The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible for the reimbursing Consultant Fees as set forth in this Chapter. Where the owner and applicant are different, the applicant shall provide the written consent of all owners of the subject real property acknowledging joint and several responsibility for reimbursement of Consultant Fees.

F. Escrow

1. Escrow Requirement and Amount. Where the Town Building Inspector determines that Consultant Fees are expected to exceed \$1,000.00, an escrow deposit for payment of said Consultant Fees shall be established, and the Building Inspector shall determine the amount required to be initially deposited.

The determination of such amounts shall be based on the estimated Fees to be incurred by the Town in reviewing the particular application. Fees incurred by neighboring municipalities in reviewing similar applications may be considered in establishing such amounts, and the Town's past cost in reviewing similar applications may be considered. In addition, the Town may take into consideration the size, type and number of buildings/structures to be constructed/installed; the number of lots proposed; the topography, soil conditions, and other environmental conditions at the subject site; the infrastructure proposed in the application; any relevant special conditions; and any other factors the Town may find relevant. In making such a determination, the Building

Inspector may consult with the reviewing Board and professionals to be involved with the application.

2. Funding of Escrow

a. Where an escrow deposit is required, if at any time during the review and processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay incurred Fees, or if it shall reasonably appear that such monies will be insufficient to meet anticipated Fees, the Town shall notify the applicant to, and the applicant shall be required to deposit additional sums reasonably necessary to pay for such Fees or anticipated Fees.

b. If the escrow deposit materially exceeds the reasonably anticipated/estimated Fees, any such excess shall be returned to the applicant in accordance herewith.

3. Limitation on Use of Funds. Monies deposited by applicant pursuant to this section shall not be used to offset the Town's general expenses for the several boards or its general administrative expenses, but instead shall only be used to pay for the reasonable and necessary Consultant Fees rendered relative to and in connection with the subject application.

4. Administration of Escrow. Where an escrow deposit is required, the applicant shall deposit the required amount with the Town in the form of a certified check made payable to the Town. Such monies shall be placed in a separate non-interest-bearing account in the name of the Town, and a separate record of all such monies deposited shall be kept, including the name of the applicant and project for which such sums were deposited.

5. Return of Unused Escrow Funds. The remaining balance of the deposit in excess of Consultant Fees shall be returned to the applicant without payment of interest, and a statement of the Fees paid from the escrow account shall be provided, all within 60 days of the following:

- a. After the reviewing board has rendered its decision on the subject application, all relevant conditions which could reasonably related to the incurring of Consultant Fees have been satisfied, and all associated public infrastructure has been completed to the satisfaction of the Town, or
- b. Upon the withdrawal of an application by the applicant.

G. Failure to Reimburse Consultant Fees

1. No application or permit reviews or approvals shall be issued unless the applicant is in compliance with this Chapter.
2. There may be an instance where Consultant Fees have been incurred by the Town but not yet billed to the applicant, or where Fees have been billed but are not yet past due by the applicant, but where the subject Town board(s) is ready for approval of an application or permit. In such case, the subject Town board(s) may condition approval on compliance with this Chapter prior to issuance of any building permit associated with such application.

3. In addition to any other remedy herein or otherwise, should an applicant or owner fail to reimburse Consultant Fees in accordance with this Chapter, regardless as to whether the subject application was ultimately approved or otherwise, the Town may seek recovery thereof in a Court of competent jurisdiction.

Section 5. Associated Provisions and Code Changes.

Section 87-14, General Standards, shall be amended to add a subsection "C thereof, which shall read as follows: "Reimbursement. Unless otherwise stated herein, any reimbursement to the Town of Conesus of fees/costs shall be in accordance with Chapter 117 of the Conesus Town Code."

Section 100-27, Appeals Action, shall be amended such that the last sentence thereof reads as follows: "Upon approval of the site plan and application, and the applicant's payment of the designated fees and, in accordance with Chapter 117 of the Town Code, reimbursable costs due to the Town of Conesus, the Governing Board shall endorse its approval upon a copy of the final site and application.

Section 6. Validity and Severability

Should any word, section, clause, paragraph, sentence, part or provision of this local law be declared invalid by a Court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

Section 7. Repeal, Amendment and Supersession of Other Laws

All other ordinances or local laws of the Town of Conesus which are in conflict with the provisions of this local law are hereby superseded or repealed to the extent necessary to give this local law force and effect.

Section 8. Effective Date

This Local Law will take effect immediately.