

**VILLAGE OF HEAD OF THE HARBOR
BOARD OF TRUSTEES**

**ADOPTED LOCAL LAW NO. 2 OF 2020 AMENDING CHAPTER 88 OF
THE CODE OF THE VILLAGE OF HEAD OF THE HARBOR WITH
RESPECT TO FEES AND DEPOSITS IN CONNECTION WITH THE
REVIEW OF LAND USE APPLICATIONS**

Be it hereby enacted by the Board of Trustees of the Incorporated Village of Head of the Harbor as follows:

Section 1. Amendments.

Chapter 88 of the Code of the Village of Head of the Harbor is hereby amended to read as follows:

Chapter 88. Fees and Deposits.

§ 88-1. Findings, intent and purpose.

The Board of Trustees of the Village of Head of the Harbor finds that the Village incurs costs and expenses as part of the consideration of certain land developments and construction projects submitted to the various boards of the Village. These costs and expenses include routine administrative costs, such as for mailing and publication of legal notices and decisions, taking of stenographic minutes and public hearing transcripts. The Village also incurs costs and expenses for the services of an attorney to provide legal advice with respect to issues raised by a particular application, and when necessary, to negotiate and draft agreements with applicants, to obtain, review and approve necessary securities, insurance and other legal documents, to review and record deeds, easements and covenants required as a condition to the approval of an application. The Village may also incur costs and expenses for the services of an engineer, planner or other professional consultant for purposes of engineering, scientific, land use planning, environmental, or similar professional reviews of the adequacy or substantive aspects of applications, or of issues raised during the course of review of applications 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 the rezoning of parcels to accommodate site-specific land development proposals, or for any other or ancillary land use or development permits or approvals required under the Village Code. The Board of Trustees further finds that the costs and expenses associated with the processing of these applications should ultimately be paid by those who seek to benefit from such developments and construction projects, rather than by general Village funds which are raised by assessments and/or general taxes paid by taxpayers of the Village.

§ 88-2. Filing fees.

All applications seeking a discretionary land use approval from the Board of Trustees, Zoning Board of Appeals, Planning Board, Architectural Review Board or Joint Village Coastal Management Commission, shall be accompanied by a nonrefundable filing fee in an amount established by resolution of the Board of Trustees, and amended from time to time. Said filing fee shall cover the Village's routine administrative costs, such as for mailing and publication of legal notices and decisions, taking of stenographic minutes and public hearing transcripts, which are necessary to fulfill the reviewing boards statutory charge, and shall bear a reasonable relationship to the customary fee charged by Village's in the New York metropolitan region in connection with comparable applications for land use or development.

§ 88-3. Deposit of funds for reimbursement of professional consultant fees.

- A. Simultaneously with the filing of an application for a discretionary land use approval from the Board of Trustees, Zoning Board of Appeals, Planning Board, Architectural Review Board or Joint Management Coastal Commission, the applicant shall deposit with the Village Clerk a refundable deposit of an amount established by resolution of the Board of Trustees, and amended from time to time, which shall be used as an advance against which withdrawals shall be made to reimburse the Village for the cost of legal, engineering, planning and other professional consulting services in accordance with this chapter. No application shall be considered complete for review purposes until said deposit is made.
- B. The fees charged for such professional consultants shall relate only to those services rendered in connection with a specific land use or development application, and which are necessary to the reviewing board's statutory charge and decision-making function, and not for services performed for the mere convenience of the reviewing board. Attendance by professional consultants at a public hearing before the reviewing body to consider a specific application shall be deemed necessary to the reviewing board's statutory charge and decision-making function. Said fees shall bear a reasonable relationship to the customary fees charged by similar professional consultants in the New York metropolitan region on behalf of applicants or reviewing boards in connection with comparable applications for land use or development, and pursuant to a contractual agreement between the Village and such professional consultant. In assessing such fees, the Village may also take into account any special conditions or considerations as it may deem relevant, including but not limited to the quality and timeliness of submissions on behalf of the applicant and the cooperation of the applicant and its agents during the review process.

- C. Notwithstanding the foregoing, the fees charged for legal services under this chapter shall in no event exceed \$7,500, unless it is in connection with a subdivision of real property, change of zone, or any nonresidential use, in which case legal fees shall not exceed \$25,000.
- D. The Village Clerk shall review all vouchers for professional consultant services and shall determine whether such fees are a reasonable and necessary expense that can be reimbursed to the Village. Upon request, the applicant or landowner shall be provided with copies of vouchers for such professional consultant services as they are submitted to the Village. An applicant or landowner may direct any questions relating to fees for reimbursement of professional consultant services to the Village Clerk, who may adjust such fees as may be appropriate or refer the matter to the reviewing board.
- E. Upon request by the applicant or landowner, the Village shall provide copies of statements indicating the cost of professional consultant services paid out of the initial deposit or owing in the event the initial deposit has been depleted.
- F. Upon request by the applicant or landowner, the Board of Trustees shall review and audit all vouchers for professional consultant fees and shall determine whether such fees are reasonable in amount and necessarily incurred by the reviewing board in accordance with the standards for "reasonableness" and "necessity," and the limitations on legal fees as set forth herein. In the event of such request, the applicant or landowner shall be entitled to be heard by the Board of Trustees on reasonable advance notice.
- G. The payment of fees for professional consulting services shall be a condition of any approval and shall be set forth in any resolution of approval and shall be required in addition to any and all other fees required in connection with the review of the application as set forth in any chapter of the Village Code or any Village fee schedule.
- H. Proof of payment of all professional consultant fees shall be obtained by the applicant from the Village Treasurer and presented to the clerk of the reviewing board.
- I. In the event that an application is required to be reviewed by more than one reviewing board, then in such event and to the extent applicable, each such reviewing board shall use the same consultant who shall in such case prepare one report providing the data, information and recommendations requested. In all instances, duplication of consultant's reports shall be avoided wherever possible in order to minimize the cost of such consultant's reports to the applicant.

§ 88-4. Suspension of application and time periods; withholding of approval.

- A. If an initial deposit is depleted, the reviewing board may suspend its review of the application if any outstanding fees are not paid by the applicant within 30 days of the Village Clerk's issuance of a request for an additional deposit.
- B. The reviewing board shall not be obligated to comply with any time periods for review of applications pursuant to state and/or local law if the applicant fails to pay the fees as aforesaid. Any such time periods shall begin to accrue again upon receipt of the required payment.
- C. In the event that the applicant fails to comply with a request for an additional deposit, the Village Clerk shall notify the chair of the reviewing body, and the Building Inspector of such failure, and any approval, building permit or certificates of occupancy shall be withheld by the reviewing board, officer or employee of the Village until such monies are deposited and all professional consultant fees charged in connection with the applicant's project have been reimbursed to the Village.

§ 88-5. Responsibility for reimbursement; village remedies.

- A. The applicant, and the owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Village for funds expended to compensate for the services rendered by professional consultants under this chapter.
- B. In the event of failure to reimburse the Village for such fees, the Village may:
 - (1) Seek recovery of unreimbursed professional consulting fees by action venued in a court of appropriate jurisdiction, and the defendant(s) shall be responsible for the reasonable and necessary attorney's fees expended by the Village in prosecuting such action.
 - (2) Alternatively, and at the sole discretion of the Board of Trustees, a default in reimbursement of such professional consulting fees expended by the Village shall be remedied by charging such sums against the real property that is the subject of the land use 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 the assessed taxes and shall be applied in reimbursing the fund from which the costs were defrayed for the professional consulting fees. 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 Board of Trustees to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than 30 days after its mailing.

§ 88-6. Refunds.

After all pertinent charges have been paid, and upon final approval or denial by the reviewing board or formal withdrawal of the application by the applicant, any sums remaining on account to the credit of such applicant shall be returned to such applicant, along with a statement of the vouchers paid.

§ 88-7. Hardship review.

In the event that any fee or deposit established by this chapter creates an economic or other hardship, application may be made to the Board of Trustees, which is hereby authorized to modify such fee and/or deposit in its discretion, after appropriate public hearing.

§ 88-8. Statutory authority; supersession of state and local regulations.

This chapter is enacted by local law pursuant to Municipal Home Rule Law §§ 10(1)(i), 10(1)(ii)(a)(14) and 22, and Statute of Local Governments § 10(6). To the extent that Village Law §§ 7-712-a, 7-712-b, 7-725-a, 7-725-b, 7-728, 7-730 and 7-738, do not authorize the Board of Trustees, Planning Board or Zoning Board of Appeals, or other boards and commissions of the Village to require that applications 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 the rezoning of parcels to accommodate site-specific land development proposals, or for any other or ancillary land use or development permits or approvals required under the Village Code, be accompanied by filing fees and the deposit of funds that can be used to reimburse the Village for reasonable engineering, legal, planning and other professional consulting fees incurred by a reviewing board in order to fulfill its statutory charge and decision-making function, it is the expressed intent of the Board of Trustees to amend and supersede such statutes in their application to the Village. Moreover, to the extent that such statutes do not authorize the suspension of a reviewing board's consideration and review of an application, or the withholding of a final decision with respect to said application in the event that such reimbursement is not made to the Village, it is the expressed intent of the Board of Trustees to amend and supersede Village Law §§ 7-712-a, 7-712-b, 7-725-a, 7-725-b, 7-728, 7-730 and 7-738, to empower the Village to require such reimbursement as a condition to such consideration, review or approvals.

Section 2. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which judgment should have been rendered.

Section 3. Effective date.

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