

TOWN OF EVANS
PROPOSED LOCAL LAW NO. 7 OF CALENDAR YEAR 2018

1. Add Chapter 71: Expert Fees, Reimbursement of, to read as follows:

Chapter 71: Expert Fees, Reimbursement of

§ 71-1 Title.

§ 71-2 Legislative findings, intent, and purpose.

§ 71-3 Statutory authority; local supersession.

§ 71-4 Definitions.

§ 71-5 Retention of expert assistant; reimbursement by applicant.

§ 71-6 Exceptions.

§ 71-7 Severability.

§ 71-8 Effective date.

§ 71-1 Title.

The chapter shall be known as the "Expert Expense Reimbursement Law of the Town of Evans."

§ 71-2 Legislative findings, intent, and purpose.

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Evans, 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, applications and related materials in order to make recommendations to the Town Board, Planning Board, and Zoning Board of Appeals. The Town of Evans takes great pride in the skill and professionalism of its staff. However, from time to time, the staff is called upon to review and evaluate matters outside the range of staff training. These situations may require the Town to seek out skills not possessed by Town employees but which are not required

frequently enough to justify the hiring of new 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 hire necessary expertise that is needed infrequently without imposing the cost on its taxpayers.

§ 71-3 Statutory authority; local supersession.

This chapter is enacted under the authority of Subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law § 10(1)(ii) 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.

§ 71-4 Definitions.

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

APPLICANT

Any person, firm, partnership, association, corporation, company, limited liability 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 or take other action to advance a proposed land use development project within the Town.

CONSULTANT or EXPERT

Any consultant or professional, including, but not limited to, attorneys, engineers, accountants, financial advisors, architects, surveyors, retained by the Town for any purpose authorized pursuant to this chapter.

LAND USE APPLICATION

An application for subdivision approval, site plan approval, area variance, use variance, special use permit, development plan approval, planned district rezoning, planned unit development, amendments to the zoning map, rezoning, temporary use permits, or any similar approval issued pursuant to the Code of the Town of Evans, as amended, and any additional review for those as needed to comply with any other applicable state or local law, including, but not limited to, the New York Town Law, General Municipal Law, Highway Law, Municipal Home Rule Law, Local Finance Law and the New York State

Environmental Quality Review Act, Environmental Conservation Law Article 8, and any regulations adopted pursuant thereto.

TOWN

The Town of Evans.

§ 71-5 Retention of expert assistant; reimbursement by applicant.

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing a land use application or proposed development plan.
- B. Except as otherwise provided in Chapter 200, Zoning, § 200-53, of the Code of the Town of Evans with respect to applications for special use permits for telecommunications facilities, 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.
- C. The Town will maintain a separate escrow account for such funds. The initial deposit shall be \$5,000.00. The placement of the \$5,000 with the Town shall precede the preapplication meeting. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.
- D. 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.
- E. 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.
- F. 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 or consultant 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.

G. Contracts for the retention of experts and/or consultants, shall be let pursuant to the purchasing policy of the Town of Evans unless the contract is one that must be competitively bid.

H. 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.

§ 71-6 Exceptions.

A. The following developments are hereby exempt from the application of this chapter:

(1) Any development of land of one acre or less abutting an existing public highway.

(2) Any subdivision of land into four or fewer lots abutting an existing public highway.

B. 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.

§ 71-7 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.