

Chapter 57**REIMBURSEMENT OF PROFESSIONAL CONSULTANTS' EXPENSES****§ 57-1. Purpose****§ 57-2. Statutory Authority; suppression of Village Law****§ 57-3. Compensation of Village for review costs****§ 57-4. Definitions****§ 57-5. Procedures on applications****§ 57-6. Funding of escrow account****§ 57-7. Withdrawals from escrow accounts****§ 57-8. Procedures upon depletion of escrow accounts****§ 57-9. Approvals prohibited prior to payment****§ 57-10. Return of unexpended funds****§ 57-11. Village's further remedies for applicant's failure to reimburse**

[HISTORY: Adopted by the Board of Trustees of the Village of Cold Spring 10-22-2019 as L.L. No. 4-2019. Amendments noted where applicable.]

§ 57-1. Purpose.

- A. The Village Board of Trustees enacts this Chapter to put in place a system for the reimbursement of fees and expenses which would otherwise be raised by assessments of the Village taxpayers to defray the costs of the Village's consultants, including but not limited to, engineering, planning and legal, with respect to the review of land use applications as defined in this Chapter. It is the intention of this Chapter that the cost of such consultants should be ultimately paid by those who seek approvals from the Village, rather than from Village funds raised by assessments paid by the Village taxpayers.

- B. The Village also wishes to establish a procedure to be followed requiring the deposit of those funds in a separate account and requiring that payments from that account be made only upon receipt and approval by the Village Board of Trustees of itemized vouchers from its consultants following the determination by the Village Board.

§ 57-2. Statutory Authority; suppression of Village Law.

This article is enacted under the authority of subparagraphs a(1), (2) and d(3) of Municipal Home Rule Law Section 10(1)(ii) and Municipal Home Rule Law Section 22. To the extent Village Law Article 7 does not authorize the Village to require the reimbursement to the Village for its consultants' expenses incurred by the Village in connection with the review and consideration of land use applications as hereinafter defined in this Chapter, it is the expressed intent of the Village Board of Trustees 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 Village. It is the expressed intent of the Village Board to change and supersede all sections of Article 7 of the Village Law to empower to the Village to require such payments as a condition of proceeding with an application or issuing any approval.

§ 57-3. Compensation of Village for review costs.

- A. Compensation required. In order to conduct a reasonable, full and proper review of a land use application, which includes, but is not limited to an application for a sketch, subdivision, lot line change/boundary line adjustment, site plan, special use permit, use variance, area variance, zoning interpretation, Certificate of appropriateness, Certificate of Economic Hardship, Nomination for Designation or Delineation, zoning amendment, sewer, building, water and street sidewalk permit or approval, annexation petitions or rezoning, the reviewing board before which the application is pending shall, pursuant to this article, require the applicant to compensate the Village for the actual cost of professional consultant reviews reasonably necessary to complete the review of the project. The reviews governed by this article shall include review of all land use applications, and all environmental reviews pursuant to law, including review of the proposed action under the State Environmental Quality Review Act (SEQR).
- B. Review fees covered. The fees governed by this article include those of the professional consultant reviews, including:
 - (1) Those by the engineer to the Village, the planner to the Village, and attorney to the Village; and
 - (2) Those by any other professional consultants, as required under the circumstances of a particular application.
- C. Exclusion of administrative fees. The professional fees provided for herein are in addition to application or administrative fees required pursuant to other sections of the Cold Spring Code. Funds deposited by applicants pursuant to this section shall not be used to offset the Village's general expenses of professional services for the several boards of the Village, nor its general administration expenses.
- D. Avoiding duplication. Review fees attributable to environmental reviews under SEQR shall

in no event exceed the maximum amounts to be charged pursuant to the SEQR Regulations 16 NYCRR Section 617.17 (after January 1, 1996, renumbered to section 617.13). SEQR reviews and underlying permit reviews shall be combined wherever practicable.

§ 57-4. Definitions.

The following terms have the following meanings:

LAND USE APPLICATION - Any application for a sketch, subdivision, lot line change/boundary line adjustment, site plan, special use permit, use variance, area variance, Certificate of Appropriateness, Certificate of Economic Hardship, Nomination for Designation or Delineation, zoning amendment, rezoning, annexation petitions or zoning interpretation, sewer, building, water and street sidewalk permit or approval, or any other application seeking approval from the Village to utilize land. The application shall also be deemed to include the SEQR related environmental documents submitted to evaluate the proposed action.

PROFESSIONAL CONSULTANT - The Village's planning, engineering and legal consultants. The term also includes other specialized consultants in land use and environmental matters retained in individual cases, including but not limited to, title examiners, traffic consultants, architects, preservationists and other technical and environmental experts.

PROFESSIONAL REVIEW EXPENSES - All actual expenses incurred by the Village relating to the professional consultant review of the application.

BOARD - The Village Board of Trustees, the Planning Board, the Zoning Board of Appeals, or the Historic District Review Board, as the case may be.

§ 57-5. Procedures on applications.

- A. Escrow required. No Land Use Application shall be considered complete for review purposes, and no professional reviews shall commence, until this article is complied with and, where required, an escrow account is established and sufficiently funded.
- B. Contracts required. The fees to be paid to the consultants shall be established pursuant to contract authorized by the Village Board of Trustees. The Village Board of Trustees shall assure that such contractual fees to be charged are consistent with fees for services then prevailing in the surrounding geographical area.

§ 57-6. Funding of escrow account.

- A. Informal sketch plan, discussion or conceptual review. When an applicant files an application for a sketch plan or conceptual review, the applicable board may ask the applicant to fund an escrow account in the amount of \$250 prior to commencement of review. This amount is intended to cover an informal review by a Village consultant, which is often requested even prior to the submission of a formal application or the paying of any application fees. The informal sketch, discussion or conceptual review shall not include any formal engineering or other professional review unless the applicant establishes an escrow pursuant to Schedule A.
- B. Formal application review. When an applicant files a formal Land Use Application, the

applicant shall fund an escrow account in an amount set forth in Schedule A prior to the commencement of review.

- C. Custody of accounts. The escrow amount shall be placed in a separate non-interest bearing account established for such purpose for each applicant. All review fees required pursuant to this article shall be collected by the Village Clerk. The Village Clerk shall set up escrow funds as part of a trust and agency fund where consultant fees incurred by the Village pursuant to this section shall be audited and paid from such special fund and not the general fund. The Village Clerk shall have custody of escrow account records.
- D. Adjustment in the required escrow amounts. The Village Board may increase or decrease the amounts of the required escrow deposit, as established in Schedule A herein, from time to time, by resolution.

§ 57-7. Withdrawals from escrow accounts.

- A. Audit of vouchers. All vouchers submitted by professional consultants shall be reviewed and audited by Village officials in the same manner as all other charges. The Village shall approve payment of only such fees as are reasonable in amount and are necessarily incurred by the Village in connection with the review. A fee shall be considered reasonable in amount if it bears a reasonable relationship to fees prevailing in the surrounding geographical area for similar services in similar projects. In determining similarity of services and projects, the Village may consider the size of the project, the topography, soil conditions, drainage conditions, surface water conditions, other site constraints, the nature of the improvements to be constructed, the nature of the planning, engineering or legal issues arising in the factual context of the application. In determining whether the fees were necessarily incurred, the Village may consider, in addition to the factors listed above, the nature of the materials provided by the applicant, the manner in which the service relates to the issues which must be decided by the Village in reviewing the application, whether the service provided reasonably assists the Board in performing a function required by law or regulation and such other factors as may be relevant in the factual context of the application. Records shall be maintained showing all amounts deposited, and all amounts paid from the escrow account and all bills and vouchers submitted by the Village professional consultants. The applicant shall in no case be billed for more than the Village has actually expended for consultant review fees.
- B. Payment of audited vouchers. The Village Clerk shall make withdrawals from the escrow account to pay the cost of consultant review services, as established by itemized voucher to the Village. In no case shall an applicant make direct payment to any of the Village's professional consultants.
- C. Village Board of Trustee review. Within 30 days of receiving any voucher for professional consultant fees, whether it has as yet been paid or not, an applicant may file a written request to the Village Board of Trustees seeking review of the charges therein, to determine whether such fees are reasonable in amount and are necessarily incurred by the Village in connection with the review, under the standards set forth in this article. Any party aggrieved by the outcome of the Village's audit may seek judicial review under Article 78 of the CPLR.

§ 57-8. Procedures upon depletion of escrow accounts.

- A. When the balance in such escrow account is reduced to the amount shown on the fee schedule (Schedule A), the applicant shall replenish the amount of the escrow account as shown in Schedule A.
- B. If the applicant fails to make the escrow deposit, or fails to promptly replenish the amount in the escrow account within 15 days of the Village's request, professional reviews shall not begin or continue, as the case may be, until such time as the escrow account is funded or replenished. The Board may also consider an application abandoned if nonpayment of escrow fees continues for more than two months, and the Board may deny an application based upon such abandonment.

§ 57-9. Approvals prohibited prior to payment.

Payment by the applicant of professional fees actually incurred in the review of the application shall be required prior to:

- A. Any processing and/or approval of the application by the reviewing board. The Village Board of Trustees, Planning Board, Zoning Board of Appeals, or Historic District Review Board, as the case may be, shall not process the application and/or grant approval of any kind on any application until the Village Clerk has certified to the Board that review fees actually incurred to the date of approval under this article have been fully paid and/or reimbursed, and that sufficient escrow amounts remain to cover any costs for professional reviews which will be incurred thereafter until the conclusion of the matter, including time spent, but not yet billed, as of the date of final Board action, costs for review of proposed deeds and offers of cession, and similar matters.
- B. Any administrative action in furtherance of an approval. In the event that any approval is granted and professional review fees remain to be paid, the reviewing board shall not take any further administrative action in furtherance of the approval until sufficient provision is made for the payment of these fees. For example, no rezoning amendment at the request of an applicant shall be forwarded for filing with the Secretary of State until the Mayor has certified in writing to the Village Clerk that all professional review fees actually incurred to date have been fully paid and/or reimbursed, and that sufficient escrow amounts remain to cover any professional review costs which will be incurred thereafter until the conclusion of the matter. Similarly, no site plan or subdivision plat approved by the Planning Board shall be signed by the Chair unless the Village Clerk has certified in writing to the Chair that all professional review fees actually incurred to date have been fully paid and/or reimbursed, and that sufficient escrow amounts remain to cover any costs for professional reviews which will be incurred thereafter until the conclusion of the matter.
- C. Issuance of building permits and certificates of occupancy. No building permits or certificate of occupancy or use shall be issued unless all professional review fees charged in connection with the project have been paid and reimbursed.

§ 57-10. Return of unexpended funds.

Any balance remaining in the escrow account shall be refunded within a reasonable time upon applicant's request, upon completion of project review, or upon withdrawal of an application, after all fees already incurred by the Village are first paid and deducted from the escrow account.

§ 57-11. Village's further remedies for applicant's failure to reimburse.

In the event the applicant fails to reimburse to the Village funds expended to consultants as provided herein, the following remedies may apply:

- A. The Village may seek recovery of billed and unpaid fees by bringing an action venued in a court of appropriate jurisdiction, and the applicant shall pay the Village's reasonable attorney fees in prosecuting such action in addition to any judgment.
- B. Alternatively, and at the sole discretion of the Village Board of Trustees, an applicant's failure to comply with this article by paying professional review fees by escrow, or in failing to reimburse the Village for fees expended by the Village for professional review fees may be remedied by charging such sums, together with any legal or other professional fees incurred in collection efforts, against the real property that is subject to the permit application and by adding that charge to and making it a part of the next annual real property tax assessment roll of the Village. Prior to charging such assessments, the real property owners shall be provided with written notice to the applicant, at its last known address as contained in the permit application and to the property owner, if other than the applicant, at the owner's address of record as contained in the current assessment roll. Such written notice shall be sent certified mail, return receipt requested. Such notice shall inform the owner and applicant of the delinquent amount of fees owed to the Village and shall provide an opportunity to be heard and object, before the Village Board, to the proposed additional real property assessment, at a date to be designated in the notice which shall be not less than 30 days after the mailing. If and when imposed, such charges shall be levied and collected at the same time and in the same manner as general Village taxes, and such fees shall be applied to reimbursing the account from which the professional review fees were paid.

SCHEDULE A
Village of Cold Spring
Escrow Funds

| Type of Application | Initial Deposit | Depleted to | Redeposited to Level |
|---|------------------------|--------------------|-----------------------------|
| Subdivisions | | | |
| No. of lots: | | | |
| 1 to 5 lots | \$1,500 | \$500 | \$1,500 |
| 6 to 25 lots | 5,000 | 1,000 | 5,000 |
| 26 and over | 7,500 | 2,000 | 7,500 |
| Lot line change | 500 | 100 | 500 |
| Boundary line adjustment | | | |
| Site plans | | | |
| Square footage: | | | |
| Up to 1,000 | \$1,500 | \$500 | \$1,500 |
| 1,001 to 10,000 | 2,500 | 1,000 | 2,500 |
| 10,001 and over | 5,000 | 1,000 | 5,000 |
| Special use permit | \$1,500 | \$500 | \$1,500 |
| Rezoning/ Annexation | \$2,500 | \$500 | \$2,500 |
| Certificate of Appropriateness | \$1,000 | \$500 | \$1,000 |
| Certificate of Financial Hardship | \$1,000 | \$500 | \$1,000 |
| Nomination for Designation or Delineation | \$1,000 | \$500 | \$1,000 |
| Use Variance | \$1,000 | \$200 | \$1,000 |
| Area Variance | \$500 | \$100 | \$500 |
| Zoning Interpretations | \$500 | \$100 | \$500 |

In the event the application does not appear on this table, the respective Board shall advise the applicant in writing of the appropriate amounts