

December 2, 2004

3175

A Public Hearing was held on December 2, 2004 at 7:00pm at the Town Hall regarding a proposed local law for the establishment of an escrow account for the purposes of professional review of Planning Board applications.

PRESENT:

Supervisor Duke	Councilman Hornbeck	Councilman Ryan
Councilman Santosky	Town Clerk Sommer	Attorney Christiana

ABSENT:

Councilman Gray

Supervisor Duke welcomed everyone and Town Clerk Sommer led the Pledge of Allegiance to the Flag.

RULES OF PROCEDURE: Read by Supervisor Duke.

It was further explained that this law is to ensure that the Town is reimbursed by permit applicants for the cost of engaging those outside professionals to review permit applications.

The hearing was called to order.

David O'Halloran, resident and alternate Planning Board Member clarified the difference between the Escrow Fees and increases of Application Fees. He also mentioned that currently the Town is paying 100% for the applications and recommended that the Board move on this as quickly as possible to save the taxpayers money.

Beatrice Haugen-Depuy, resident and ZBA member questioned how the process for this account would be handled and what is the public accounting on this. She suggested that a process be included in the proposed local law. She feels there should be a specific system of accountability. And she asked if we had the hourly rates of the Chazen consultants.

Nadine Carney, resident and Chairperson of the Planning Board asked if this was specifically for a Planner and if it was clarified that this law encompassed all professionals.

Shane Ricks, resident and Planning Board member asked for clarification that this firm will be available for all boards, Town, Planning & ZBA.

No further comments.

HEARING CLOSED:

A Motion was made by Councilman Santosky to close the public hearing at 7:22pm.

Seconded by: Councilman Hornbeck	Motion carried 4-0
	Gray - absent

Respectfully submitted,

Veronica I. Sommer  
Town Clerk/RMC

December 2, 2004

3176

The Town Board Meeting was held on December 2, 2004 immediately following the public hearing on proposed local law #7 of 2004.

**PRESENT:**

Supervisor Duke	Councilman Hornbeck	Councilman Ryan
Councilman Santosky	Town Clerk Sommer	Attorney Christiana

**ABSENT:**

Councilman Gray

**PRESENTATION BY GROUND WATER SPECIALIST:**

Steve Winkley, Ground Water Specialist with the New York Rural Water Association, a certified professional geologist with a M.S. in Hydrogeology from Syracuse University and a B.S. in Geology from Rensselaer Polytechnic Institute, with over 15 years of professional experience in the field of ground water development and protection.

Mr. Winkley explained how the Town can develop a ground water protection plan. He is currently working with the Town of Saugerties and will perform the same function with us. Right now he will be working with the Town of Rochester's Environmental Conservation Commission.

**ANNOUNCEMENT:**

Supervisor Duke received a letter from the Ulster County Planning Board announcing that Stanley Hudson has been appointed Vice Chairman of the Ulster County Planning Board for the year 2005. Stanley is a member of the Town's ZBA. Congratulations to Stanley for this great honor!

**OPEN TO THE PUBLIC:**

Resident, Martha Tardibuono spoke to the fact that the Town does not have an architectural plan and feels we need a code. She made reference to the storage units and pole barns being constructed on Route 209.

Wayne Kelder, Highway Superintendent requested that the Board rethink reimbursing him the out of pocket expense he is paying his former secretary to come in and train the new secretary.

Resident, Ted Fina again requested his road be paved.

Resident, Mary Mendola is concerned about the County repair of the Towpath Road bridge. She addressed her concerns in a letter submitted to both the Town Board and the Highway Superintendent.

Resident, Al Barnett thanked the Town Board and Highway Department for the great job all are doing.

David O'Halloran spoke on behalf of Nadine Carney to be re-appointed to the Planning Board.

Resident and Planning Board member Robert Gaydos endorsed both Nadine Carney and David O'Halloran to be re-appointed to the Planning Board.

Nadine Carney spoke on behalf of David O'Halloran and the changes with the new Planner on board.

Marbletown resident, Kim Massie reiterated on the noise at the speedway and a better muffler system. Kim requested that Councilman Santosky contact Danny at Meineke for his input.

**APPROVAL OF MINUTES:**

**A Motion** was made by Councilman Ryan to approve the following minutes as submitted:

November 4, 2004 - 2005 Public Hearing re: Budget  
November 4, 2004 - Town Board Meeting  
November 10, 2004 - 2005 Budget Workshop Meeting





**Resolution #143 - 2004 Alternate Planning Board Appointment**

**A Motion** was made by Councilman Ryan that David O'Halloran be appointed as alternate to the Planning Board, his term to expire December 31, 2006.

Seconded by: Councilman Hornbeck                      Motion carried 4-0  
Gray - absent

**Resolution #144 - 2004 ZBA Appointment**

**A Motion** was made by Councilman Santosky that Beatrice Haugen-Depuy be appointed to the Zoning Board of Appeals, her term to expire December 31, 2009.

Seconded by: Councilman Ryan                              Motion carried 4-0  
Gray - absent

**Resolution #145 - 2004 ZBA Alternate Appointment**

**A Motion** was made by Councilman Santosky that James Kingston be appointed alternate to the Zoning Board of Appeals, his term to expire December 31, 2006.

Seconded by: Councilman Ryan                              Motion carried 4-0  
Gray - absent

**Resolution #146 - 2004 Planning Board Appointment**

**A Motion** was made by Councilman Santosky that Nadine Carney be appointed to the Planning Board, her term to expire December 31, 2011.

Seconded by: Councilman Ryan                              Motion carried 4-0  
Gray - absent

**NEW BUSINESS:**

Racetrack Application was discussed and modified.

**Resolution #147 - 2004 Racetrack Application approved**

**A Resolution** was made by Councilman Santosky that the Board accept the Racetrack Application as modified.

Seconded by: Councilman Ryan                              Motion carried 4-0  
Gray - absent

**Resolution #148 - 2004 Speedway Date Schedule accepted**

**A Motion** was made by Councilman Hornbeck that the Town Board accept the Accord Speedway race dates as submitted.

Seconded by: Councilman Santosky                        Motion carried 4-0  
Gray - absent

**Resolution #149 - 2004 Inter-fund transfer**

**A Motion** was made by Councilman Santosky to transfer \$30,000.00 from 5140.400DA, Brush & Weeds to 5110.400DA, General Repair.

Seconded by: Councilman Ryan                              Motion carried 4-0  
Gray - absent

**SECOND PUBLIC COMMENT PERIOD:**

Resident, Alex Miller wrote a letter of intent for the Planning Board and spoke to the Board having the inability to interview and that this display was an embarrassment to the Town. He felt that this procedure is undemocratic and he is disappointed by the inaction of the Board.





December 16, 2004

3182

ADJOURNMENT:

A Motion was made by Councilman Hornbeck to adjourn the meeting at 10:50am.

Seconded by: Councilman Santosky

Motion carried 4-0  
Gray - absent

Respectfully submitted,

Veronica I. Sommer  
Town Clerk/RMC

December 27, 2004

3183

A Town Board Meeting was held on December 27, 2004 at 9:00am at the Town Hall to interview applicants for the Building Inspector I position.

**PRESENT:**

Supervisor Duke                      Councilman Hornbeck                      Councilman Ryan  
Councilman Santosky

**ABSENT:**

Councilman Gray

**EXECUTIVE SESSION:**

A Motion was made by Councilman Hornbeck that the Town Board enter into executive session at 9:00am for the purpose of conducting interviews for the Building Inspector position I, and inviting Douglas Dymond, the CEO.

Seconded by: Councilman Santosky                      Motion carried 4-0  
Gray - absent

**MEETING RECONVENED:**

A Motion was made by Councilman Santosky to reconvene the meeting at 11:00am, with the Supervisor reporting no action was taken, nor monies expended.

Seconded by: Councilman Ryan                      Motion carried 4-0  
Gray - absent

**ADJOURNMENT:**

A Motion was made by Councilman Hornbeck to adjourn the meeting at 11:00am.

Seconded by: Councilman Santosky                      Motion carried 4-0

Respectfully submitted,

Veronica I. Sommer  
Town Clerk/RMC



**SECTION 1.**

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Rochester, its residents and their property, with respect to expenses incurred by the Town, in connection with the review of applications made to the Building Department, Planning Board, Zoning Board of Appeals and the Town Board and to assure that applicants proceed with work at their sites in a competent and workmanlike manner and in conformity with all applicable governmental codes, rules and regulations and, if appropriate, dedicate and convey highways or projects to the Town in a legally sufficient manner, it is essential for the Town to have competent professionals retained by the Town to review applications, plans, and designs and make recommendations to the appropriate board or department and to inspect the construction of improvements and to draft appropriate agreements with applicants, obtain, review and approve necessary securities, insurance and other legal documents, review proposed deeds and easements and to generally represent the Town with respect to legal disputes and issues with respect to applications, and that the cost of retaining such professionals should ultimately be paid by those who seek to profit from such developments rather than from general Town funds which are raised by assessments paid by taxpayers of the Town.

This local law is enacted under the authority of subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law Section 10(1)(ii) and Municipal Home Rule Law Section 22. To the extent Town Law Sections 274-a, 276 and 277 do not authorize the Town Board or Town Planning 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 application for subdivision approval and for the approval, amendment or extension of planned districts under the Town's zoning ordinance, 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, Sections 274-a, 276 and 277 to empower the Town to require such payment as a condition to such approvals.

**SECTION 2.**

In accordance with the purpose stated above, Section 140 of the Code of the Town of Rochester shall be amended to insert a new ARTICLE VI-A to read as follows:

Section 140- 30A. Fees and expenses:

- A. All application fees for special permits, variances, site plans, subdivisions and other matters of land use, planning and development which are brought before any agent or agency of the town of Rochester shall be in accordance with a table of fees for licenses and permits, which table shall be created by resolution of the Town Board with assistance of the Planning Board and shall be maintained on a current basis and from time to time modified or updated upon recommendation of the Planning Board or upon initiation of by the Town Board.
- B.
  1. The Town Board, the Planning Board, the Zoning Board of Appeals and the Building Department are empowered to charge an applicant the reasonable and necessary expenses for professional fees incurred by any of those boards or the building department as a result of professional work required to be performed on behalf of any of said boards or the building department as a result of the filing of an application seeking approval by that board or the building department. For the purpose of this Section 140-30A Professionals shall include, but not be limited to, engineers, attorneys, planning consultants, architects, traffic consultants and noise consultants.
  2. Simultaneously with the filing of an application for approval of a development and prior to the commencement of the review of the application the applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in sub section 9 of this section 140-30A, which sum shall be used to pay the costs incurred by the Town for consulting, engineering and legal services as described in this section.
  3. Upon receipt of such sums, the Town Supervisor or his or her designee 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.
  4. Upon receipt and approval by the Town Board of itemized vouchers from a professional for services rendered on behalf of the Town pertaining to the application, 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.

5. The Town Board shall review and audit all such vouchers and shall approve payment of only such professional fees as are reasonable in amount and necessarily incurred by the Town in connection with the review, consideration and approval of the application. 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 professionals to the Town for services performed in connection with the approval or construction of a similar application and in this regard the Town Board may take into consideration the magnitude of the application and any special conditions or considerations as the Town Board may deem relevant.
6. If at any time during or after the processing of such application or in the construction, inspection or acceptance of the proposed project 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, or his /her designee, that such monies will be insufficient to meet vouchers yet to be submitted, the Town Supervisor, or his or her designee, shall cause the applicant or developer to deposit additional sums as the Supervisor, or his or her designee, deems necessary or advisable in order to meet such expenses or anticipated expenses.
7. In the event that the applicant or developer fails to deposit such funds or such additional funds, the Town Supervisor, or his or her designee, shall notify as applicable, the Chairman of the Planning Board or Zoning Board of Appeals, 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.
8. After final approval, acceptance and/or the issuance of a certificate of occupancy relating to any specific application, 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.
9. 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.
10. 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 for professional services for the several Boards of the Town, nor its general administration expenses.

**SECTION 3.**

If any clause, sentence, paragraph, subdivision, 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 thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

**SECTION 4.**

This local law shall take effect upon filing in the office of the Secretary of State and the adoption of the initial table of fees by the Town Board.

Seconded by: Councilman Santosky

Motion carried 4-0  
Gray - absent

**ESCROW FEE SCHEDULE:**

**Resolution #154 - 2004**

**A Motion** was made by Councilman Hornbeck that the Town Board accept the Escrow Fee Schedule as follows:

Escrow Amounts

Suggested amounts for planning review. If engineering review or special review is required, additional escrow may be requested:

PROPOSED ACTION	NUMBER OF LOTS OR SQUARE FOOTAGE (SF)	TYPICAL ESCROW SCHEDULE
Lot Line Change		\$100
Subdivision*	Nine lots or less	\$350 plus \$100 per lot for each lot after the third.
Subdivision*	Ten or more lots	\$1250 Plus \$200 per lot after the tenth
Site Plan Review*	Under 2,000 SF or less of new building area	\$250.00
	2,000 to 5,000 SF of new building area	\$500.00
Site Plan Review*	More than 5,000 SF of new building area	\$1,000.00
EIS Review		\$5,000.00

\* With or without special use permit

Seconded by: Councilman ryan

Motion carried 4-0  
Gray - absent

**ESCROW ACCOUNTING PROCEDURES:**

**Resolution #155 - 2004:**

**A Motion** was made by Councilman Santosky that the Town Board accept the Escrow Accounting procedures as follows:

Date:

Dear Applicant:

On \_\_\_\_\_, the Town of Rochester adopted Local Law #7 of 2004 in order to establish an escrow account (the "Escrow Account") to enable applicants before the Town's Planning Board, Zoning Board of Appeals, Building Department and other entities of the Town to deposit funds in escrow in order to reimburse the Town for any expenses for professional services that the Town might incur in connection with an application submitted to the Town.

On \_\_\_\_\_, we received the amount of \$ \_\_\_\_\_ in connection with your application dated \_\_\_\_\_ before the [Planning Board, ZBA, Building Department, etc.] You have received a receipt for these funds and these funds have been or will be deposited into the Escrow Account.

As the level of professional services required by the Town in connection with each application is based on the complexity of the application, we are unable to give a binding estimate on the ultimate cost of these services.

You may request a statement of the amount held by the Town in the Escrow Account at any time by contacting Planning & Zoning Department Secretary.

If you have any questions related to the Escrow Account, please do not hesitate to contact me.

Sincerely,

Becky Paddock-Stange  
Secretary

Seconded by: Councilman Ryan

Motion carried 4-0  
Gray - absent

**Escrow Account Management Procedures**

**1. Establishment of Account**

The Supervisor shall establish a demand deposit interest bearing account at an authorized depository bank.

Copies of bank statements shall be addressed to:

Supervisor  
Town of Rochester  
PO Box 65  
Accord, NY 12404

With a duplicate to be sent by the bank to:

Planning & Zoning Department Secretary  
PO Box 65  
Accord, NY 12404

**2. Deposits**

All checks, money orders, and travelers checks shall be payable to the "Town of Rochester - Escrow Account." No checks, money orders, travelers checks, etc. shall be made payable to "Cash", nor shall any cash be accepted under any circumstances.

The Planning Board/ZBA secretary shall be authorized to accept deposits and shall issue a preprinted sequentially numbered receipt for all checks received. The receipt shall indicate the following:

Depositor Name  
Description of Permit Application under Review, including date  
Amount of Deposit  
Date funds received.

The Planning Board/ZBA secretary shall keep a daily log (computer spread sheet) of checks received. Such log shall indicate:

Receipt number  
Depositor Name  
Description of Permit Application under Review, including date  
Amount of Deposit  
Date funds received.  
Total amount received during that day.  
Each deposit shall represent the amount

The Planning Board/ZBA secretary shall deposit funds into the Escrow Account or shall cause such funds to be deposited. At the same time, the Planning Board/ZBA secretary shall deliver to the Supervisor's Office by email, fax or other means the deposit back up.

The Planning Board/ZBA secretary shall prepare a month end Escrow Account reconciliation within five business days of the earlier of receipt of bank statement or month end. Such reconciliation report shall be delivered to the Supervisor and include:

Escrow Account Balance  
Indication of how much is kept for Escrowee  
Total of all amounts for each Escrowee shall reconcile to cash balance.  
Any discrepancies shall be noted.  
Amounts disbursed, including Escrowee and projects for whom/which funds are disbursed.

Planning Board/ZBA secretary shall be able to at all times:  
Provide detail for all deposits made  
Provide backup for all disbursements requested.

**3. Disbursements:**

All bills from professional service providers shall be sent to the Supervisor and to the Planning Board/ZBA secretary. Each bill shall note the project name or matter number. Upon receipt, the Planning Board/ZBA secretary shall prepare a Voucher, amount to be paid for each matter, and submit completed form to the Supervisor's Office for Payment at the monthly Audit Meeting.

Upon receipt by the Supervisor's Office, the bill shall be paid.



December 29, 2005

3190

ADJOURNED:

A Motion was made by Councilman Hornbeck to adjourn the meeting at 6:27pm.

Seconded by: Councilman Ryan

Motion carried 4-0

Respectfully submitted,

Veronica I. Sommer  
Town Clerk/RMC