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February 17, 2009

**PUBLIC HEARING LOCAL LAW #2 FOR 2009 – PROFESSIONAL SERVICES REIMBURSEMENT** Upon due notice to all members of the Village Board, a Public Hearing was held on Tuesday, February 17, 2009 at 7:25 p.m. at the Municipal Building, 240 N. Main Street, Minoa, NY. The purpose was to consider the enactment of Local Law #2 for 2009 related to establishing a new Chapter 115 of the Village of Minoa Municipal Code entitled “Professional Services Reimbursement” which provides for a mechanism whereby the Village of Minoa may utilize necessary expertise for particular land development and construction projects without imposing the cost on its taxpayers.

**PRESENT:** Mayor Donovan  
Trustee Mayor Brazill  
Trustee Champagne  
Trustee Cronk  
Trustee Theobald  
Attorney Courtney Hills  
Clerk/Treasurer Snider

**ALSO PRESENT:** Chris Beers, Dan DeLucia, David VanMarter, Ernie Green and Thomas Petterelli

**ABSENT:** Attorney Steven Primo

**PROOF OF PUBLICATION** A motion was made by Trustee Cronk and seconded by Trustee Champagne agreeing to waive the reading of the Proof of Publication of Public Hearing. All in favor. Motion carried.

**PURPOSE OF PUBLIC HEARING** Mayor Donovan called the Public Hearing to order at 7:26 p.m. for Local Law #2 for 2009 for the Village of Minoa related to establishing a new Chapter 115 of the

Village of Minoa Municipal Code entitled "Professional Services Reimbursement" which provides for a mechanism whereby the Village of Minoa may utilize necessary expertise for particular land development and construction projects without imposing the cost on its taxpayers.

Mayor Donovan turned the Public Hearing over to Attorney Courtney Hills to provide an overview of the proposed Local Law:

Village of Minoa

Local Law No. Two (2) of the year 2009.

A local law adding a new Chapter 115, entitled "Professional Services Reimbursement," to the Code of the Village of Minoa, providing for a mechanism whereby the Village of Minoa may utilize necessary expertise for particular land development and construction projects without imposing the cost on its taxpayers.

Be it enacted by the Village Board of the Village of Minoa as follows:

Section One. Chapter 115, entitled "Professional Services Reimbursement" is hereby added, reading in its entirety as follows:

CHAPTER 115  
Professional Services Reimbursement

§115-1. Title.

This Chapter 115 shall be known as "Professional Services Reimbursement Local Law."

§115-2. Legislative Intent and Purpose.

The Village of Minoa Village Board hereby finds and determines that in order to protect and safeguard the Village, its residents and their property, with respect to land, and improvements within the Village, the development and construction thereon and the uses, operations, businesses, trades, professions and industries conducted thereon, all should be designed and constructed in a competent and workmanlike manner and developed, constructed and utilized in conformity with all applicable governmental laws, codes, rules and regulations, and where applicable to development, dedicated and conveyed to the Village in a legally sufficient manner. In order to ensure the foregoing, it is essential that the Village have available to it all necessary professional expertise to assist with inspections of the foregoing, any required legal opinion(s) or actions, including relative to violations and enforcement of such applicable law, codes, rules and regulations, the review of legal documents and instruments, plans, designs, applications, and to make recommendations to the Code Enforcement Officer, Village Board, Planning Board, Zoning Board of Appeals, Village Attorney and Building Inspector. The Village takes great pride in the skill and professionalism of its land use and zoning boards, code enforcement and administrative staff, however, from time to time, such boards and staff are called upon to review and evaluate matters and to consider and take actions outside the range of their training and/or expertise and/or requiring legal assistance and expertise. These situations may require the Village to seek out skills not possessed by such Village boards and Village officials but which are not required frequently enough to justify the full or part-time hiring of such specialized staff. At the same time, the cost of retaining such expertise should not be borne by the taxpayers of the Village, but rather by those who seek to benefit or profit from the decisions of the Village, its boards, administrative staff and/or those who are legally responsible relative to efforts, actions and proceedings addressing violations and enforcement of such governmental laws, codes, rules and regulations. Therefore, it is the intent of this Chapter to establish a mechanism whereby the Village may utilize necessary expertise for such matters without imposing the cost on its taxpayers.

§115-3. Statutory Authority.

This Chapter is enacted under the authority of Subparagraphs (a)(12) and (d)(3) of the Municipal Home Rule Law § 10(1)(iii) and Municipal Home Rule Law § 22. To the extent that the Village Law of the State of New York does not authorize the Village Board, Village Planning Board or Zoning Board of Appeals to require the reimbursement to the Village of expenses incurred by the Village in connection with professional assistance, it is the expressed

intent of the Village Board to change and supersede such statutes. Such statutes likewise do not authorize the deferral or withholding of approvals in the event such expenses are not paid to the Village. It is the express intent of the Village Board to change and supersede the New York State Village Law, including without limitations, §§ 7-700, 7-708, 7-712, 7-712-a, 7-712-b, 7-725-a, 7-725-b, 7-728, 7-732, and 7-736, and to the extent legally permissible, relating specifically to the subject matter hereof and subject to Executive Law §383, to supplement New York Code Rules and Regulations Title 19, Parts 1220-1226 and to supplement New York State Vehicle & Traffic Law §1224; Executive Law §382, the New York State Public Health Law (Article 13) relative to public nuisance abatement, Village Law §§4-400, 4-412, 8-802, and 20-2006, to empower the Village to require such payment as part of the any procedures thereunder and in relation to any efforts, actions or proceedings deemed necessary by the Town Board to address enforcement and violation issues.

#### §115-4. Definitions.

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

**APPLICANT** — Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests the Code Enforcement Officer, Zoning Officer, or other issuer of building permits, certificates of completion, occupancy and compliance, or the Village Board, the Planning Board or the Zoning Board of Appeals to approve a Municipal Application.

**ENFORCEMENT/VIOLATION EFFORTS** – Any efforts, actions or proceedings pursuant to, and intending to address the enforcement or violations of any Federal, New York State Law, Onondaga County, or Village of Minoa Code commenced or initiated by, at the request of or under policies established by the Village of Minoa Board of Trustees.

**MUNICIPAL APPLICATION** — An application or request, formal, informal, or otherwise relative to proposed development, construction, renovation, related and/or similar within the Village, including without limitation, application or requests for subdivision approval, site plan approval, area variance, use variance, special permit, zone change(s), utility availability, capacity or connection, storm drainage or erosion and sedimentation control, building permit, certificate of compliance, occupancy or completion (or similar permit) and any additional review for those as needed to comply with the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, and regulations adopted pursuant thereto, and the Village Code, as amended. The foregoing notwithstanding, professional fees incurred or to be incurred for routine applications for utility connections or building permits specifically covered under the Village Code shall not be considered Municipal Applications unless the same involve special, unusual or extraordinary conditions or circumstances as solely determined initially by the Mayor, Village Administrator or Code Enforcement Officer, and affirmed by the Board of Trustees.

#### §115-5. Retention of professional services; reimbursement by Applicant.

- A. The Village may hire any consultant and/or expert necessary to assist the Village in reviewing or otherwise a Municipal Application or conducting Enforcement/Violation Efforts, including, but not limited to, scientific, technical, architectural or engineering consultants or legal counsel.
- B. Except as may otherwise be expressly provided in the Village Code, if, prior to the completion of a review of a Municipal Application, the Village discovers the need to retain consultant and/or expert services, the Applicant shall deposit with the Village funds sufficient to reimburse the Village for the reasonable costs of consultation and/or evaluation in connection with review of the application, the amount of such deposit to be estimated by the Code Enforcement Officer or professional(s) retained or to be retained for such service(s). The Village will maintain a separate escrow account for such funds.
- C. Upon receipt of such funds, the Village Clerk shall cause the money to be placed in an account in the name of the Village 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.
- D. The Village's consultants and experts shall invoice the Village for services rendered in reviewing the application. The Village shall furnish a copy of each invoice received to the Applicant upon receipt of the invoice by the Village.
- E. The Village 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 Village in connection with a review of a Municipal Application or conduct of Enforcement/Violation Efforts. 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 to the Village or others for services performed in connection with the review of a project similar to that involved in the Municipal Application or the conduct of enforcement proceedings or actions similar to those intended in the Enforcement/Violation Efforts. In this regard, the Village may take into consideration size and type of property use(s) or project involved and any special conditions or considerations as the Village may deem relevant in connection with the particular Municipal Application or Enforcement/Violation Effort.

- F. Contracts for the retention of experts shall be let pursuant to any applicable policy of the Village (if any) unless the contract is one that must be competitively bid or the service is performed by a retained Attorney or Engineer of the Village or other retained expert under a general fee for service or hourly charge retainer agreement with the Village.
- G. After payment of all outstanding invoices, any funds held by the Village upon completion of a review of a Municipal Application shall be returned to the Applicant
- H. The Village shall be entitled to recover reasonable expenses, attorney's fees, costs and disbursements incurred or in the enforcement of any rights hereunder, including without limitation, the collection of professional fees owing to the Village.

§115-6. Exception.

Notwithstanding anything to the contrary contained in this Chapter in relation to a Municipal Application, an Applicant or developer shall not be required to reimburse the Village for any part of a fee incurred by the Village for services performed in connection with matters, including but not limited to those resulting from complaints by third parties, as to which the Village Board determined the Applicant had no responsibility or were beyond the reasonable control of the Applicant, such determination to be solely within the Village Board's discretion.

§115-7. Assessment of Charges.

Upon resolution duly adopted by the Village Board following a prior written notice of not less than thirty (30) days (addressed to the Applicant, individual(s) or entities subject of a Municipal Application or against whom Enforcement/Violation Efforts have been conducted and the owner of the property subject of a Municipal Application or Enforcement/Violation proceeding) advising such persons or entities of amounts owing to the Village for professional fees incurred hereunder, and providing such person(s) an opportunity to be heard at the Village Board meeting whereat such resolution is adopted, the Village may consider and make the determination(s) required at §115-5(E) hereof (if not previously made) and assess the property subject thereof with such costs in the same manner as with respect to property taxes, such that same may be collected and the lien of same enforced, in the same manner as liens for such taxes and charges.

§115-8. Provisions Non-Exclusive; Incorporation by Reference.

The provisions hereof shall be in addition to and not in lieu of any other provisions of the Village of Minoa Code or New York State law providing for the payment, reimbursement or recovery of legal or other professional fees costs and/or disbursements. Any such other provisions shall in addition be deemed to have incorporated therein by reference, subject to §115-9 hereof, the provisions of §115-7 hereof providing for the assessment of such charges on the property subject of the Municipal Application or Enforcement/Violation Efforts.

§115-9. Severability.

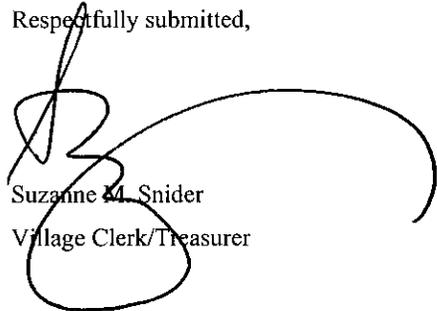
If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged invalid or unconstitutional by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court shall attempt to modify same to a provision which is not invalid or unconstitutional and which best achieves the intent of the invalid provision.

**COMMENTS FROM THE VILLAGE BOARD** Let the record show that there were no comments or questions from the Village Board.

**PUBLIC COMMENTS** Let the record show that there were no comments or questions from the public.

**PUBLIC HEARING CLOSED** A motion was made by Trustee Cronk and seconded by Trustee Theobald to close the Public Hearing for Local Law #2 for 2009 at 7:28 p.m. All in favor. Motion carried.

Respectfully submitted,

  
Suzanne M. Snider  
Village Clerk/Treasurer