

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
AUG 31 2000
Alexander F. Escobar
Secretary of State

~~COUNTY~~
~~CITY~~ of Caroline
Town
~~VILLAGE~~

Local Law No. 3 of the year 2000

A local law of the Town of Caroline, State of New York, providing for a Fee
(Insert Title)
Structure for Engineers and Attorneys

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~COUNTY~~
~~CITY~~ of Caroline as follows:
Town
~~VILLAGE~~

SECTION 1. Legislative Findings, Intent and Purpose

The Town Board hereby finds and determines that in order to protect and safeguard the Town of Caroline, its residents and their property with respect to certain land developments within the Town, all buildings, highways, drainage facilities, water and sewer facilities, other utilities and parks within developments 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, that in order to assure the foregoing, it is essential for the Town to have competent engineers retained by the Town to review and approve plans and designs, make recommendations to the Town Board and Subdivision Review Board, inspect the construction of highways, drainage, water and sewer, other facilities and parks to be dedicated to the Town and to recommend their acceptance by the Town, and to have competent attorneys retained by the Town to negotiate and draft appropriate agreements with developers, obtain, review and approve necessary securities, insurance and other legal documents, review proposed deeds and easements to assure the Town is obtaining good and proper title and to generally represent the Town with respect to legal disputes and issues with respect to developments, and that the cost of retaining such competent engineers and attorneys should ultimately be paid by those who seek to profit from such developments rather than from general Town funds which are raised from taxes paid by taxpayers of the Town.

This local law is enacted under the authority of Municipal Home Rule Law Section 10(1)(ii)(a)(12) and (d)(3) and Municipal Home Rule Law Section 22. To the extent Town Law Sections 276, 277 and 278 do not authorize the Town Board or Subdivision Review Board to require

(If additional space is needed, attach pages the same size as this sheet, and number each.)

the reimbursement to the Town of legal and engineering expenses incurred by the Town in connection with the review and consideration of applications for subdivision approval, 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 276, 277 and 278 to empower the Town to require such payment as a condition to such approvals.

SECTION 2. Definitions

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

- A. **APPLICANT** - Any person, firm, partnership, association, corporation, company or organization of any kind who or which requests the Town through its Subdivision Review Board or Town Board to approve a development or application.
- B. **DEVELOPER** - Any person, firm, partnership, association, corporation, company or organization of any kind who or which constructs or proposes to construct one or more highways, drainage facilities, water, sewer or other facilities, utilities or parks within or in conjunction with a development and to convey or dedicate same to the Town.
- C. **DEVELOPMENT** - Shall mean and include, an application for subdivision approval.
- D. **DRAINAGE FACILITY** - All surface water drainage facilities, including, but not limited to, detention and retention basins, storm sewers and their appurtenances, drainage swales and ditches, and any easements through or over land on which said facilities may be constructed or installed in or in connection with a development.
- E. **HIGHWAY** - The term "highway" includes a street, avenue, road, square, place, alley, lane, boulevard, concourse, parkway, driveway, overpass and underpass and also includes all items appurtenant thereto, including but not limited to bridges, culverts, ditches, shoulders and sidewalks in or in connection with a development.
- F. **PARK** - An area of land located within a development which is open to the public and devoted to active or passive recreation.
- G. **SUBDIVISION** - A subdivision of land pursuant to the Subdivision Regulations of the Town (including environmental review pursuant to the New York State Environmental Quality Review Act).
- H. **TOWN** - The Town of Caroline.
- I. **UTILITIES** - All water, sewer, drainage, gas, electric, telephone, cable television facilities and any easements through or over which said facilities may be constructed or installed in or in connection with a development.

SECTION 3. Reimbursement of Fees and Expenses

1. The applicant, in connection with an application for approval of a development in the Town, shall reimburse the Town for all reasonable and necessary engineering expenses incurred by the Town in connection with the review and consideration of such development application.

2. A developer who constructs, or proposes to construct, one or more highways, drainage facilities, utilities or parks within or in conjunction with an approved subdivision by the Town shall reimburse the Town for all reasonable and necessary legal and engineering expenses incurred by the Town in connection with the inspection and acceptance by the Town of such highways, drainage facilities, utilities and parks and the dedication of same to the Town.

SECTION 4. Exceptions

A. The following developments are hereby excepted from the application of this local law: Any division of land that does not meet the definition of subdivision in the Subdivision Regulations of the Town.

B. Notwithstanding anything to the contrary contained in this local law, an applicant or developer shall not be required to reimburse the Town for any part of a legal or engineering 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 Board determines the applicant or developer had no responsibility or was beyond the reasonable control of the applicant or developer.

SECTION 5. Deposit and Payment of Fees

A. Simultaneously with the filing of an application for approval of a development and prior to the commencement of any construction of buildings, highways, drainage facilities, utilities or parks therein, the applicant or developer, as the case may be, shall deposit with the Town Supervisor a sum of money, as determined in Section 6 of this local law, which sum shall be used to pay the costs incurred by the Town for engineering and legal services as described in Section 3 of this local law.

B. Upon receipt of such sums, the Town Supervisor 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.

C. Upon receipt and approval by the Town Board of itemized vouchers from an engineer and/or attorney for services rendered on behalf of the Town pertaining to the development, 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.

D. The Town Board shall review and audit all such vouchers and shall approve payment of only such engineering and legal fees as are reasonable in amount and necessarily incurred by the Town in

connection with the review, consideration and approval of developments and the inspection and acceptance of highways, drainage facilities, utilities and parks within or in conjunction with such developments. 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 engineers or attorneys to the Town for services performed in connection with the approval or construction of a similar development and in this regard the Town Board may take into consideration the size, type and number of buildings to be constructed, the amount of time to complete the development, the topography of the land on which such development is located, soil conditions, surface water, drainage conditions, the nature and extent of highways, drainage facilities, utilities and parks to be constructed and any special conditions or considerations as the Town Board may deem relevant; and a fee or part thereof is necessarily incurred it was charged by the engineer or attorney for a service which was rendered in order to protect or promote the health, safety or other vital interests of the residents of the Town, protect public or private property from damage from uncontrolled, surface water run-off and other factors, assure the proper and timely construction of highways, drainage facilities, utilities and parks, protect the legal interests of the Town including receipt by the Town of good and proper title to dedicated highways and other facilities and the avoidance of claims and liability, and such other interests as the Town Board may deem relevant.

E. If at any time during or after the processing of such application or in the construction, inspection or acceptance of buildings, highways, drainage facilities, utilities or parks 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 that such monies will be insufficient to meet vouchers yet to be submitted, the Town Supervisor shall cause the applicant or developer to deposit additional sums as the Supervisor deems necessary or advisable in order to meet such expenses or anticipated expenses.

F. In the event that the applicant or developer fails to deposit such funds or such additional funds, the Town Supervisor shall notify as applicable, the Chairperson of the Subdivision Review Board, 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.

G. After final approval, acceptance and/or the issuance of a certificate of occupancy relating to any specific development, 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.

SECTION 6. Deposit Amounts

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.

SECTION 7. Application Fees

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 of legal and engineering services for the several Boards of the Town, nor its general administration expenses.

SECTION 8. Severability

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 9. Effective Date

This local law shall take effect immediately upon filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2000 of the ~~(County)~~(City)(Town)(Village) of Caroline was duly passed by the Town Board on August 24, 2000, in accordance with the applicable provisions of law.
(Name of Legislative Body)

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of was duly passed by the on 20, and was (approved)(not approved)(repassed after disapproval) by the and was deemed duly adopted on 20, in accordance with the applicable provisions of law.~~
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of was duly passed by the on 20, and was (approved)(not approved)(repassed after disapproval) by the on 20. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 20, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 20 of the (County)(City)(Town)(Village) of was duly passed by the on 20, and was (approved)(not approved)(repassed after disapproval) by the on 20. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 20, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

~~5. (City local law concerning Charter revision proposed by petition.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.~~

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit ~~voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph-----1-----, above.

Kim Case

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body Kim Case, Town Clerk

(Seal)

Date: 8/29/2000

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF TOMPKINS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Mahlon R. Perkins

Signature Mahlon R. Perkins

Town Attorney
Title

~~XXXXX~~
~~XXX~~ of Caroline
Town
~~XXXXX~~

Date: August 25, 2000