

**RESOLUTION NO. 54 OF 2010 - ESTABLISHING FEES FOR BUILDING CODE, ZONING ORDINANCE, SUBDIVISION AND LAND DEIVISON REGULATION, STORMWATER MANAGEMENT, EROSION AND SEDIMENT CONTROL, AND OTHER ENFORCEMENT ACTIVITIES**

**Whereas**, the Town Board of the Town of Danby by Resolution No. 72 of 1991, amended by Resolution No. 18 of 2009, has established fees for permits, review, and other matters related to administration and enforcement of the New York State Uniform Fire Prevention and Building Code, the Zoning Ordinance of the Town of Danby, and the Subdivision Regulations of the Town of Danby; presently entitled the Subdivision and Land Division Regulations of the Town of Danby; and

**Whereas**, the Town wishes to update such fees in conjunction with said legislation as it may be amended from time to time and to add fees associated with the Town of Danby Stormwater Management, Erosion and Sediment Control Local Law (Local Law Number 1 of 2010), Local Law No. 2 of 2010, "Stormwater Amendments to Town of Danby Zoning Ordinance," and Local Law No. 3 of 2010, "Stormwater Amendments to Subdivision and Land Division Regulations," all of which laws were adopted by the Town Board on February 8, 2010;

**Now, therefor**, it is

**Resolved**, that the fees set forth below shall supersede any other fees established by any prior resolutions of this Board for the activities described herein; and it is further

**Resolved**, that the fees set forth below shall take effect immediately; and it is further

**Resolved**, that fees for the items set forth below be calculated as follows:

**1. Miscellaneous Provisions.**

(a) The Town Board, Planning Board, Board of Appeals, Code Enforcement Officer, or Stormwater Management Officer, and the individual members and alternate members of each such body or Board, as applicable (each and all herein, together with the members of any such body or Board, a "Town Official"), shall not hold any public hearing, conduct any review, or take any action upon any matter or application before such Town Official, including, but not limited to, the review, approval, or issuance of any permit or endorsement, until and unless each, any, and all applicable fees and reimbursable costs and expenses (herein and together, the "Fees") have been either (1) paid to the Town, with a receipt therefor provided, or (2) paid into escrow as hereinafter set forth. Examples of such Fees may include filing fees and expenses, publication fees and expenses, mailing fees and expenses, conference and other room rental fees and expenses, service of process fees and expenses, photocopying and printing fees and expenses, transcription fees and expenses, Town staff and personnel time and expenses, and various types of Expert Expenses (as further defined below).

(b) Fees shall be calculated by the Code Enforcement Officer or Stormwater Management Officer, as applicable (herein and respectively, the "CEO" and "SMO"). Whenever they deem it desirable, the CEO or SMO may require that a reasonable initial estimated amount of Fees be paid into an escrow account managed by the Town Clerk's Office, which shall issue receipts for all deposits thereto. Such receipts shall state the purpose of the escrow and be delivered by the Town Clerk to the CEO or SMO, as applicable, to accompany any application or otherwise be and become a part of the project file. Upon final project approval or closure, as applicable, any unused balance in any escrow account shall be refunded to the person or entity who deposited such Fees.

(c) Whenever an escrow account or deposit is required the developer or applicant shall initially deposit the applicable stated or calculated sum (the "Deposit") with the Town, which sum shall be placed in a non-interest bearing account. The Town may draw down or utilize such Deposit to reimburse the Town for any applicable costs or expenses of review related to the matter or purpose of such Deposit. Upon consumption or depletion of any Deposit below 15% of the amount of the initial Deposit, the SMO or CEO may, by written notice, require an additional Deposit in an amount reasonably calculated under applicable law. The developer or applicant shall replenish the escrow account by paying a Deposit equal to the sum stated in such notice within 15 business days of the date of delivery of such notice.

(d) No Fees paid to the Town shall be returned or refundable, regardless of whether the underlying application, permit, matter under review, or other matter for which a Fee is paid, is granted, denied, reduced in size, abandoned, or conditionally approved or rejected, unless: (1) the amount of the Fee was calculated in error; (2) this resolution specifically permits such return or refund; (3) the amount to be refunded or re-

turned is the balance in any escrow account; or (4) such return or refund is required by a Town law or ordinance, by a New York State statute or regulation, or ordered by judicial decree.

(e) The payment of any Fees shall not relieve any person or entity from the provision of security, bonds, letters of credit, or other assurances or guarantees of payment or performance required under any ordinance, local law, law, statute, rule, regulation, or the like. Nor shall the payment of any Fees or the refund of any balance of any escrow relieve any person or entity from any promise, agreement, guarantee, warranty, or obligation to the Town or any Town Official.

(f) Whenever the amount of any Fees may or shall include the cost of any attorney, engineering, surveying, or other expert or specialized consultant's fees (herein, separately and together, "Expert Expenses"), the Town Supervisor, the CEO and/or the SMO shall reasonably estimate the anticipated costs to the Town for such Expert Expenses and charge such amount as Fees hereunder. Each, any, and all matters before the Town or any Town Official may permit the Town Supervisor, CEO, or SMO to require that Expert Expenses be or become part of any Fee or escrow amount required to be paid. Notwithstanding the foregoing, no Expert Expenses shall be charged in any amount greater than allowed by applicable law. The Town or any Town Official may standardize Fees to include the reasonable average cost of Expert Expenses.

(g) For purposes of calculating fees in any dormitory, two bedrooms shall constitute one dwelling unit.

(h) Any inspections relating to building permits requested outside of normal business hours will be billed at the rate of \$35.00 per hour (minimum charge of 2 hours) in addition to the permit fee.

## 2. Building Permit Fees.

(a) Building permit fees for new construction shall be calculated based upon square footage of the structure. Basement area is excluded from the square footage if the basement is unfinished and not used as living quarters. When the square footage calculation cannot be readily applied, the fee will be based upon the estimated cost of the improvement as determined by the Code Enforcement Officer. Unless otherwise determined by the Code Enforcement Officer, the fees shall be calculated as follows:

Residential New Construction:

All One and Two Family Residences, and Additions **25 cents/square foot\***  
(exclude basements from square foot total if unfinished)

Mobile Homes on private lots, (doublewides and temporary singlewides) **\$ 200.00**

Mobile Homes on rental lots, (doublewides and singlewides) **\$ 75.00**

Garages, Pole Barns, Storage Buildings, Decks & Porches **10 cents/square foot\***  
(note that a new residence with a garage will pay \$.25 + \$.10 per sq ft.)

Swimming Pools, (above ground and in-ground) **\$ 45.00**

All Solid Fuel Stoves or Burning Appliances, (wood, coal, pellet, etc.) **\$ 25.00**

(Appliance and Chimney must be inspected by Code Enforcement Officer)

Renovations and Alterations:

All Renovations and Alterations **25 cents/square foot\***

When the per sq. foot isn't feasible for calculation, fee will be based upon **\$ 4.00 per thousand\*\***

Commercial Construction:

Based on Estimated Cost of Construction **\$ 5.00 per thousand\*\***

There Will Be A Minimum Fee Of \$35.00 For All Permits Unless Otherwise Noted

\* Square Footage is Based Upon Exterior Measurements in All Cases

\*\* The "per thousand dollars" estimated cost of construction is determined by the Code Enforcement Officer and will include an estimated cost for labor along with materials.

(b) In the event that a building permit must be renewed, a fee equal to 50% of the original building permit fee will be charged prior to re-issuance of the permit.

(c) In the event that an application for a building permit is not approved, the applicant shall be entitled to a refund of 75 % of the fee paid.

## 3. Other code enforcement inspection fees related to administration and enforcement of the New York State uniform fire prevention and Building Code.

(a) When a Certificate of Occupancy is issued in conjunction with completion of new construction for which a building permit fee has been paid, there shall be no charge for the Certificate of Occupancy. If a Certificate of Compliance is requested independent of construction for which a building permit has been issued (e.g., an application for a certificate evidencing compliance with all applicable rules and regulations when the property changes hands) there shall be a fee of \$100.00 for the issuance of the certificate.

(b) Whenever an inspection is required related to inspection of areas of public assembly, periodic inspection of other occupancies, or an operating permit, as provided in the Town's Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code, the fee shall be \$50.00.

#### 4. Stormwater Management, Erosion and Sediment Control Fees.

(a) The Town shall require any person or entity undertaking any Land Development Activity, as defined in and as regulated by Town of Danby Stormwater Management, Erosion and Sediment Control Local Law (Local Law Number 1 of 2010, herein the “Stormwater Local Law, which term shall include Local Law No. 2 of 2010, entitled “Stormwater Amendments to Town of Danby Zoning Ordinance,” Local Law No. 3 of 2010, entitled “Stormwater Amendments to Subdivision and Land Division Regulations”, each and all as now written or as hereafter amended or re-codified) to pay the Fees set forth below, in addition to the costs of review for Stormwater Pollution Prevention Plans (“SWPPPs”), costs of inspections, and/or maintenance expenses incurred by the Town, whether performed by the Town or by a third party for the Town, including all Expert Expenses, and any costs or expenses incurred for any further or other reviews or actions under such Stormwater Local Law, including, but not limited to, wetland delineations, site plan reviews, re-zoning matters, subdivision reviews, and other actions and reviews relating to land development activities, as so defined in such Stormwater Local Law.

(b) A non-refundable fee shall be paid along with each SWPPP application as set forth below to cover expenses related to the initial review and processing of the SWPPP application.

(c) For each SWPPP review under any Stormwater Local Law, an escrow account shall also be established as set forth below and an additional amount shall be deposited as escrow to be used by the Town to cover the the actual costs and expenses incurred by the Town in relation to the review of a SWPPP and subsequent inspections for SWPPP implementation. An escrow agreement providing for the deposit of the amounts herein set forth shall be executed by the applicant and the Deposit made in the amount set forth here or therein. Sums so deposited and not utilized in the review and inspection process shall be returned to the applicant within a reasonable period of time after final approval by the Town of SWPPP implementation. At the time of such return (or if no funds are due, within a reasonable period of time after final disposition of the SWPPP activity), the Town will provide an accounting of the expenses charged to the escrow account.

(d) Fees for Land Development Activities as defined in and as regulated by the above Stormwater Local Laws are as follows:

Fee Schedule–Stormwater Management, Erosion and Sediment Control Plans  
and Related Inspections:

Simple SWPPP

If Land Development Activity is not within 50 feet of any Surface Waters, Wetland, or Watercourse:

**No Fee.**

If Land Development Activity is within 50 feet of any Surface Waters, Wetland, or Watercourse:

**\$250.00 initial Deposit as escrow.**

Basic SWPPP

Non-refundable application Fee: **\$90.00**

Review and Inspection Fee: \$250.00 initial Deposit as escrow.

Full SWPPP

Non-refundable application Fee: **\$250.00**

Review and Inspection Fee: \$500.00 initial Deposit as escrow.

**All SWPPPs** – If field delineation of wetland boundaries is required, such delineation shall be performed by a certified wetlands expert. The Fee for the delineation and related Expert Expenses shall be paid by the applicant. The estimated cost for the delineation shall be deposited in escrow with the Town before the delineation will commence. The applicant, at his/her option, may directly arrange for and provide such certified wetlands delineation.

## 5. Application fees related to Land Divisions, Subdivisions, Site Plans, Special Permits, and Rezonings.

(a) A non-refundable Fee shall be paid along with each application as set forth in the Schedule of Application and Review Fees, as set forth below, to cover Fees related to the administration and processing of applications, including agenda or public hearing notices, clerical processing, and preliminary processing of the application by planning and/or engineering personnel.

(b) Whenever an application or appeal is filed with the Town for which a public hearing is required, there shall be paid simultaneously a Fee of \$75.00 to defray the costs of publishing and mailing the notice and application to appropriate parties, and the costs of transcribing the proceedings relating to the application or appeal. Such \$75.00 Fee is included in the Fee Schedule set forth below as part of the initial application fee.

(c) If the hearing continues for more than one meeting, thus necessitating re-publication and/or re-noticing, an additional Public Hearing Fee shall be paid prior to each continued hearing. If the matter continues for more than one meeting but the subsequent meetings do not require a public hearing, an Agenda Processing Fee shall be paid prior to each additional meeting at which the matter is continued without a public hearing. In the discretion of the applicable Town Official additional Public Hearing Fees or additional Agenda Processing Fees may be waived with respect to any subsequent meetings, particularly if the continuation was necessitated by actions of the Town and not the applicant.

(d) Any of the above Fees may be waived in whole or in part, or may be modified by the Town Supervisor or the CEO, for good cause shown.

(e) In the case of **Subdivision or Site Plan** applications, the Planning Board, in its discretion, may waive all or any portion of the Fee for a final plat or final site plan approvals in those circumstances where Final Plat or Plan Approval is given simultaneously with Preliminary Plat or Plan Approval.

(f) In the case of Clustered Subdivision applications, the Fees set forth for subdivisions shall apply.

(g) In the case of applications for **Rezoning**, a basic Fee as set forth in the Fee Schedule for initial review of the general plan by staff and the Town Board shall be submitted with the initial application. When the rezoning is referred to the Planning Board for recommendation, the Fee for Site Plan Review - Preliminary Plan shall be paid prior to any further review of the general plan by the Planning Board and prior to any recommendation by the Planning Board to the Town Board. If the Town Board approves an application for rezoning upon recommendation by the Planning Board, and when specific development is proposed, the Fee for Site Plan Review - Final Plan shall be paid to cover the costs of further review by staff and the Planning Board. The Planning Board, in its discretion, may waive all or any portion of the Fee for Site Plan Review – Final Plan when there are no substantial changes from the general plan as recommended by the Planning Board and as approved by the Town Board.

(h) In the case of applications for a **Special Permit**, a basic Fee as set forth in the Fee Schedule for initial review of the general plan by staff and the Planning Board shall be submitted with the initial application. The Fee required for Site Plan Review - Preliminary Plan shall be paid prior to any further review of the application by the Planning Board. If the Planning Board approves an application for a Special Permit conditional upon approval of a final site plan or in any other circumstance where further review by the Planning Board is required after preliminary site plan approval, the Fee for Site Plan Review - Final Plan shall be paid to cover the costs of further review by staff and the Planning Board. The Planning Board, in its discretion, may waive all or any portion of the Fee for Site Plan Review – Final Plan when there are no substantial changes from the general plan as recommended by the Planning Board and as approved by the Town Board.

## 6. Review fees related to Subdivisions, Site Plans, Special Permits, and Rezonings.

(a) A Review Fee shall be paid as set forth in the Fee Schedule set forth below. Such Fee is intended to cover part of the cost of Expert Expenses incurred by the Town in its review of the submitted application materials for Preliminary and/or Final Subdivision or Site Plan Approval.

(b) When the Review Fee set forth in the Fee Schedule is calculated on a per lot or per unit basis the Review Fee is non-refundable unless denominated as an amount to be placed in escrow.

(c) When the Review Fee is stated in the Fee Schedule to be the Actual Cost of Review, the Review Fee shall be such actual cost of conducting the review as determined and billed by the Town. The basis for calculating such cost shall be the actual costs to the Town for independent consultant services, legal services, engineering services, planning services and/or any other services or expenses of outside consultants, plus an amount intended to reimburse the Town for the time of Town staff (Code Enforcement Officer, Planning, Legal, Highway Superintendent, and others) devoted to reviewing the proposals. The amount charged for Town staff shall be determined by multiplying the number of hours devoted to the proposal times the hourly rates as determined from time to time by the Town Board for various staff positions.

(d) An escrow agreement providing for the deposit of the amounts set forth in the Fee Schedule in the form directed by the Town Supervisor shall be executed by the applicant and the Deposit made in the amount set forth in the Fee Schedule. Sums so deposited and not utilized in the review process shall be returned to the applicant within a reasonable period of time after the adoption of the last resolution finally disposing of the application (whether by granting or denial of the application). At the time of such return (or if no funds are due, within a reasonable period of time after final disposition of the application) the Town will provide an accounting of the expenses charged to the escrow account.

(e) If the review costs are estimated to exceed the amount so deposited and additional Fees are deemed necessary, the applicant shall be notified of the required additional amount by the Code Enforcement Officer and the applicant shall Deposit such sum to the escrow account.

(f) If, in the judgment of the Code Enforcement Officer, the Deposit provided for herein exceeds the anticipated reasonable review costs, the Code Enforcement Officer may adjust the Deposit to reflect the anticipated review cost.

(g) Unexpended escrow funds deposited as part of the Review Fee may be credited against Deposits due for the Inspection Fee, where such is required, upon the filing of an application for site development or the construction of improvements.

(h) For purposes of determining the amount of escrow the following shall apply:

(1) As part of the application for **Preliminary Subdivision Plat** or **Preliminary Site Plan Approval**, a preliminary estimate of the cost of improvements shall be provided by the applicant's Licensed Professional Engineer along with the other items required for a Preliminary Subdivision Plat or Preliminary Site Plan Application as set forth in the Town of Danby Land Division and Subdivision Regulations and the Town of Danby Zoning Ordinance.

(2) As part of the application for **Final Subdivision Plat** or **Final Site Plan Approval**, a revised estimate of the cost of improvements shall be provided by the applicant's Licensed Professional Engineer along with the other items required for final subdivision application as outlined in the Town of Danby Land Division and Subdivision Regulations and the Town of Danby Zoning Ordinance.

(3) In the case of **Subdivision** applications, the terms "cost of improvements", "improvement cost" or "project cost" shall mean the costs of construction of all general site improvements (whether on or off the specific site involved) to be constructed by applicant such as grading, roads, drainage improvements, Stormwater Management Practices, sewers, water lines, and other similar items, but excluding the cost of dwelling units to be constructed on the subdivided lots.

(4) In the case of **Site Plan** applications such terms shall mean the costs of construction of all site improvements (whether on or off the specific site involved) including grading, roads, drainage improvements, Stormwater Management Practices, sewers, water lines, buildings and any other improvement of any nature whatsoever to be constructed by applicant. In both cases such terms exclude land acquisition costs, architects' fees, engineering fees, and other similar non-construction costs.

- (5) The estimates provided with the preliminary or final application shall be considered, along with the other items of application and anticipated review costs, in determining the amount of the review Fee escrow.
- (6) An estimate of the cost of improvements provided by the applicant and not by a Licensed Professional Engineer may be accepted when, in the judgment of the CEO, such estimate is reasonably accurate. The CEO may adjust such estimate and the estimate as so revised by the CEO shall be the basis of the escrow deposit calculation.
- (7) In no event shall an escrow account be established with less than a \$250 deposit, which amount shall be a minimum regardless of the amounts calculated pursuant to the Fee Schedule.

## 7. SEQRA-Related Fees.

In addition to the fees required as stated in the Fee Schedule, the Fees for review or preparation of an Environmental Impact Statement involving an application for approval or funding of an action requiring preparation or filing of a draft environmental impact statement shall be determined by the lead agency for each such application. The fees shall be based on the actual cost to the Town for reviewing or preparing the draft and final environmental impact statement, including the cost of hiring consultants and Expert Expenses, the salary time of Town employees and actual disbursements incurred as a result of the review or preparation of such impact statement, but in no event shall the fees be greater than that established in 6 NYCRR 617.17. The Town Supervisor or Code Enforcement Officer may require, prior to the commencement of the review or preparation of an environmental impact statement, a Deposit to be made with the Town in an amount reasonably estimated to cover the Fees set forth in this section.

8. Inspection fees related to Subdivisions, Site Plans, Special Permits, and Rezonings.

(a) In addition to the Fees provided for herein, where the inspection of on- or off-site improvements or development is required (and such inspection is not an inspection required by the New York State Uniform Fire Prevention and Building Code, (hereinafter the "Building Code") specifically provided for elsewhere in this resolution) the applicant shall reimburse the Town for the actual cost to the Town of all engineering, planning, highway inspection, legal, consulting, clerical, Code Enforcement Officer inspections and other Fees and expenses incurred by the Town during the process of inspection and review of the completion of site improvements and the fulfillment of any requirements of any regulation or resolution pertaining to development projects which have been granted **Final Subdivision** or **Site Plan Approval**, including Expert Expenses. The costs so incurred shall be determined by the Town and billed to the applicant. The basis for calculating such costs shall be the same as set forth above with reference to Review Fees.

(b) An escrow agreement providing for the Deposit of the amounts set forth in the Fee Schedule in the form directed by the Town Supervisor shall be executed by the applicant and the Deposit made in the amount set forth in the Fee Schedule to cover the cost of inspections and compliance review incurred:

- (1) after final approvals have been given,
- (2) in the course of building permit issuance,
- (3) during the course of construction of any improvements including buildings, roads, Stormwater Management Practices, and other improvements, and
- (4) during the course of issuing any certificates of compliance or occupancy.

(c) Along with any application for final approval of site improvement and development construction plans where final approval of such plans is required, an estimate of the cost of improvements shall be provided by the applicant's Licensed Professional Engineer in similar manner as the estimate is provided for the escrow for the review Fees. This estimate shall be used along with the other items included in the application and in the prior review process in determining the amount of inspection Fee escrow. The developer shall make the required inspection escrow Fee deposit prior to any final approval of said site improvement and development construction plans and prior to the commencement of construction of any of such improvements.

(d) All of the provisions regarding escrow accounts for review Fees shall be applicable to the escrow accounts for inspection Fees including authority to the CEO to waive the requirement that the cost of improvements be prepared by a Licensed Engineer, and to increase or decrease the required escrow amount, the definitions of costs of improvements, and the minimum Deposit.

(e) The inspection Fee shall in no case be less than \$100.

(f) The inspection Fee may be included as a portion of a letter of credit or performance guarantee, where applicable.

(g) Where applicable or where required, no final acceptance of proposed public improvements, and no final approval of site construction or site improvements shall be made, and no Certificates of Occupancy shall be issued, until all inspection Fees have been paid or fully escrowed.



(h) The Town shall return any balance of the escrow deposit to the applicant upon final acceptance of proposed public improvements and/or final acceptance of subject site improvements together with an account of all expenses charged to the escrow fund.

**RESOLUTION NO. 55 OF 2010 - DETERMINING VARIOUS FEE RATES FOR THE REVIEW OF CERTAIN DEVELOPMENT APPLICATIONS**

**Whereas**, Resolution No 54 of 2010, "Establishing Fees for Building Code, Zoning Ordinance, Subdivision & Land Division Regulation, Stormwater Management, Erosion and Sediment Control, and Other Enforcement Activities", adopted by the Town Board of the Town of Danby on April 12, 2010 provides that certain fees may be charged by the Town to cover some town staff and personnel time and expenses, and various types of Expert Expenses as described in said resolution; and

**Whereas**, said resolution also provides that the hourly rates to be charged for Town staff for this purpose may be determined from time to time by the Town Board; now, therefore, it is

**Resolved**, that the Town Board of the Town of Danby hereby determines the following hourly rates for said purpose:

- a. Town Zoning/Code/Fire Enforcement Officer and Stormwater Management Officer/Manager: \$34.90;
- b. Town Code/Fire Enforcement Officer and Stormwater Management Officer: \$25.80; and
- c. Town Highway Superintendent: \$38.06.