

NEWBURYPORT PLANNING BOARD REGULATIONS GOVERNING FEES AND FEE SCHEDULES

Adopted September 19, 2007

SECTION 1. INTRODUCTION.

1.1 Procedural History. On September 19, 2007 the Planning Board held a public hearing, pursuant to G.L. c. 41, s. 81Q and G.L. c. 40A, s. 9, to consider proposed regulations governing fees. At the close of the public hearing, the Planning Board voted to adopt regulations governing fees and a new schedule of fees for review conducted by the Planning Board and its consultants on the various types of applications which come before it. This document, subject to revision from time to time in a manner spelled out herein, constitutes the Planning Board's rules governing the imposition of fees and its current fee schedules.

1.2 Purpose. These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical and legal review of applications to the Planning Board; to take advantage of the procedures offered by G.L. c. 44, s. 53G; to establish a review procedure in the selection of consultants; and to promote more informed decision-making by the Planning Board.

SECTION 2. FEE STRUCTURES AND REGULATIONS.

2.1 General. The Planning Board shall impose reasonable fees for the review of applications which come before it. The Planning Board may impose Administrative Fees and Project Review Fees as may be applicable to the types of applications set forth below.

SECTION 3. ADMINISTRATIVE FEES.

3.1 Applicability. An Administrative Fee shall be assessed to offset the expense of review by the Planning Board and its office with regard to all applications set forth in Section 3.3, below.

3.2 Submittal. Administrative Fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.

3.3 Schedule of Administrative Fees. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the City Zoning Ordinance, the Rules and Regulations for the Subdivision of Land, and any listings which may have been compiled from time to time for the benefit of applicants.

- A. Approval Not Required (ANR) Plans - \$200.00/lot or lot line change.
- B. Preliminary Plans - \$100.00 base and \$100.00 per lot.

- C. Definitive Plans - \$1,000.00 base and \$250.00 per lot; \$500.00 per lot if no preliminary plan was submitted.
- D. Modification of a Definitive Plan - \$500.00 base, plus \$175.00 per lot.
- E. Special Permit - \$200.00. Modification or extension of special permit shall also require a fee of \$200.00.
- F. Site Plan Review - Review of Site Plans shall require the following application fees:
 - 1. Minor Project \$200.00.
 - 2. Major Project \$500.00.
- G. Repetitive Petition - Consideration of a petition for a rehearing from the Zoning Board of Appeals - \$200.00.

3.5 Fee Waivers. The Planning Board may waive or reduce any Administrative Fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

3.6 Refund. Once the review process has been commenced, the Planning Board shall not refund Administrative Fees, including the case of withdrawal of the application by the applicant.

SECTION 4. PROJECT REVIEW FEES.

4.1 Applicability. In addition to an Administrative Fee, the Planning Board shall impose a Project Review Fee on those applications which require, in the judgment of the Planning Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the city lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

4.2 Submittal. Project Review Fees shall be submitted at the time of the submittal of the application for deposit in an account established pursuant to G.L. c. 44, s. 53G (53G Account). Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full. Total Project Review Fees may surpass this initial deposit. The Planning Board will notify applicants if incurred fees surpass this initial deposit (See Section 4.4 – Replenishment).

4.3 Schedule of Project Review Fees. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the City Zoning Ordinance, the Rules and Regulations for the Subdivision of Land, and any listings which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Planning Board action, only the largest of the applicable Project Review Fees shall be collected for deposit into the 53G Account, and not the sum of those fees.

A. Preliminary Plan, Modification of a Definitive Plan, or Modification of a Special Permit:

| <u>Project Size</u> | <u>Fee</u> |
|-----------------------------|------------|
| 2 - 15 Lots/Units | \$2,000 |
| 16 - 20 Lots/Units | \$3,000 |
| 21 - 25 Lots/Units | \$4,250 |
| More than 25 Lots/Units | \$5,000 |
| Ten or fewer Parking Spaces | \$1,000 |
| Ten or more Spaces | \$1,500 |

B. Initial Definitive Plan, Special Permit or Site Plan:

| <u>Project Size</u> | <u>Fee</u> |
|-----------------------------|------------|
| 2 - 15 Lots/Units | \$4,000 |
| 16 - 20 Lots/Units | \$6,000 |
| 21 - 25 Lots/Units | \$10,000 |
| More than 25 Lots/Units | \$20,000 |
| Minor Site Plan Review | \$500 |
| Major Site Plan Review | \$1,500 |
| Ten or fewer Parking Spaces | \$2,000 |
| Ten or more Spaces | \$5,000 |

4.4 Replenishment. When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, as imposed above, the Planning Board shall consider whether to require a supplemental Project Review Fee to cover the cost of the remaining project review.

4.5 Inspection Phase. After the granting of a Special Permit, site plan approval or Definitive Plan approval, the Planning Board may require a Supplemental Project Review Fee for the purpose of ensuring the availability of funds during the inspection phase of the review process.

4.6 Handling of Project Review Fees. The Project Review Fee is to be deposited into a special account as set forth in G.L. c. 44, s. 53G.

- A.** Outside consultants retained by the Planning Board to assist in the review of an application shall be paid from this account.
- B.** Project Review Fees shall be turned over to the City Treasurer by the Planning Board for deposit into a 53G Account.
- C.** A copy of the latest statement from the banking institution handling the 53G Account shall be forwarded from the office of the City Treasurer to the Planning Board office as soon as it is received for timely and accurate accounting.
- D.** An accounting of an applicant's funds held in the 53G Account may be requested by the applicant at any time.

1. The Planning Board shall respond to the request in a timely fashion.
2. This accounting shall include the following information:
 - a. The latest statement from the banking institution handling the account, which should include an accurate accumulated interest portion to the closing date of the statement if such statements are subdivided into individual applicants' accounts. Otherwise, a statement of principal and interest, prepared by the Planning Board office, based on the latest statement from the banking institution.
 - b. A report of all checks authorized for issuance since that last banking statement.
- E. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced. An applicant may also request copies of all itemized invoices.
- F. Excess fees in the 53G Account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
 1. With the approval or disapproval of a Preliminary Subdivision Plan.
 2. With the disapproval of a Definitive Subdivision Plan.
 3. With the release of the performance bond at the end of construction of an approved Definitive Subdivision Plan.
 4. With the final inspection or the approval or disapproval on all other types of applications under the City Zoning Ordinance, whichever comes later.

4.7. Appeal. Per G.L. c.44, s. 53, the choice of a consultant selected by the Planning Board for the review of an application may be appealed in writing to the City Council by the applicant, providing such appeal is initiated within two weeks of the initial selection.

- A. The City Council shall convene a formal hearing within twenty days of receiving a written appeal by an applicant.
- B. Two circumstances may disqualify the selected consultant. These conditions constitute the *only* grounds for an appeal.
 1. Conflict of interest: A consultant shall not have a financial interest in the project under review, or be in a position to financially benefit in some way from the outcome of the pending review process. Consultants must be in compliance with the Massachusetts Conflict of Interest Law, G.L. c. 268A.
 2. Lack of appropriate qualifications: A consultant shall possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.

- C. The required time limits for action upon an application by the Planning Board shall be extended by duration of the appeal.
- D. If no decision is rendered by the City Council within one month following the filing of the appeal, the selection made by the Planning Board shall stand.
- E. This appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

SECTION 5. DELINQUENT ACCOUNTS. The following rules apply to fees owed to the Planning Board by applicants:

5.1 Monthly Interest Charge. All fees past due by one month from the date of invoice shall be subject to a monthly interest charge based upon an annual interest rate of 14%.

5.2 Costs of Collection. All costs of collection associate with past due accounts shall be borne by the applicant.

5.3 Current Delinquents. All applicants owing fees to the Planning Board at the time of any amendment to these provisions of the regulations shall be sent the following:

- A. A duplicate notice of the amount past due.
- B. A copy of the applicable sections of these regulations with all amendments clearly indicated.
- C. Notice of a 30 day grace period before the commencement of any changes in interest rates or charges.

SECTION 6. REVISION OF FEE SCHEDULES AND REGULATIONS GOVERNING FEES.

6.1 Amendment. The Planning Board may review and revise its regulations and fee schedules, from time to time, as it sees fit.

- A. Amendments shall be preceded by a public hearing.
- B. Any new regulations or alterations to the fee schedule shall take affect upon filing a copy of the amendments with the City Clerk.
- C. The Planning Board will review its regulations and fee schedule on an annual basis.
 - 1. The Board may waive this provision in any year with a motion carried by a majority of the Board members.