



MEMORANDUM

TO: Board of Building Appeals Members

FROM: William J. Heniff, AICP, Community Development Director ~~TH~~

DATE: August 23, 2016

SUBJECT: **Text Amendments to Chapter 150.160 of the Village Code: Expedited Permit Review**

Chapter 150.160 of the Village Code established a process for review and approval of expedited building permits, which reads as follows:

§ 150.160 - Expedited permit review process and fees.

(A) Any person submitting plans to the village for review and desiring to have those plans reviewed in an expedited fashion shall have the option of requesting an expedited review. Payment of additional costs involved in processing the plans in an expedited fashion shall be paid to the village in addition to the normal fees associated with review of all plans.

(B) All requests for processing in an expedited fashion must be in writing and the party must agree to pay for all costs expended by any experts hired or retained by the village to process or review the plans.

(C) A fee of \$500.00 must accompany the request for expedited review with the remainder to be paid within 30 days after the bill has been sent by the village.

(70 Code, § 15.10.190)

This provision has been within Village Code for decades but has not been utilized in recent history. However, when staff received such an inquiry from a developer earlier this year, staff found that this code provision is inadequate to address current development and market conditions, as follows:

1. The code does not define what “expedited” actually is;

2. It assumes that a third party service is “at the ready” to conduct a review which would occur faster than an in-house review;
3. It assumes that the review would provide a “value-added” component that would be worthy of an additional charge;
4. It does not readily define what elements would be subject to an expedited review (e.g., engineering review, building plan review, etc.); and
5. It does not account for external review activities by other departments or other governmental entities (i.e., DuPage County Development & Stormwater, DuPage County Health Department, Glenbard Wastewater Authority, IEPA, IDOT, etc.).

In further review of this concept, staff also undertook a peer review of other municipal jurisdictions that offer such services. Through this review, staff found that expedited reviews pose some unique challenges to those respective communities and would not be readily attributable to Lombard, as follows:

1. The Building Division is largely comprised of part-time staff that would be precluded from additional hours for plan review activities, due to budget constraints;
2. The implication of ready staff to provide such work on an overtime basis cannot be guaranteed; and
3. Outside plan review would still require some review in-house for quality control purposes.

In lieu of this code provision, staff notes that the Village Board recently adopted amendments to Chapter 16 of the Village Code pertaining to Cost Recovery (attached Ordinance 7209, adopted April 21, 2016) which would provide for a reimbursement provision, if the Village and the requestor sought such a service. As such, this provision would better address situations in which external or third-party services are needed. It also allows for greater flexibility for the development community to denote the specific scope of services to be performed and the associated costs.

ACTION REQUESTED

Staff recommends that BOBA recommend to the Village Board the provisions set forth with Chapter 150.160 be repealed in its entirety.

Should such expedited services be needed in a manner that cannot be accommodated through the normal permit process, the provisions of Chapter 16 may apply.

**ORDINANCE 7209
PAMPHLET**

**AMENDMENTS TO CHAPTER 16 OF THE VILLAGE CODE
COST RECOVERY**



**PUBLISHED IN PAMPHLET FORM THIS 22nd DAY OF APRIL, 2016, BY ORDER
OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD, DUPAGE
COUNTY, ILLINOIS.**

Sharon Kuderna

**Sharon Kuderna
Village Clerk**

ORDINANCE NO. 7209

**AN ORDINANCE AMENDING TITLE I, CHAPTER 16, SECTIONS 16.01, 16.03 AND 16.04
OF THE LOMBARD VILLAGE CODE IN REGARD TO COST RECOVERY**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title I, Chapter 16, Section 16.01 of the Lombard Village Code is amended to read in its entirety as follows:

"§ 16.01 Costs to be recovered.

The costs as described in § 16.02 below shall be:

- (A) recoverable and paid by the applicant/petitioner whenever such costs are actually incurred by the Village in reviewing for approval a petition or an application for annexation, subdivision, zoning amendment, variation, conditional use, special use, building permit, liquor license, or other license or permit required by law and issuable by the Village; or
- (B) recoverable and paid by the proposed developer/developer whenever such costs are actually incurred by the Village in reviewing and analyzing a development proposal, which has not yet reached the formal petition or application stage, or an economic incentive request."

SECTION 2: That Title I, Chapter 16, Section 16.03 of the Lombard Village Code is amended by adding the following to the end thereof:

"Notwithstanding the foregoing, the Village staff is hereby authorized to enter into an agreement with a proposed developer/developer, in substantially the form as attached to Ordinance No. 7209, adopted April 21, 2016, and incorporated herein by reference, (an "Agreement to Reimburse Costs"), relative to a particular development proposal and/or economic incentive request, as referenced in § 16.01(B) above, pursuant to which the proposed developer/developer shall deposit with the Village an agreed upon amount, relative to the anticipated costs (as defined in § 16.02 above) to be incurred by the Village in regard to reviewing and analyzing said development proposal and/or economic incentive request. Said Agreement to Reimburse Costs shall also provide for an agreed upon cap on the costs (as defined in § 16.02 above) that the proposed developer/developer has agreed to pay, and for the return of any unused deposited funds, to the proposed developer/developer, upon the Village being fully reimbursed for all costs (as defined in § 16.02 above), that the Village has incurred relative to the proposed developer's/developer's development proposal and/or economic incentive request."

SECTION 3: That Title I, Chapter 16, Section 16.04 of the Lombard Village Code is amended to read in its entirety as follows:

"§ 16.04 Failure to pay.

Failure of the applicant/petitioner or proposed developer/developer to pay, as specified in § 16.03 above, or in accordance with the terms of the Agreement to Reimburse Costs referenced in § 16.03 above, if entered into, shall entitle the Village to withhold indefinitely the granting of the relief sought and/or the issuance of the permit or license, to withhold indefinitely the issuance of the next subsequent permit or license sought by the applicant/petitioner or proposed developer/developer, or to withhold indefinitely the next subsequent relief sought by the applicant/petitioner or proposed developer/developer in relation to the property that was the subject of the application/petition or development proposal/economic incentive request."

SECTION 4: That the Agreement to Reimburse Costs, as referenced in Title I, Chapter 16, Section 16.03 of the Lombard Village Code, shall be in substantially the format attached hereto as Exhibit A and made part hereof.

SECTION 5: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as provided by law.

Passed on first reading this 7th day of April, 2016.

First reading waived by action of the Board of Trustees this ____ day of ____, 2016.

Passed on second reading this 21st day of April, 2016.

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Johnston, Pike and Ware


Nays: None

Absent: None

Approved this 21st day of April, 2016.


Keith T. Giagnorio
Village President

ATTEST:


Sharon Kuderna
Village Clerk

Published by me in pamphlet form on this 22nd day of April, 2016.


Sharon Kuderna
Village Clerk

EXHIBIT A

AGREEMENT TO REIMBURSE COSTS

Date: _____

Requestor: _____

Affected Property: _____

Lombard, Illinois 60148

P.I.N.: _-_-_-_-

Prepayment: \$____,000.00

Maximum: \$____,000.00

Recitals

WHEREAS, Requestor has requested that the Village of Lombard, Illinois (the "Village") undertake selected third party consultant services prior to the Village's formal consideration of a development proposal and/or in relation to an economic incentive request; and

WHEREAS, Section 16.01 of the Lombard Village Code identifies third party consultant costs as being "recoverable and paid by the proposed developer/developer whenever such costs are actually incurred by the Village in reviewing and analyzing a development proposal, which has not yet reached the formal petition or application stage, or an economic incentive request"; and

WHEREAS, the Village and the Requestor deem it to be of mutual benefit to provide for said third party consultant services, prior to the Village's formal consideration of a development proposal and/or in relation to an economic incentive request, to help ensure that both the Village and the Requestor have the best information available prior to formal consideration of the development proposal and/or the economic incentive request; and

WHEREAS, the Requestor is seeking the Village to undertake the following third party consultant services (the "Services"), associated with the Requestor's development proposal and/or economic incentive request, in regard to the Affected Property:

; and

WHEREAS, recognizing the unavailability of Village staff to provide the requested Services, Requestor has offered to reimburse the Village for its costs incurred in undertaking the requested Services; and

WHEREAS, the Village would not undertake the requested Services unless the Village was being reimbursed for the cost thereof by the Requestor;

NOW, THEREFORE, BASED ON THE FOREGOING, THE MUTUAL PROMISES CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED BY THE VILLAGE AND THE REQUESTOR, IT IS HEREBY AGREED BETWEEN THE REQUESTOR AND THE VILLAGE AS FOLLOWS:

1. **Requested Assistance.** Requestor has requested that the Village undertake the Services in regard to the Requestor's development proposal and/or economic incentive request relative to the Affected Property.
2. **Village Assistance.** The Village has agreed to contract with a third party consultant to perform the requested Services.
3. **Requestor Promise to Reimburse.** Requestor agrees to reimburse the Village for all of the costs of the third party consultants retained by the Village, relative to the Services. While the Village agrees to exercise reasonable control over its incurrence of costs, in regard to the Services, it does not commit that its costs will be less than a particular sum; provided, however, it is understood Requestor does not agree to pay an amount greater than the Maximum stated above, relative to the Services, except upon Requestor's express written supplemental direction to the Village. Reimbursement of third party consultant costs incurred by the Village, relative to the Services, shall be made to the Village not later than thirty (30) days following the Requestor's receipt of a copy of the third party consultant's statement relative to the Services.
4. **Prepayment of Costs.** This Agreement shall be null and void unless Requestor, within three (3) days after the date of this Agreement, pays to the Village the Prepayment stated above. This is to guarantee reimbursement to the Village, but does not replace the obligations of Section 3. above. In regard to the payment obligation set forth in Section 3. above, the Village may draw upon the Prepayment for reimbursement of the costs incurred by the Village relative to the Services.
5. **Termination.** This Agreement to Reimburse Costs shall terminate upon the completion of the Services, and the reimbursement of the Village for the costs thereof. Otherwise, this Agreement may be terminated by either the Village or the Requestor upon three (3) days prior written notice to the other party. All costs incurred by the Village prior to its sending or receipt of such notice are reimbursable hereunder. Upon the termination of this Agreement to Reimburse Costs, and the reimbursement of the Village for all costs incurred by the Village relative to the Services, if any portion of the Prepayment remains on deposit with the Village, said remaining portion of the Prepayment shall be refunded to the Requestor.

On the date shown above, the Requestor and the Village, through their authorized representatives, have entered into this Agreement.

Requestor:

By: _____
Name: _____
Title: _____

VILLAGE OF LOMBARD

By: _____
Name: _____
Title: _____