

Regulations for Application Fees and Consultant Review Deposits for Matters Submitted to the Planning Board

SECTION 1. INTRODUCTION. 1.1

1.2 Purpose.

Fees may be imposed by a governmental entity provided they share [three] common traits that distinguish them from taxes: [1] they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner 'not shared by other members of society'; [2] they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and [3] the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. [Paraphrased from *Emerson College v. Boston*, 391 Mass. 415, 424-425 (1984).]

Accordingly, the Planning Board imposes fees for the submission and consideration of applications for the permits, licenses, and approvals it grants under various laws and regulations. Such fees are intended to at least partially recover the costs of the services provided including departmental overhead. These costs include processing applications, giving notice of hearings, determining that the work proposed in the application will conform to the laws and regulations regulating the work, and the proposed work is not contrary to the public interest or the rights of abutters. The fees established in this policy are intended to cover the costs incurred by the Board and the staff assigned to handle the various aspects of processing the application. Further fees and charges may be assessed to cover the cost of monitoring a project to see that it is carried out according to the approved plan and that the project does not result in unexpected adverse effects on the environment, the neighbors, or the community.

Experience has shown that major applications require substantial work by the planning agent in generally advising and assisting the applicant, ensuring the application is complete, and otherwise getting the application in proper order for Board consideration. This work is substantially increased when the Board is forced to require multiple submittals by the applicant and consequent multiple hearing sessions to get a complete application which proposes an acceptable project. These regulations and fee schedules also take advantage of the procedures offered by M. G. L. chapter 44, section 53G; to provide the technical assistance of consultants; and thus promote better informed decision-making by the Planning Board

1.3 Definitions:

ADDITIONAL SUBMITTAL A submittal of material following the original application which may include documents, reports, statements, plans, charts, pictures, electronic media, and other material made in connection with that application. All material relating to a single project submitted at the same time or at nearly the same time shall constitute a single additional submittal. If a session of the public hearing is opened between submittals, the submittals will be considered separate additional submittals.

ADVERTISING FEE A fee equal to the actual cost of advertising a required hearing on the application submitted. The planning agent may require this fee be paid by a separate check drawn to the newspaper chosen by the planning agent.

APPLICATION The signed application form for the action requested accompanied by all necessary plans, narratives and other materials as may be required by the statutes, zoning bylaws, and Board regulations.

CONSULTANT REVIEW DEPOSIT A sum of money necessary to cover the expected cost of consultants hired by the Board in accordance with M. G. L. Chapter 44 section 53G. See section 3 below.

LOW IMPACT DEVELOPMENT (L I D) Bylaws and Regulations requiring most stormwater be returned to the soil on site. A permit is required by article 31 of the Winchendon General Bylaws for many development projects.

MAIL NOTICE FEE When a public hearing with notice to abutters and others is required by law or regulation, the applicant shall pay a fee for each notice that must be mailed. Abutters will be determined according to an abutters list provided by the assessors.

MINOR CHANGE in an LID permit A minor change is change to the plan which will have no significant impact on stormwater handling for the site.

MINOR SUBDIVISION A residential subdivision proposing no more than three dwelling units and no more than 500 feet of new road.

REPETITIVE PETITION A petition presented within two years after disapproval by the town meeting of a zoning amendment which is substantially the same as one which was disapproved. Also a repeat of a disapproved application to the Board when the fee for such application was less than the repetitive petition fee.

SOLAR ENERGY PROJECT IN COMBINATION WITH AGRICULTURAL USE: A project which combines a solar energy project with the area between or under the solar collectors being used for the commercial grazing of livestock or the commercial production of crops including vegetables, fruit, hay, grains, nursery stock, and other crops sold for cash or used on the farm for the feeding of livestock.

SECTION 2. FEE STRUCTURE AND REGULATIONS.

2.1 General.

The Planning Board shall impose reasonable fees for the review of applications which come before it. These include administrative fees, advertising fees, mail notice fees, and consultant review deposits as may be applicable to the types of applications set forth below.

2.2 Additional Submittal Fee

Whenever the Board finds an application is incomplete, board member questions, or comments by a consultant require written responses and/or additional material be submitted by the applicant in order for the Board to make a properly informed decision, additional planning agent and Board time is required. Therefore an additional submittal fee will be required for submittals beyond one additional submittal. The cost of this first additional submittal is included in the normal application fee. An additional submittal may consist of documents and/or plans, charts, pictures, electronic media, etc. and other necessary supplemental material provided all such material is submitted at the same time or nearly the same time and is for a continued session of the public hearing. When additional material is required after another hearing session, it will constitute a new additional submittal and will require payment of an additional fee.

2.3 Continuation of hearing fees:

Since abutters and other interested parties should be properly advised of the application review process, depending on the nature of the proceeding, additional advertising fees and mail notice fees may be required when a hearing is continued.

2.4 Standard Fee Schedule: Permits and Approvals Under the Zoning Bylaw:

2.4.1 ENDORSEMENT OF AN APPROVAL NOT REQUIRED PLAN:

Application Fee for plan showing two new lots, whether or not buildable	110.00
Each additional lot	200.00

2.4.2 RESIDENTIAL DEVELOPMENT PLAN

Application fee for sketch plan	375.00
Advertising Fee for Board discussion meeting	Required
Mail Notice Fee, for each recipient of notice (for Board discussion meeting)	5.00

2.4.3 PRELIMINARY SUBDIVISION PLAN:

Application Fee	550.00
Consultant review deposit	As required by the Board

2.4.4 DEFINITIVE SUBDIVISION PLAN:

Application Fee, if preliminary plan or residential sketch plan was submitted and not disapproved	500.00
Application Fee, if no preliminary plan or residential sketch plan was submitted or such was disapproved	1000.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	7.00
Consultant review deposit	4000.00

2.4.5 REVIEW OF MINOR SUBDIVISION:

Application Fee, if preliminary plan or residential sketch plan was submitted and not disapproved	250.00
Application Fee, if no preliminary plan or residential sketch plan was submitted or such was disapproved	500.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	7.00
Consultant review deposit	500.00

2.4.6 RELEASE OF LOTS (1 OR MORE) FROM PERFORMANCE GUARANTEE:

Application Fee	275.00
Consultant review deposit	As required by the Board

2.4.7 SITE PLAN REVIEW BY PLANNING AGENT:

Review Fee	50.00
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2.4.8 INFORMAL SITE PLAN REVIEW BY THE BOARD (BOARD CONFERENCE)

Additional fee after Planning Agent Review Fee	200.00
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2.4.9 SITE PLAN FORMAL REVIEW (PUBLIC HEARING):

Credit will be allowed for any fees already paid for this site review.

Application Fee	1000.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	5.00
Consultant review deposit	4000.00

2.4.10 SITE PLAN REVIEW OF SOLAR ENERGY PROJECT

Application Fee	1000.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	5.00
Consultant review deposit	4000.00

2.4.11 SITE PLAN REVIEW OF SOLAR ENERGY PROJECT IN COMBINATION WITH AGRICULTURAL USE:

Application Fee	500.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	5.00
Consultant review deposit	4000.00

2.4.12 PLANNING BOARD SPECIAL PERMIT

Application Fee	1000.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	7.00
Consultant review deposit	As required by the Board

2.4.13 MODIFY OR AMEND DEFINITIVE SUBDIVISION, FORMAL SITE PLAN or special permit:

Application Fee	550.00
Advertising Fee	Required
Mail Notice Fee, for each recipient of notice	7.00
Consultant review deposit	As required by the Board

2.4 14 TIME EXTENSION FOR APPROVED SUBDIVISION, SITE PLAN OR SPECIAL PERMIT:

Application Fee	300.00
Consultant review deposit	As required by the Board

2.4.15 CHANGE TO SCENIC ROAD HEARING:

Application by public agency	no fee
Application by a private entity	55.00

2.4.16 REPETITIVE PETITION 300.00

2.4.17 ADDITIONAL SUBMITTAL FEE (ALL APPROVALS AND PERMITS):

Submittal Fee, per additional submittal for which a fee is required	150.00
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2.5 Standard Fee Schedule: Permits under the Low Impact Development Bylaw:

2.5.1 LOW IMPACT DEVELOPMENT PERMIT, not in conjunction with another application for the same site

Application Fee	110.00
Per square foot of impervious area	0.03
Per square foot total new disturbance of land	0.02
Consultant review deposit	As required by the Board

2.5.2 LOW IMPACT DEVELOPMENT PERMIT, Application filed in conjunction with a subdivision plan, a site plan or a Planning Board special Permit

Application Fee	25.00
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Since the review of the proposal will be considered as part of the review of the other plan, no additional fees will be required.

2.5.3 MODIFY APPROVED L I D Permit, major change not involving modification of another plan

Application Fee	100.00
Per square foot of new impervious area	0.03
Per square foot total new disturbance of land	0.02
Per square foot previously disturbed land	0.005
Consultant review deposit	As required by the Board

2.5.4 MODIFY APPROVED L I D Permit, minor change not involving modification of another plan

Application fee	25.00
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2.5.6 EXTEND AN L I D PERMIT, not requiring any modifications

Application fee	25.00
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2.6 Form of Payment. All Administrative and Consultant review deposits shall be paid by bank or certified check.

2.7 Fees shall be submitted at the time the application is submitted. Any application filed without the required fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full to the department of Planning and Development. Additional fees will be assessed when subsequent submittals are filed and must be paid with the submittal.

2.8 First Additional Submittal It is recognized that an applicant may be required to provide clarifications and further details after the submittal of an original application. This is particularly true where a response to the comments of the board’s consulting engineer may be required. Accordingly, no additional fee will be assessed for the first submittal following the original application. Second and subsequent submittals will require the payment of an additional fee.

2.9 Fees for Revised Applications.

When during the course of the consideration of an application, the application is changed so that the resulting project would incur a higher fee, an additional fee equal to the difference in fees shall be assessed and must be paid with the submittal of the revised application.

Should the scope of a project be reduced during the review process such that the resulting project would normally incur a lower fee, the Board will consider a reduction in the fee amounting to half the difference in the fees if it is satisfied that the actual cost to the town in staff time and other resources was reduced at least in proportion.

2.10. Fee Waivers.

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

No application fee will be assessed on any projects submitted by any town, state or federal agency. The Board will consider waiving all or part of the fee for applications submitted by non profit tax exempt organizations.

2.11 Refunds.

Once the review process has been commenced, the Planning Board will not refund fees, including the case of withdrawal of the application by the applicant, except as provided in Section 2.9 and 2.10 above.

SECTION 3. CONSULTANT REVIEW DEPOSITS .

3.1 Applicability.

In addition to an application or administrative Fee, the Planning Board shall require a Consultant review deposit for those applications which require, in the judgment of the Planning Board, review by outside consultants due to the size, scale or complexity of the proposed project, the project's potential impacts, or because the Town lacks the necessary staff or expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, architects, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, bylaws 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.

The amount of the consultant review deposit stated in the fee schedule will constitute a deposit toward the actual fee. The actual fee will be the cost to the Town for the consultant services required. See sections 3.3 to 3.7 below for specific provisions.

3.2 Waiver or reduction of consultant review deposit

A. If the Board determines that no consultant review will be needed or that the cost of the review will likely be less than the usual required deposit, the Board may waive or reduce the required deposit. If the deposit is waived any amount received and not expended will be returned. If the likely cost of consultants will be less than any deposit on hand, the Board will consider a refund of the unneeded deposit.

B. If the planning agent feels that no consultant review will be needed or that the cost of the review will likely be less than the usual required deposit, the application may be

accepted without a review deposit or with a lesser deposit pending formal action by the Board in regard to a review deposit.

3.3 Payment of consultant review deposit.

Consultant review deposits shall be submitted at the time of the submittal of the application and will be forwarded to the town treasurer for deposit in an account established pursuant to M. G. L. chapter 44, section 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.

3.4 Replenishment

When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Consultant review deposit, as imposed above, the Planning Board shall consider whether to require a supplemental Consultant Review Deposit to cover the cost of the remaining project review. If such replenishment is required, the applicant shall pay the amount determined by the Board forthwith and no further review will occur until the additional amount has been paid.

3.5 Inspection Phase.

After the granting of a special permit, site plan approval or definitive subdivision approval, the Planning Board may require a Supplemental Consultant Review Deposit for the purpose of monitoring the construction phase of the review process. A deposit toward the cost of monitoring the work will be determined by the Board and must be paid prior to the commencement of the work.

3.6 Handling of Consultant review deposits.

The Consultant review deposit will be handled in accordance with M. G. L. chapter 44, section 53G:

- A. Consultant review deposits shall be turned over to the Town Treasurer by the Planning Board for deposit into a 53G Account.
- B. Outside consultants retained by the Planning Board to assist in the review of an application shall be paid from this account.
- C. A copy of the latest statement from the banking institution handling the 53G account shall be forwarded from the office of the Town Treasurer to the Planning Board office as soon as it is received for timely and accurate accounting.
- D. The Town Accountant shall prepare a report on activity in the 53G Account on an annual basis.

1. This report shall be submitted to the Planning Board and to the applicant for their review.
- E. 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.
- F. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.
- G. 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 disapproval of a Definitive Subdivision Plan or other plan.
 2. With the release of the performance bond or other security at the end of construction of an approved definitive subdivision plan, site plan or special permit project.
 3. With the final inspection showing satisfactory completion or the approval or disapproval on all other types of applications under the Zoning Bylaw, whichever comes later.

3.7. Appeal of the Board's choice of consultant.

The choice of a consultant selected by the Planning Board for the review of an application may be appealed in writing to the Board of Selectman by the applicant, providing such appeal is initiated within two weeks of the initial selection.

- A. The Selectmen 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 of 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 Board of Selectmen 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 4. DELINQUENT ACCOUNTS. The following rules apply to fees owed to the Planning Board by applicants:

4.1 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%.

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

4.3. 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 5. REVISION OF FEE SCHEDULES, CONSULTANT REVIEW DEPOSITS, AND REGULATIONS GOVERNING FEES.

5.1 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 Town Clerk.