PART 85

APPLICATION FOR PERMISSION OF STATE COMPTROLLER

(Statutory authority: County Law, Sections 258, 268, 269, 280-l, 280-t, 299-o and 299-r; Town Law, Sections 54, 194, 202-d, 202-e, 209-f, 209-h and 209-q; State Finance Law, Section 8[14])

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§ 85.1 Background.

(a) The purpose of this Part is to:

(1) set forth the documentation that must be included in applications to the Comptroller for permission to establish, extend or increase the maximum amount to be expended in town or county improvement districts or to authorize or increase the maximum amount to be expended for a town improvement; and

(2) to place the primary responsibility for compliance with the applicable provisions of the Town Law and the County Law with local officials. It is the Comptroller's expectation that, upon receipt of an application which complies with this Part, he will, in all but a very limited number of instances, be able to make prompt determinations of public interest and undue burden, as required by statute, without requiring additional information or documents from the applicant.

(b) While existing procedures used to review applications under the Town Law and the County Law may result in the identification and correction of deficiencies, the Comptroller believes that the administrative burdens and attendant delays imposed on towns and counties by this review may be disproportionate to the protection it provides to the taxpayers. In addition, it is the Comptroller's judgment that the existing procedures are no longer a wise use of the limited resources available to the Comptroller's Office.

Therefore, these regulations are intended to establish streamlined procedures for the performance of the statutorily required approval function.

(c) The procedures contained in this Part are intended to eliminate the need for a detailed review by the Comptroller's Office of all proceedings underlying a matter requiring the Comptroller's permission and, instead, place the primary responsibility for compliance with the Town Law and the County Law with local officials. To this end, the regulations require the town or county's legal counsel to provide an opinion that the town or county has undertaken all necessary proceedings in the manner required by statute. In addition, the town or county must submit a verified statement detailing the nature of the proposed improvements, the need for such improvements, and the information necessary to calculate the cost of the proposed improvements to the properties which will be required to pay for them.

§ 85.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) “Application” shall mean any application for permission of the State Comptroller.

(b) “Permission of the State Comptroller” shall mean the consent, permission or approval of the State Comptroller required pursuant to any of the following statutes: County Law, sections 258, 268, 269, 280-i, 280-t, 299-o and 299-r; Town Law, sections 54, 194, 202-d, 202-e, 209-f, 209-h and 209-q.

(c) “Typical property” shall mean the assessed value that approximates the assessed value of a majority or mode of the properties situated in the area that will be required to finance the cost of the proposed improvements.

(d) “Typical one- or two-family home” shall mean the assessed value that approximates the assessed value of a majority or mode of the one- or two-family dwellings situated in the area that will be required to finance the cost of the proposed improvements.

(e) “Verified” shall mean an application which contains a verification in substantially the following form:

VERIFICATION

STATE OF NEW

YORK) COUNTY

OF_____) SS.:

_____, being duly sworn, deposes and says that (s)he is the _____ of the _____, the corporation named in the within entitled action; that (s)he has read the foregoing application and knows the contents thereof; and that the same is true to (her) his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters (s)he believes it to be true.

_____

Sworn to before me this

_____ day of _____, 19

_____

§ 85.3 Authority for submitting application.

(a) An application for permission of the State Comptroller shall set forth the statute pursuant to which the application is being made and contain such other information as is required by section 85.4 of this Part. Such information may either be included as a statement in the application or attached as an exhibit thereto. The application shall be executed and verified by the supervisor if an application is made pursuant to the Town Law, the chairman of the board of supervisors if an application is made pursuant to the County Law or such other officer as the governing board of the town or county shall designate. Any application under Town Law, sections 194 and 209-f, including all exhibits thereto, shall be submitted in duplicate.

(b) All applications for permission of the State Comptroller shall be accompanied by:

(1) a certified copy of a resolution of the governing board stating that the attached application was prepared at the direction of the governing board; that the board believes the contents of the application to be accurate; that the Board has determined that the improvement, district, extension or expenditure for which permission is sought is in the public interest and will not constitute an undue burden on the property which will bear the cost thereof; and if the cost of the proposed improvements is to be assessed in whole or in part against a benefited area, that all real property to be so assessed will be benefited by the proposed improvements and that no benefited property has been excluded; and

(2) one or more opinions of legal counsel that comply with the requirements of section 85.5 of this Part.

§ 85.4 Information required in application.

An application for permission of the State Comptroller shall contain the following:

(a) all documents and information required to be included by the provisions of the Town Law or the County Law pursuant to which the application is being made;

(b) a description of the proposed improvements;

(c) a statement setting forth the maximum cost of the proposed improvements. If an application is for the approval of an increase of maximum amount, a statement of the original maximum amount, the amount of the increase, and the circumstances which have made the increase necessary;

(d) a statement explaining the factors which the governing board considered in making its determination that the proposed improvements are in the public interest. These factors should demonstrate a basis for the board's determinations that the proposed improvements are necessary, convenient or desirable and, if the cost of the improvements is to be assessed in whole or part against benefited property, that all property upon which the assessments are to be imposed will be benefited by the improvements and that no benefited property has been excluded;

(e) a statement describing the proposed manner of financing the cost of the improvements. This statement shall set forth:

(1) the anticipated amount, type, term, and interest rate of the proposed town or county indebtedness, together with a statement that the proposed financing is reasonable under current market conditions or is being made available under a State or Federal loan program; and

(2) a description of the amount and type of State or Federal aid, if any, together with written documentation from the appropriate State or Federal agency confirming that such aid has been committed. If the town or county's determination that the proposed financing is reasonable is based on the opinion of the town or county's financial advisor, a copy of such opinion should accompany the application;

(f) an estimate of the cost of operating and maintaining the proposed improvements, including the basis or source of such estimate;

(g) a statement detailing the manner in which it is proposed to raise the costs of debt service and operation and maintenance. If assessments are to be made on a benefit basis, a description of the proposed benefit formula must be included. If user charges are to be imposed in connection with the improvements, an estimate of the amount of such charges and the basis on which they are to be computed;

(h) if an application is for permission to establish or extend a district or for an increase in the maximum amount to be expended in a district or an extension, a statement of the aggregate assessed valuation of the taxable real property in the proposed district or extension, as shown on the latest completed assessment roll;

(i) if an application is for permission to provide an improvement under section 54 or 209-q of the Town Law or to increase the maximum amount to be expended for such an improvement:

(1) if all or part of the cost is to be assessed against a benefited area, a statement of the aggregate assessed valuation of the taxable real property in the proposed benefited area, as shown on the latest completed assessment roll of the town; or

(2) if all or part of the cost is to be assessed against the area of the town outside of any villages, a statement of the aggregate assessed valuation of the taxable real property in that area, as shown on the latest completed assessment roll of the town;

(j) if an application is made pursuant to section 258, 268, 269, 280-i, 280-t, 299-o or 299-r of the County Law and it is proposed to establish two or more zones of assessment within a county district, a statement of the allocation of costs of the proposed improvements between the zones of assessment and the factors the governing board considered in making such allocation;

(k) a statement of the average full valuation of the taxable real property of the town or county making the application computed pursuant to the first paragraph of subdivision seven-a of section 2.00 of the Local Finance Law;

(l) an itemized statement of the outstanding, and authorized but unissued, indebtedness as of the date of the application for all town purposes, if the applicant is a town, and for all county purposes, if the applicant is a county;

(m) a statement of all appropriations made during the current fiscal year for repayment of debt principal, the amount of any State or Federal aid available for the payment of debt principal, and the amount of all debt which is excludable for purposes of computing the town or county's debt limit under article VIII of the New York State Constitution;

(n) In lieu of the statements required by subdivisions l and m, the town or county may submit a debt statement prepared, as of the date of the Application, in the manner prescribed in title 10 of article 2 of the Local Finance Law;

(o) the current tax rates and assessments applicable to the taxable real property which will bear the cost of the proposed improvement itemized for:

(1) county;

(2) town, including highway;

(3) school;

(4) fire;

(5) any other purpose, with each such purpose being listed individually.

Ad valorem rates should be separately listed per $1,000 of assessed valuation. In the case of benefit assessments, the estimated cost to a typical property should be included;

(p) a statement of the assessed value of a typical property;

(q) a statement setting forth the amount that it is estimated that the owner of a typical property and, if different, a typical one- or two-family home will be required to pay in the first year following approval of the application, if granted, for debt service, operation and maintenance and other charges, such as user charges or hook-up fees, related to the proposed improvements, together with an explanation of how such costs have been computed;

(r) a statement setting forth the maximum amount any real property owner will be required to pay in the first year following approval of an application, if granted, for debt service, operation and maintenance and other charges related to the proposed improvements, together with an explanation of how such costs have been computed;

(s) a statement whether the area which will bear the cost of the proposed improvements contains state lands and, if so, the identity of the State lands and the costs which will be borne by such property in the first year following approval of the application, if granted;

(t) a statement whether the area which will bear the cost of the proposed improvements is wholly or partially within an existing or proposed agricultural district, and if so, how the assessment base for the proposed improvement will be affected thereby;

(u) a statement of the population of the area which will bear the cost of the improvements, the number of one- and two-family homes located in the area, the assessed value of the typical one- or two-family home, and a description of any nonresidential areas, including the total assessed value thereof;

(v) if the proposed district, extension or improvement will benefit vacant land, a statement describing the status of any proposals for the development of such land. If the governing board's determination that the cost of the proposed improvement will not constitute an undue burden on the area which will bear the cost of those improvements is dependent, in whole or in part, on the development of vacant land, a statement of the type of security to be obtained by the governing board to ensure that the cost will not be an undue burden or the factors on which the governing board relied in determining that such security is unnecessary;

(w) if it is contemplated that service will be sold to users outside the proposed district, extension or area benefited by an improvement, a statement of the anticipated price to be charged and the amount of revenue expected to be generated in the first year following approval of the application, if granted;

(x) a copy of any and all orders issued by a State or Federal agency or court relating to the proposed district, extension, improvement or expenditure, together with a statement describing any pending judicial or administrative proceedings which relate to the proposed improvements;

(y) a statement of what actions, if any, the governing board has taken, other than those required by the applicable provisions of the Town Law or County Law, to apprise the owners of the properties which will bear the cost of the proposed improvements of that cost, including the estimated first year cost; and

(z) a statement whether the town or county has received any written objections from the owners of the real property that will bear the cost of the improvements expressing opposition to undertaking the improvements, and if so, the nature and extent of such opposition.

§ 85.5 Opinion of legal counsel.

The legal opinion(s) required by section 85.3(b) of this Part shall be addressed to the town or county, expressly provide that the State Comptroller may rely thereon, and contain the following:

(a) A statement that, in his or her capacity as legal counsel for the town or county, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to:

(1) the Constitution of the State and relevant statutes, including but not limited to, the statute pursuant to which the application is made and the State Environmental Quality Review Act;

(2) any petitions for the establishment or extension of a district or provision of an improvement;

(3) all orders and resolutions of the governing board pertaining to such application;

(4) proof of any posting and publication of required notice;

(5) any petitions requesting a referendum;

(6) any certificate stating that no petition requesting a referendum was received or certifying the result of the vote on the proposition submitted at a referendum;

(7) any map or plan required by statute;

(8) any proposed contracts or agreements referred to in the application; and

(9) the application to be submitted to this office; and

(b) An expression of his or her opinion that:

(1) the application to this office contains all information required by the applicable statutes and regulations;

(2) the town or county, in relation to the district, extension, improvement, expenditure or increase in maximum for which the permission or consent of the Comptroller is sought, has undertaken all actions and proceedings required by applicable provisions of law. The opinion may contain appropriate qualifications so long as the attorney expresses his or her opinion that there was no substantial or material deviation from the applicable statutes;

(3) such district, extension, improvement, expenditure or increase in maximum has been duly authorized by the town or county as required by statute except for:

(i) obtaining the permission or consent of the Comptroller;

(ii) the adoption of any order or resolution required to be adopted after the Comptroller has granted such consent or permission; and

(iii) any publication of any notice required to be published after receipt of such consent or permission;

(4) town or county officials, as the case may be, are not aware of any material pending or threatened lawsuits or claims relating to the district, extension, improvement, expenditure or increase in maximum for which permission or consent is being sought; and

(5) any assessments, charges or taxes to be levied or imposed to finance the improvements or services to be provided are authorized by statute and all necessary action has been taken by the municipality to authorize the imposition or levy of such assessments, charges or taxes.

§ 85.6 Amending the application.

The town or county, on its own initiative or at the request of the Comptroller, may provide any additional information which will assist the Comptroller in making determinations of public interest and undue burden.

§ 85.7 Final order of the Comptroller.

Upon receipt of an application for permission of the State Comptroller that complies with the requirements of sections 85.3, 85.4, 85.5 and 85.6 of this Part, the Comptroller, after reviewing the same, shall make his final determination and make an order, in duplicate, granting or denying the permission sought.