

Chapter 144

ZONING

[HISTORY: Adopted by the Town Board of the Town of Hartland 8-12-1982. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 78.

Flood damage prevention — See Ch. 81.

ARTICLE I

General Provisions

§ 144-1. Purpose.

Pursuant to Article 16 of the Town Law, the purpose of this chapter is to encourage the most appropriate use of land throughout the Town and to conserve the value of property, with due consideration for the particular uses, all in accordance with a Comprehensive Plan designed to lessen congestion in the streets; to secure safety from fire, flood, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and, to that end, to regulate the height and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and the location of these uses within the limits of the Town.

§ 144-2. Construal of provisions.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of any law, ordinance, local law or any rules, which shall be adopted or issued pursuant to law, relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of law, ordinance or local law or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.

§ 144-3. Applicability.

This chapter shall apply uniformly throughout the entire Town of Hartland, with the exception of that portion which is in the Village of Middleport.

§ 144-4. Definitions.

- A. Any word or term not expressly hereinafter defined shall have a meaning as set forth in a standard dictionary.
- B. The following terms are expressed within this chapter with special meaning as therein applied and no other. Any word or term not expressly defined in this section shall have the meaning as defined in a standard dictionary.

ALTERATIONS — As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

AMENITIES — The facilities incidental to utilization of a structure or a piece of land, including but not limited to landscaping, parking, signs, driveways, water, sewer and utilities.

AMUSEMENTS AND EXHIBITIONS — Includes, but are not limited to, a circus, fair, carnival, field day, rodeo, outdoor concert, race, display or show of mechanical or animal proficiency or the exhibition of any natural or artificial curiosity.

BUILDING — Any permanently placed structure, having a roof supported by columns, piers or walls, intended for the shelter or housing of persons, animals or property.

BUILDING, ACCESSORY — A subordinate building located on the same lot with the principal building, occupied by or devoted to an accessory use. Where an "accessory building" is attached to the main building in a substantial manner, as by a wall or roof, such "accessory building" shall be considered part of the principal building.

BUILDING AREA — The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

BUILDING HEIGHT — The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of the roof for flat roofs; to the decline of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof. The top of the foundation wall shall be at least 16 inches above the center line of the road for a dwelling.

BUILDING LINE — A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

BUILDING PERMIT — A permit issued by the Zoning Enforcement Officer, which is required before any building may be legally constructed, expanded, altered, removed, demolished or changed from one use to another which requires greater strength.

BUILDING, PRINCIPAL — A building or buildings in which is conducted the main or principal use of the lot on which said building is situated.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Zoning Enforcement Officer

upon the completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this chapter and such adjustments thereto granted by the Board of Appeals.

CLUSTER RESIDENTIAL DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the district within which such development occurs but containing the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

DWELLING — A building or portion thereof used exclusively as the residence or sleeping place of one or more persons.

DWELLING, MULTIFAMILY — A building or portion thereof containing three or more dwelling units and used for occupancy by three or more families living independently of each other.

DWELLING, ONE- OR SINGLE-FAMILY — A building or dwelling unit designed for or occupied exclusively by one or more persons living as a single, nonprofit housekeeping unit. Floor area shall be no less than 500 square feet.

DWELLING, TWO-FAMILY — A building or portion thereof containing two dwelling units and used exclusively for occupancy by two families living independently of each other.

EXCAVATION OF EARTH PRODUCTS — Includes the stripping, excavating, quarrying or mining of topsoil, sand, gravel, rock, ore, minerals or other items customarily found on or below the surface of the earth. It does not include the excavation for the foundation of any structure for which a building permit has been obtained, the installation of an inground swimming pool, sewage disposal system or creation of a well or excavation for the installation of any public utility.

EXCAVATION OPERATION — Any commercial use of a property wherein any mineral, element or other earth product is removed from or below the natural surface of the land.

FARM — Any parcel containing 10 acres or more of land which is used for gain in the raising of agricultural products, including crops, livestock, poultry or dairy products.

FARM BUILDING — Any building used for the housing of agricultural equipment, produce, livestock or poultry or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with and necessary to the operation of the farm as defined by this section. The term "farm building" shall not include a dwelling.

FLOODPLAIN — That portion of land lying within an area subject to periodic flooding.

GARAGE, PUBLIC — Any garage, other than a private garage, open to the public at stated hours, operated for gain and which is used for storage, repair, rental, washing, servicing, adjusting, equipping and painting of automobiles or other motor vehicles.

GARAGE SALE — The sale or offering for sale of tangible personal property from residential or agricultural premises, be the sale entitled "garage sale," "yard sale," "porch sale," "lawn sale," "attic sale," "basement sale," "rummage sale," "flea market" or "antique sale." "Garage sale" does not include the liquidation auction of the personal property of the occupants of the property nor does it include the bona fide liquidation auction of an estate or farm.

HOME OCCUPATION — Any occupation carried on as a subordinate use by a member of the family residing in the dwelling on a residential lot, provided that not more than 25% of the gross floor area of the dwelling is used for the carrying on of the subordinate use. Included in the definition of "home occupation" are all licensed, recognized professions and sole proprietorships involved in the dispensing of a service only. A "home occupation" may not utilize more than one employee. Excluded specifically herefrom are all sole proprietorships engaged in manufacturing, remanufacturing, assembly or repair.

JUNKYARD — A lot, land or structure, or part thereof, used for the collection, sorting, storage or abandonment of wastepapers, rags, scrap or discarded materials and articles of any kind; or for the collecting, dismantling, storage, salvaging or sale of abandoned machinery or fixtures of any kind not in an operating condition; or for the storage or disposal, whether in connection with a business or not, of one or more old, secondhand, abandoned, disabled or dismantled vehicles of any kind or the parts of waste materials therefrom.

KENNEL — Any premises on which six or more dogs over six months of age are kept.

LOT AREA — An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating "lot area."

LOT DEPTH — The horizontal distance between the front and rear lot lines, measured at right angles to the front lot lines.

LOT LINES — The property lines bounding the lot. In the case of a lot abutting on more than one street, the owner may elect any street lot line as front lot line. The rear line shall be the lot line most distant from the front lot line.

LOT OR PLOT — A parcel of land occupied or capable of being occupied by one building and accessory buildings customary and incidental to it, including such open spaces as are required by this chapter and such open spaces as are arranged and designed to be used in connection with such building.

LOT WIDTH — The horizontal distance between the side lot lines, measured at right angles to its depth at the building line.

NONCONFORMING BUILDING — A building existing as of April 1, 1956, which in its design or location upon a lot does not conform to the regulations for the district in which it is located.

NONCONFORMING LOT — A lot of record existing as of April 1, 1956, which does not have the minimum width or depth or contain the minimum area for the district in which it is located.

NONCONFORMING USE — Any use of any building, including a trailer or mobile home, structure or land existing as of April 1, 1956, which does not conform to the use regulations of the district in which it is situated.

NURSING HOME — A building, structure or premises having accommodations for hire and where limited medical care is provided for invalid, infirm and/or aged, convalescent or physically disabled or injured persons.

PLAT — A map, plan or layout of a city, Town, section or subdivision indicating the location and boundaries of individual properties.

RESIDENT-OWNER/OPERATOR BUSINESS — Manufacturing, remanufacturing, repair, retail, and service enterprises conducted by the resident-owner of the premises as an accessory use thereto and having no more than two employees or workmen in addition to the resident-owner and his or her immediate family who are also residents of the premises. [Added 9-12-2013 by L.L. No. 2-2013]

RETIREMENT OR CUSTODIAL HOME — A building, structure or premises having accommodations for elderly people, but not requiring medical care.

RIGHT-OF-WAY — The line determining the street or highway public limit of ownership.

SETBACK — The distance from the center line of the highway to the part of the structure nearest the highway and measured at right angles to the center line of the highway, not including cornices or open verandas, porches or entrance steps.¹

SITE PLAN — A plan of a lot or subdivision in which is shown topography, the location of all buildings, structures, roads, rights-of-way, boundaries and all other information deemed necessary by the Planning Board.

SPECIAL USE — A use designated as a special use in the use districts established by this chapter, in accordance with the provisions of this chapter. [Added 12-8-2005 by L.L. No. 2-2005]

STAND — A structure erected for the sale of homegrown farm produce (fruits and vegetables). The minimum setback from a hard surface shall be 20 feet.

STORY — That portion of a building between the surface of any floor and the surface of the floor next above, also, any portion of a building used for human occupancy between the topmost floor and the roof. For purposes of height measurement, in determining the permissible number of stories, a cellar shall not be counted.

STORY, HALF — A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

STREET — A public thoroughfare which affords the principal means of access to abutting property.

STREET LINE — That line determining the limit of the highway rights of the public, either existing or contemplated.

STREET WIDTH — The right-angle distance between the two sides of the street.

STRUCTURAL ALTERATIONS — Any change in the supporting members of a building or structure such as bearing walls, columns, beams or girders and exit facilities.

STRUCTURE — Anything constructed or erected which requires a permanent, fixed location on the ground or attachment to something having such location.

SWIMMING POOL — Any artificial pool, maintained as an accessory use to a residential dwelling, covering an area of at least 250 square feet and capable of holding water at least 18 inches in depth.

1. Editor's Note: The former definition of "single owner/operator business," which immediately followed this definition, was repealed 9-12-2013 by L.L. No. 2-2013. See now the definition of "resident owner/operator business."

TEMPORARY USE — An activity conducted for a specific limited period of time, which may not otherwise be permitted by the provisions of this chapter.

TOWNHOUSE — One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to a private, individual rear and/or front yard designed as an integral part of each one-family dwelling unit.

TRAILER OR MOBILE HOME — Any noncollapsible vehicle or combination thereof used, designed or intended for use for permanent occupancy as living quarters for one or more persons, designed to be moved from one location to another by means of wheels affixed to an axle or carriage affixed to the vehicle, whether propelled by its own power or by the power of another vehicle to which it may be attached and whether the axle or carriage to which the wheels may be affixed are detachable or detached and irrespective of the name or title assigned or designated by the manufacturer of the unit or other person.

TRAILER COURT OR MOBILE HOME PARK — Any site, lot, field, plot, parcel or tract of land on which two or more mobile homes are parked or located and for which use said premises are offered to the public or to any person for a fee of any type, including cost sharing.

USE — The specific purposes for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

USE, ACCESSORY — A use customarily incidental and subordinate to the principal use or building and located on the same lot therewith. In no case shall such accessory use dominate, in area, extent or purpose, the principal use or building.

USE, PRINCIPAL — The main use to which a building or lot is to be used.

YARD AREA, FRONT — An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building. An enclosed veranda shall be considered as part of the building.

YARD, REAR — A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a "rear yard" shall be measured at right angles to the rear line of the lot or, if the lot is not rectangular, then in the general direction of its side building lines.

YARD, SIDE — An open, unoccupied space between the side line of the lot and the nearest line of the building. It shall extend from the front yard to the rear of the building.

ZONING ENFORCEMENT OFFICER — The officially established Zoning Enforcement Officer of the Town of Hartland as appointed by the Town Board, or his authorized assistants.

ARTICLE II Planning Board

§ 144-5. **Creation; membership.** [Amended 3-14-1996 by L.L. No. 1-1996]

The Town Board of the Town of Hartland has previously created the Town of Hartland Planning

Board pursuant to § 271 of the Town Law.² The Planning Board consists of five members, appointed by the Town Board to serve for terms of five years. No person who holds any elected office in the Town of Hartland shall be eligible for membership on the Planning Board. If a vacancy shall occur in the composition of the Planning Board, it shall be filled by the Town Board by appointment for the unexpired term. The Chairman of the Planning Board shall be appointed by the Town Board.

§ 144-5.1. Compensation. [Added 3-14-1996 by L.L. No. 1-1996]

Planning Board members shall be compensated in such manner as the Town Board shall, from time to time, determine by resolution.

§ 144-6. Powers and duties. [Amended 12-8-2005 by L.L. No. 2-2005]

The Planning Board shall have the power to approve:

- A. Subdivisions, pursuant to Town Law § 276 et seq.
- B. Cluster development, pursuant to Town Law § 278.
- C. Special use permits, pursuant to this Code and Town Law § 274-b.
- D. Site plans, pursuant to this Code and Town Law § 274-a.
- E. Such other matters as may be referred to it from time to time by the Town Board.

§ 144-7. through § 144-10. (Reserved) ³

ARTICLE III
Zoning Board of Appeals

§ 144-11. Creation; membership.

The Town Board of the Town of Hartland has previously created the Zoning Board of Appeals pursuant to § 267 of the Town Law. The Zoning Board of Appeals shall consist of five members, appointed by the Town Board to serve for terms of five years. No person who holds any elected office in the Town of Hartland shall be eligible for membership on the Zoning Board of Appeals. If a vacancy shall occur in the composition of the Zoning Board of Appeals, it shall be filled by the Town Board by appointment for the unexpired term. The Chairman of the Zoning Board of Appeals shall be appointed by the Town Board.

§ 144-12. Powers and duties. [Amended 12-8-2005 by L.L. No. 2-2005]

The Zoning Board of Appeals of the Town of Hartland shall have such powers and duties as are described in § 267 of the Town Law, as the same may be amended from time to time.

§ 144-13. Procedures and regulations for operation.

2. Editor's Note: The Planning Board was established by the Town Board 10-10-1969 by resolution.

3. Editor's Note: Former § 144-7 through § 144-10 were repealed 12-8-2005 by L.L. No. 2-2005.

The Zoning Board of Appeals shall act in strict accordance with the procedures specified in this chapter. All appeals, referrals and applications made to the Zoning Board of Appeals shall be in writing on forms prescribed by the Zoning Board of Appeals and available from the Zoning Enforcement Officer and Town Clerk. The Zoning Board of Appeals shall have power to adopt such further rules of procedure and regulations as it may deem best. The Zoning Board of Appeals shall file with the Town Clerk a current summary of its procedures and regulations and a copy of its current forms.

§ 144-14. Notice of meetings.

The Zoning Board of Appeals shall fix a reasonable time for its meeting and shall give due notice of the same to the public.

§ 144-15. Holding of public hearings; notice.

Prior to the granting of a variance or permit or at such other time as a majority of its members may desire, the Zoning Board of Appeals shall advertise and hold public hearings, notice of which hearings shall be advertised in the official newspaper designated by the Town Board, pursuant to § 64 of the Town Law, and in such other newspapers or publications as the Zoning Board of Appeals may direct. Publication in the official newspaper must be at least five days before the public hearing.

ARTICLE IV
Regulation of Certain Uses

§ 144-16. Cluster residential development. [Added 12-8-2005 by L.L. No. 2-2005⁴]

The Planning Board is authorized to approve cluster residential development in the A, R-1, R-2, and R-3 Districts of the Town pursuant to § 278 of the Town Law.

§ 144-17. Solar energy systems. [Added 3-15-2017 by L.L. No. 1-2017]

- A. Findings. The Town Board of the Town of Hartland makes the following findings:
- (1) The Town Board of the Town of Hartland finds that solar energy, as properly regulated, is clean, readily available and renewable energy source beneficial to the Town of Hartland, its residents and general public.
 - (2) The Town Board, nevertheless, finds a growing need to properly site and regulate solar energy systems within the boundaries of the Town of Hartland to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Hartland, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Hartland.

4. Editor's Note: This local law also repealed former § 144-16, Purpose, former § 144-17, Amusements and exhibitions; former § 144-18, Excavation of earth products, as amended; former § 144-19, Single owner/operator businesses, as amended; former § 144-20, Storage of flammable liquids or gas; and former § 144-21, Storage of vehicles, machinery and materials used in business, which immediately followed.

- (3) Solar energy systems deplete land available for other uses, introduce industrial usage into other nonindustrial areas, and can pose environmental challenges and compete with other activities.
- (4) Solar energy systems need to be regulated for removal when no longer utilized, to prevent environmental problems and abandoned industrial.

B. Definitions. The following definitions shall apply to this section:

APPLICANT — The person or entity filing an application and seeking an approval under this section; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant" or "owner" or "operator" are used in this section, said term shall include any person acting as an applicant, owner or operator.

SMALL BUILDING-MOUNTED SOLAR ENERGY SYSTEMS — A solar energy system that is affixed to the side(s) of a building either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building and designed and intended to generate electricity solely for use primarily on said building or other buildings on the same premises, through a distribution system that is not available to the general public.

SMALL GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot, through a distribution system that is not available to the general public.

SMALL ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM — Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface, designed and intended to generate electricity primarily for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

SOLAR ENERGY SYSTEM — Any system or group of components designed to produce power from the sun and affixed to real property, except self-contained, single-purpose components, such as signage lighting panels.

UTILITY-SCALE SOLAR ENERGY SYSTEM — Any solar energy system is designed and intended to supply energy primarily into a utility grid for sale to the general public, whether or not it also supplies energy for use on the parcel of land on which it is located.

C. Use districts where allowed. No solar energy systems shall be permitted in the Town of Hartland except in the zoning districts specified in this section:

- (1) Rooftop-mounted and building-mounted solar energy systems are permitted in all zoning districts in the Town, subject to setback and height restrictions.
- (2) Ground-mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town subject to all setback, height and area coverage restrictions.
- (3) Utility-scale solar energy systems permitted only in an Agricultural Use District (AG

District) or Agricultural Business Use District (AB District) and Light Industrial Use District (I District).

D. General regulations. The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Hartland shall be permitted only as follows:

- (1) Utility-scale solar energy systems shall be permitted only by special permit by the Town of Hartland Planning Board in use districts where allowed in accordance with the criteria established in this section, after SEQRA review, upon concurrent site plan approval issued by the Town of Hartland Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this section.
- (2) Small rooftop-mounted and small building-mounted solar energy systems shall follow normal building permit procedures.
- (3) Small ground-mounted solar energy systems shall follow normal building permit procedures, and must be accompanied by a to-scale map showing location, setbacks and lot coverage.
- (4) This section shall supersede over any inconsistent provisions of the Zoning Law of the Town of Hartland.
- (5) This section shall not apply to any premises owned or controlled by the Town of Hartland.

E. General criteria.

- (1) Rooftop-mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three feet before the edge of the roof. Maintenance access shall be incorporated into the system as determined by the Building Inspector.
- (2) Building-mounted solar energy systems shall not be more than three feet from the building wall and in no instance shall any part of the system extend beyond the roof line or parapet wall.
- (3) Ground-mounted solar energy systems shall be subject to the following requirements:
 - (a) The location of said solar energy system shall be placed no closer in accordance with setback requirements for an accessory structure of the use district in which it is located; and
 - (b) The location of said solar energy system shall be only located in the side or rear yard;
 - (c) The total surface area of said solar energy system on a lot shall not exceed the allowed accessory structures or combinations of accessory structures where permitted in the District.
- (4) Solar storage batteries. When solar storage batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the

requirements of the New York State Building Code.

- (5) Any solar energy system shall be accessible by all emergency service vehicles and personnel.
- (6) All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
- (7) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks.
- (8) Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (9) If the use of a solar energy system is discontinued or not maintained the owner or operator shall notify the Building Inspector within 30 days of such discontinuance and shall remove the system and properly dispose of all materials. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed nonoperating or abandoned.

F. Special permit requirements for utility-scale solar energy systems. Applications under this section shall be made as follows: Applicants for a special permit to place, construct, and make a major modification to a utility-scale solar energy systems within the boundaries of the Town of Hartland shall submit 12 sets of the following information to the Building Inspector, who shall first present it to a Town designated professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. After considering such application in accordance with this section, the Planning Board may grant the application, deny the application or grant the special use permit, deny the special use permit or grant the special use permit and impose reasonable conditions and restrictions as authorized by Town Law § 274(b)(4). The following information shall be contained in or accompany the application:

- (1) A completed State Environmental Quality Review Act (SEQRA) form.
- (2) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
- (3) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
- (4) Documentation of the clearing, grading, storm water and erosion control plans.
- (5) Utility interconnection data and a copy of written notification to the utility of the

proposed interconnection.

- (6) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
- (7) A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a utility-scale solar energy system, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:
 - (a) The restrictions placed upon buildings, structures, vegetation and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system; and
 - (b) A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions; and
 - (c) The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day; and
 - (d) Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses; and
 - (e) Provisions for compensation of the owner/operator benefitting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and
 - (f) The terms or conditions, if any, under which the easement may be revised or terminated.
- (8) A site plan in accordance with the Town of Hartland's site plan requirements and drawn in sufficient detail as follows:
 - (a) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and

- (b) Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels; and
 - (c) Proposed fencing and/or screening for said project.
 - (9) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Hartland Planning Board, Town Attorney, Building Inspector.
- G. Special permit criteria; restrictions. Special permits issued for a utility-scale solar energy systems shall meet the following conditions:
- (1) Minimum lot area: The minimum lot upon which the system is to be constructed shall be 15 acres.
 - (2) Maximum coverage area: The maximum coverage area of the system shall be 50 acres.
 - (3) Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:
 - (a) From any zoning district boundary: A minimum of 200 feet from all property lot lines bordering any zoning district boundary.
 - (b) From any property lot lines: A minimum of 100 feet from any property lot line.
 - (c) From buildings or structures not on the lot proposed for the solar energy system:
 - [1] A minimum of 250 feet.
 - [2] A minimum of 500 feet from any dwelling.
 - (d) From buildings or structures on the lot proposed for the solar system: A minimum of 100 feet from any building, structure or dwelling.
 - (e) From public roads: A minimum of 200 feet from any public road (measured from the road right-of-way line).
 - (f) From schools, public parks: A minimum of 500 feet from all property lot lines bordering a school or public park.
 - (4) Maximum overall height. The height of a utility-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.
 - (5) Number of utility-scale solar energy systems allowed per lot. There shall only be allowed one utility-scale solar energy systems per lot.
 - (6) A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Hartland laws, regulations, building, plumbing, electrical, and fire codes, and the applicant shall provide any requested documentation of such correspondence.
 - (7) Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats,

or other significant habitats identified by the Town of Hartland or other federal or state regulatory agencies.

- (8) The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- (9) All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
- (10) All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- (11) All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- (12) Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (13) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations and shall not be illuminated.
- (14) A berm and/or screening may be required along property line abutting a residential lot.
- (15) Prior to issuance of a certificate of occupancy, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- (16) Compliance with regulatory agencies: The applicant is required to obtain and maintain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
- (17) A bond or other appropriate form of security acceptable to the Planning Board shall be provided to cover the cost of the removal and site restoration. Said bond or security shall be filed prior to construction. Said bond shall not be revocable and shall extend for a period of not less than:
 - (a) The actual removal and restoration without limit as duration.
 - (b) Shall transfer to cover any subsequent owner or operator of the system.
- (18) Clearing, grading, storm water and erosion control:
 - (a) Before the Town of Hartland shall issue a clearing, grading, stormwater or building permit for a utility-scale solar energy system, the applicant shall submit

a stormwater and Erosion Control Plan to the Engineering Department for its review and approval; and

- (b) The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

H. Maintenance, procedures, and fees.

- (1) Time limit on completion. Upon the granting of a special permit of a utility-scale solar energy system by the Planning Board, the building permit shall be obtained within six months and the project shall be completed within 12 months of the granting of the special use permit. If not constructed, the special permit and site plan approval and building permit shall automatically lapse without notice.
- (2) Inspections. Upon reasonable notice, the Town of Hartland Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. The applicant/operator shall authorize and cooperate in such inspection. Furthermore, a utility-scale solar energy system shall be inspected annually by a New-York-State-licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (3) General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special use or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- (4) Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- (5) Removal. All solar energy systems shall be dismantled and removed by the applicant/owner operator immediately from a lot when the special permit or approval has been revoked by the Town of Hartland Planning Board or the solar energy system has been deemed to be nonoperating or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner/operator or applicant does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. Such action shall be in addition to and not in lieu of any other enforcement remedies the Town may have.

- (6) Determination of abandonment or nonoperation. A determination of the abandonment or nonoperation of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner/operator or applicant with written notice by personal service or certified mail at the address shown in the records of the Town or the application. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Hartland Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing certified mail of his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation approved or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- (7) Application and annual fees.
 - (a) Utility-scale solar energy system. An applicant shall pay an initial application fee of \$2,500, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the owner shall pay an annual fee of \$1,000, or such other amount as the Town Board may, from time to time, determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
 - (b) Said fees are in addition to fees for Building Permits. Fees are as follows:
 - [1] Per square foot of the project area: \$0.025, or such other amount as the Town Board may, from time to time, determine by resolution.
- (8) Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- (9) Special permits for a utility-scale solar energy system granted under this section shall be issued only following a public hearing held as required for special permits under the New York State Town Law.
- (10) The Planning Board may:
 - (a) For utility-scale solar energy systems, grant a special permit, deny a special permit, or grant a special permit with written stated conditions. Upon issuance of a special permit, the applicant shall obtain a building permit for the utility-scale solar energy system.
- (11) Any changes or alterations post construction to a utility-scale solar energy system shall be allowed only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.
- (12) Special permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this section and all the

conditions, and the Building Inspector is notified in writing at least 15 days prior thereto.

- (13) In addition to the requirements of this section, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

I. Violation/revocation.

- (1) Any violation of this section or of the terms of a special use permit constitutes a violation pursuant to the Zoning Code.
- (2) The Town may enforce this section by obtaining an injunction, temporary restraining order, temporary injunction or any other remedy available in law or equity.
- (3) If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant owner/operator is notified in writing of the violations and the Town of Hartland Planning Board holds a hearing on same.

- J. Severability. If any section, subsection, phrase, sentence, or other portion of this section is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 144-18. Noncommercial wind energy conversion systems. [Added 3-15-2017 by L.L. No. 3-2017]

A. Findings. The Town Board of the Town of Hartland makes the following findings:

- (1) The Town Board of the Town of Hartland finds that there is a growing need to properly site and regulate noncommercial wind energy conversion systems. Prior to the adoption of this section, no specific procedures existed to address the siting of noncommercial wind energy conversion systems. Accordingly, the Town Board finds that the promulgation of this section is necessary to direct the location, construction and maintenance of these systems.
- (2) Noncommercial wind energy towers have a potential beneficial effect of producing "clean energy," low-cost power to residents of and businesses in the Town, but also can adversely affect the enjoyment of adjacent areas, can cause aesthetic problems, and are not compatible with other land uses in some cases.
- (3) Furthermore, the Town Board finds that the small-town atmosphere and character of the Town of Hartland requires regulation of noncommercial wind energy conversion systems, and this section is necessary to direct the location of noncommercial wind energy conversion systems within the boundaries of the Town of Hartland to address the number of such towers, to protect residential, business areas and other land uses from potential adverse impacts of noncommercial wind energy conversion systems to preserve the overall beauty, nature and character of the Town of Hartland and to protect the health, safety and general welfare of the citizens of the Town of Hartland.
- (4) Noncommercial wind energy conversion systems need to be regulated for removal

when no longer utilized.

B. Definitions. The following definitions shall apply to this section:

APPLICANT — The person or entity filing an application and seeking a permit under this section; the owner of a noncommercial wind energy conversion system or a proposed project; the operator of a noncommercial wind energy conversion system or proposed project; any person acting on behalf of an applicant, noncommercial wind energy conversion system project or proposed noncommercial wind energy conversion system. Whenever the term "applicant" or "owner" or "operator" is used in this section, said term shall include any person acting as an applicant, owner or operator.

NONCOMMERCIAL WIND ENERGY CONVERSION SYSTEM — A wind energy conversion system, which may be referred to as "NCWECS" throughout this section, consisting of one wind turbine, one tower, and associated control or conversion electronics, with a total maximum height of not more than 165 feet, as measured from the ground elevation to the top of the tip of the blade in the vertical position, and is intended to primarily supply electrical power for the use on the subject property.

SEQRA — The New York State Environmental Quality Review Act, as amended from time to time, and the regulations promulgated pursuant thereto.

TOTAL HEIGHT (also MAXIMUM OVERALL HEIGHT) — The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.

TOWER — The support structure, including guyed, monopole, and lattice types, upon which a wind turbine and other mechanical devices are mounted.

TOWER HEIGHT — The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

WIND ENERGY CONVERSION SYSTEMS — Any machine or wind facility that converts the kinetic energy of wind into electricity, and all related infrastructure and appurtenances.

WIND TURBINE — Any piece of electrical generating equipment that converts wind energy into electrical energy through the use of airfoils, rotating turbine blades, or similar devices to capture the wind.

C. Use districts where allowed. No wind energy conversion systems shall be allowed in the Town of Hartland (unless authorized as a commercial/industrial wind energy System) except as authorized in this § 144-18. Subject to the provisions of this section, NCWECS shall be allowed only in the Agricultural Use District (A District), or Industrial Use (I District). Any inconsistent provisions of the Zoning Law which may be interpreted to allow noncommercial wind energy conversion systems in other districts are hereby superseded.

D. General regulations. The placement, construction, and major modification of all NCWECS within the boundaries of the Town of Hartland shall be permitted only by special use permit by the Town of Hartland Planning Board in use districts where allowed in accordance with the criteria established in this section, upon concurrent site plan approval issued by the Town of Hartland Planning Board. The provisions of this section shall

supersede any inconsistent provisions of the Zoning Code.

E. Special permit requirements. Application for a special use permit shall be made as follows: Applicants shall submit 12 sets of the following information to the Building Inspector, who may submit the application to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may require such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. After compliance with the requirements of this section, the Planning Board may grant the special use permit, deny the special use permit or grant the special use permit and impose reasonable conditions and restrictions by Town Law § 274(b)(4). The following information shall be contained in the application:

- (1) A completed State Environmental Quality Review Act (SEQRA) short form environmental assessment form (EAF), in accordance with SEQRA regulations.
- (2) Necessary permit information:
 - (a) Name and address of the applicant;
 - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application;
 - (c) Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of all NCWECS components;
 - (d) Photographs or detailed drawings of each NCWECS component including the tower and foundation;
 - (e) Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection;
 - (f) An acoustic report shall be furnished for the specific wind turbine technology which provides sound curve based on production levels for the overall dB(A) measurement of the wind turbine at different wind speeds based on field testing. This shall be done in accordance with the Small Wind Certification Council (SWCC) standards which have standardized North American reporting on turbine energy and sound performance;
 - (g) A report from the turbine manufacturer stating the wind speed and conditions that the wind turbine is designed to withstand (including all assumptions);
 - (h) A copy of written notification to the Federal Aviation Administration (FAA) and to Mercy Flight, and any correspondence from said entities;
 - (i) If a proposed NCWECS is located within two miles of any microwave communications link, then the application shall include a copy of a written notification to the operator of the link; and
 - (j) If a proposed NCWECS is located within a one-hundred-year floodplain area, then the application shall include any such flood hazard areas are shown on the

floodplain maps with a detailed report which shall address the potential for wind erosion, water erosion, sedimentation, and flooding, and which shall propose mitigation measures for such impacts.

- (3) A site plan drawn in sufficient detail to show the following:
 - (a) Location of the tower(s) on the lot and the tower height, including blades, wind turbine diameter, and ground clearance;
 - (b) Dimensional representation of the various structural components of the tower construction including the base and footing;
 - (c) Property lot lines and the location and dimensions of all existing structures and uses on the lot within 500 feet of the NCWECS;
 - (d) Proposed plan for restoration of the site after construction according to New York State Department of Environmental Conservation and Town of Hartland guidelines and requirements;
 - (e) Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code; and
 - (f) Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
- (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Hartland Planning Board, Town Attorney or Building Inspector.

F. Special permit criteria. Special permits issued for an NCWECS shall meet the following conditions:

- (1) Minimum lot area: The minimum lot area needed for one tower and one wind turbine shall be 10 acres. (Two wind towers and two wind turbines need a minimum lot area of at least 20 acres.)
- (2) Setbacks: Any NCWECS shall adhere to the following setbacks:
 - (a) From any use district boundary, a minimum 750 feet.
 - (b) From any property lot lines: A minimum 1 1/2 times the total height of the NCWECS from any property lot line.
 - (c) From buildings or structures:
 - [1] A minimum 1 1/2 times the total height of the NCWECS from any building or structure, except if said building or structure is used for the actual operation of the NCWECS; and,
 - [2] A minimum of 500 feet from any dwelling, other than the dwelling on the same premises.

- (d) From public roads and railroads:
 - [1] A minimum 1 1/2 times the total height of the NCWECS from any public road or railroad (measured from the road right-of-way or property line); and,
 - [2] Where the lot line abuts a public road, the setbacks specified above shall be measured from the right-of-way line.
- (e) From schools, public parks: A minimum of 750 feet from all property lot lines bordering a school or public park.
- (f) From aboveground transmission lines: A minimum 1 1/2 times the total height of the NCWECS from any aboveground transmission line greater than 12 kilovolts.
- (3) Maximum overall height: The maximum overall height of any NCWECS shall be 165 feet, as measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (4) Number of towers and wind turbines allowed per lot: There shall only be allowed a maximum of two wind towers and two wind turbines per lot or parcel of land.
- (5) The power produced from an NCWECS shall only be used for on-site consumption (except for net metering purposes).
- (6) NCWECS shall only be located to the rear of any dwelling.
- (7) Signage:
 - (a) No advertising sign or logo shall be placed or painted on any NCWECS; and
 - (b) NCWECS special permit may allow the placement of the tower's manufacturer's logo on a system generator housing in an unobtrusive manner.
- (8) Color and finish:
 - (a) Wind turbines and towers shall be painted an unobtrusive (e.g., light environmental color such as white, gray, or beige) color that is nonreflective; and
 - (b) The design of NCWECS buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend the facility to the natural setting and the existing environment.
- (9) Lighting: Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the FAA or required by Mercy Flight (and approved by the Town of Hartland Planning Board).
- (10) Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of an NCWECS.
- (11) Safety and security requirements:

- (a) Safety shutdown: Each NCWECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the wind turbine. Manual electrical and/or over-speed shutdown disconnect switches shall be provided and clearly labeled on the NCWECS. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the tower structure, rotor blades, and wind turbine components;
 - (b) All structures which may be charged with lightning shall be grounded according to applicable electrical code;
 - (c) The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet;
 - (d) Wind turbine towers shall not be climbable up to 15 feet above ground level;
 - (e) All access doors to NCWECS structures and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present;
 - (f) Anchor points for any guy wires for a system tower shall be located with the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering to eight feet above the ground. The minimum setback for the guy wire anchors shall be 20 feet from the property boundary; and
 - (g) Appropriate warning signage shall be placed on wind turbine towers and electrical equipment. Signage shall also include one twenty-four-hour emergency contact number to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.
- (12) Noise requirements:
- (a) The audible noise standard due to wind turbine operations shall be in conformance with the Town's Noise Ordinance;⁵ and
 - (b) An NCWECS shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (13) Impact on wildlife species and habitat:
- (a) Development and operation of an NCWECS shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats; and
 - (b) Development and operation of an NCWECS shall not have an adverse impact on migratory bird species.

5. Editor's Note: See Ch. 99, Noise.

- (14) Interference with residential television, microwave, and radio reception:
- (a) The applicant must submit information that the proposed construction of an NCWECS will not cause interference with microwave transmissions, cellular transmissions, residential television interference, or radio reception of domestic or foreign signals; and
 - (b) The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (15) Interference with aviation navigational systems:
- (a) No NCWECS shall be installed or operated in a manner that causes interference with the operation of any aviation facility; and
 - (b) All NCWECS sitings shall comply with FAA and Mercy Flight regulations.
- (16) Bond: A bond or other appropriate form of security may be required to cover the cost of the removal and site restoration.
- (17) Erosion control:
- (a) If required by the Planning Board, before the Town of Hartland shall issue a grading or building permit for an NCWECS, the applicant shall submit an erosion control plan to the Engineering Department for its review and approval; and
 - (b) The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.
- (18) Certification:
- (a) The foundation, tower, wind turbine, and compatibility of the tower with related equipment shall be certified in writing by a structural engineer registered in New York State. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State;
 - (b) After completion of the NCWECS, the applicant shall provide a post-construction certification from a licensed professional engineer registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans;
 - (c) The electrical system shall be certified in writing by an engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State;
 - (d) The wind turbine over-speed control system shall be certified by an engineer registered in New York State; and

- (e) Certificate of completion must be supplied by the applicant and approved by the Town of Hartland Code Enforcement Officer, prior to the issuance of a certificate of occupancy.

G. Maintenance, procedures, and fees.

- (1) Time limit on completion. After approval of an NCWECS, the building permit shall be obtained within six months and the project shall be completed within 12 months. If not constructed, the special permit shall automatically lapse within 12 months after the date of approval by the Town of Hartland Planning Board.
- (2) Inspections. Upon reasonable notice, Town of Hartland Code Enforcement officials or their designated representatives may enter a lot on which an NCWECS special permit has been granted for the purpose of compliance with any permit requirements. The Building Inspector may require the owner to have a licensed engineer inspect and report on the NCWECS when he determines it necessary to guarantee the safety and proper operation of the NCWECS.
- (3) General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of the special permit. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of any complaint from the Town of Hartland Code Enforcement Officer, the permit holder/contact person shall have seven working days to reply to the Town in writing before any determination or decision is made by the Building Inspector.
- (4) Continued operation. An NCWECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for the NCWECS regarding the NCWECS's usage at any time.
- (5) Removal. At the cost of the owner, all NCWECS facilities, including, but, not limited to, towers, blades, and accessory structures, shall be dismantled and removed immediately from the site when the permit has been revoked by the Town of Hartland Planning Board or the NCWECS has been deemed inoperative or not operating by the Building Inspector for a period of more than 180 days or revocation of the special use permit. If the owner does not dismantle and remove said NCWECS facility as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel and may recover the cost of the removal from the owner. This remedy is in addition to and not in lieu of any other enforcement remedy available to the Town.
- (6) Determination of abandonment or inoperability. A determination of the abandonment or inoperability or non-operation of an NCWECS shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's

- determination of abandonment or inoperability or non-operation shall be filed with the Town of Hartland Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of 181 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any special permit and/or variance approvals for the NCWECS shall automatically expire.
- (7) Special permit term. Special permits granted pursuant to this section may be limited in duration by the Town of Hartland Planning Board.
 - (8) Application and annual fees. Applicant shall pay an initial application fee of \$500, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its application to cover the cost of processing and reviewing the application.
 - (9) Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
 - (10) Special permits granted under this section shall be issued only following a public hearing held as required by the Town Zoning Law.
 - (11) The Planning Board may grant the special permit, deny the special permit, or grant the special permit with written stated conditions. Denial of the special permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of the special permit, the applicant shall obtain a building permit for each NCWECS.
 - (12) Any changes or alterations post construction to an NCWECS shall be done only by amendment to the special permit and subject to all requirements of this Code.
 - (13) In addition to the requirements of this section, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.
- H. Permit revocation. If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit. Revocation may occur after the applicant is notified in writing of the violations and the Town of Hartland Planning Board holds a hearing on same.
- I. Interpretation; conflict with other laws. In their interpretation and application, the provisions of this section shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this section are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.
- J. Severability. If any section, subsection, phrase, sentence, or other portion of this section is

for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 144-19. Commercial/industrial wind energy conversion systems. [Added 3-15-2017 by L.L. No. 2-2017]

- A. Purposes. The Town Board of the Town of Hartland adopts this section to regulate the placement of commercial and industrial wind energy conversion systems to protect the public safety health and welfare; to provide a regulatory structure that promotes the protection of the Town of Hartland residents; to minimize the adverse impacts on the Town's character and environment and economy and property values; to minimize negative impacts on the unique resources including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways; the residential and farming communities of the Town.
- B. Authority. The Town Board of the Town of Hartland, enacts this section under the authority granted by:
- (1) Article IX of the New York State Constitution, § 2(c) (6) and (10).
 - (2) New York Statute of Local Governments, § 10(1), (6) and (7).
 - (3) New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10(1)(a)(6), (11), (12) and (14).
 - (4) The supersession authority of New York Municipal Home Rule Law, § 10(2) (d) (3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this section differ from the authority granted to the Town by Article 16 of the Town Law.
 - (5) New York Town Law, Article 16 (Zoning).
 - (6) New York Town Law § 130(1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of Streets and Highways), (7-a) (Location of Driveways), (11) (Peace, Good Order and Safety), (15) (Promotion of Public Welfare), (15-a) (Excavated Lands), (16) (Unsafe Buildings), (19) (Trespass), and (25) (Building lines).
 - (7) New York Town Law § 64(17-a) (Protection of Aesthetic Interests), (23) (General powers).
 - (8) New York Real Property Tax Law § 487.
 - (9) Police Powers of the Town of Hartland; Laws of the State of New York.
- C. Findings. The Town Board of the Town of Hartland makes the following findings:
- (1) Short-sighted planning has often resulted in creation of problem industries which

adversely affect public health and quality of life. Examples are found in Hartland, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial wind energy facilities are not exempt from these problems and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning been primary protectors of their citizenry. This section will contribute to this effort. The existence of Article X of the Public Service Law does not negate this responsibility, and in fact recognizes it. Further, Article X remains untested by judicial review addressing several potential legal issues. This section is not unduly burdensome to the mandates or the process set forth in Article X, but is rather compatible with them.

- (2) The findings set forth in this section are cumulative and interactive, and shall be liberally interpreted in conjunction, one with another.
- (3) Commercial/industrial wind energy facilities have increased significantly in number, and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
- (4) Commercial/industrial wind energy facilities should benefit the residents of the local areas where they are sited.
- (5) Commercial/industrial wind energy facilities are, by their very nature not aesthetically pleasing, due their height, disruption of views and skylines, especially in rural flat landed communities without many high structures.
- (6) The Town of Hartland is a rural community devoid of large hills and consists of mostly flat terrain.
- (7) The Town of Hartland is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region, grain and dairy.
- (8) The Town of Hartland has very few tall structures.
- (9) The Town of Hartland is bordered on the north, south, east and west by Towns which share Hartland's agricultural and rural residential character, and are similarly low, flat areas.
- (10) The only other municipality in the Town of Hartland is the Village of Middleport, which is a small Village bedroom community, and which is also part of the rural, residential community devoid of high structures.
- (11) Commercial/industrial wind energy facilities represent potential for extreme adverse aesthetic impacts due to their height as well as other affects.
- (12) The Town of Hartland is located on a major migration route for many species of birds, and is habitat for many species, both year round and seasonal.
- (13) The bat population in the Town of Hartland is important and in distress.

- (14) Commercial/industrial wind energy facilities are known to pose danger to birds and bats, and have been demonstrated to kill numerous members of both species annually.
- (15) Commercial/industrial wind energy facilities can cause danger to humans and animals, including livestock resulting from ice throw.
- (16) If not properly regulated, installation of commercial/industrial wind energy facilities can create drainage problems through erosion, lack of sediment control for facility and access road sites, and can harm farmland through improper construction methods.
- (17) Commercial/industrial wind energy facilities, when improperly sited, are known to adversely affect property values, and cause economic hardship to property owners.
- (18) The Town of Hartland contains clusters and stretches of homes, in and around the Village of Middleport, Johnson Creek, Hartland Corners, Ridge Road Corridor, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural pastoral lifestyle.
- (19) Town of Hartland residents and visitors enjoy outdoor activities, including hunting, hiking, cycling, snowmobiling, jogging, etc., all of which are potentially adversely affected by presence of commercial/industrial wind energy facilities.
- (20) Commercial/industrial wind energy facilities may be significant sources of noise, including infrasound that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and health and quality of life of residents.
- (21) Construction of wind facilities can create traffic problems and can cause damage to local roads and infrastructure.
- (22) Commercial/industrial wind energy facilities have the potential to cause electromagnetic interference with various types of communications.
- (23) Commercial/industrial wind energy facilities have the potential to adversely interfere with orderly development of the Town of Hartland, including single-family residences and small subdivisions by making such development unappealing.
- (24) Commercial/industrial wind energy facilities need to be regulated for removal when no longer utilized.
- (25) Commercial/industrial wind energy facilities provide renewable energy. Their viability is highly dependent on state and federal subsidies, and renewable energy companies are subject to economic pressure and potential bankruptcies. Funding and mechanism for removal when no longer operating need to be in place.
- (26) In formulation of this section, many studies have been reviewed and taken into consideration. Wind energy laws in other locations have been reviewed and considered; experiences of other areas have been studied; the Town of Hartland Comprehensive Plan has been considered and complied with.
- (27) When considering large-scale construction and maintenance, due weight should be given to the following:

- (a) The relative distress caused to a community and its residents;
- (b) The actual necessity for such facility given energy production in the area and region, including clean energy production;
- (c) Past and present stresses and disruption imposed upon an area due to all types of energy production;
- (d) Alternatives to facilities, including location in other areas, location in areas where demand is needed, alternative methods of producing clean energy;
- (e) Location in areas of highest consumption;
- (f) Burden on a community and its residents versus reward to community and its residents, with emphasis upon quality of life.

D. Definitions.

- (1) As used in this section, the following definitions apply. If any definition herein conflicts with a definition found elsewhere in the Town Code, the definitions set forth here apply. If not defined in this section, the definitions as set forth in § 144-4 shall apply.
- (2) As used in this section, the following terms shall have the meanings indicated:

AMBIENT SOUND — Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient sound also includes insect and other nearby sounds from birds and animals or people. The nearby and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

ANSI — Refers to or means the American National Standards Institute.

APPLICANT — The person or entity filing an application and seeking license under this section; the owner of a WECS or a proposed project; the operator of a WECS or proposed project; any person acting on behalf of an applicant, WECS project or proposed WECS. Whenever the term "applicant" or "owner" or "operator" are used in this section. Said term shall include any person acting as an applicant, owner or operator.

BACKGROUND SOUND — Background sounds are those heard during lulls in the ambient sound environment and represent the quietest 10% of the time: for example, the quietest one minute.

dba — A weighted sound pressure level. A measure of overall sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low with respect to the frequencies centered around 1,000 Hz. The resultant sound level is said to be "weighted" and the units are "dba." Sound level meters have an A-weighting network for measuring A-weighted sound levels (dba) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997, for

Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this section, dBA means LAeq unless specified otherwise.

DBC — C-weighted sound pressure level. Similar in concept to the A-weighted sound level (dBA), but C-weighting does not deemphasize the frequencies below 1,000 Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI S1.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this section, dBC means L unless specified otherwise.

DECIBEL — A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

EAF — Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules, and Regulations.

NONPARTICIPANT — Any and all Hartland landowners having no contractual relationship with a wind developer.

PARTICIPANT — Any and all landowners having a signed lease, easement, or good neighbor agreement with a wind developer.

PERSON — Any person, partnership, LLC, corporation, joint venture, trust or other entity.

QUALIFIED ACOUSTICAL CONSULTANT — A person with demonstrated competence in the specialty of community noise testing who is a person with full membership in the Institute of Noise Control Engineers (INCE).

RESIDENCE — Any building suitable for habitation in the Town of Hartland on the date an application for a wind energy facility permit is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, nursing homes, schools churches or buildings used for educational purposes, or public gatherings.

ROTOR DIAMETER — The diameter of the largest swept area of a rotating turbine blade.

SECTION or THIS SECTION — Unless otherwise identified, § 144-19 and its subsections.

SEQRA — The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SETBACKS — A distance measured from the closest right-of-way line of the road right-of-way, property lines, village limits, edge of wetlands, edge of streambed, closest point of residence foundation to the base of the turbine or measurement tower, zoning districts, or other point or line of reference.

SHADOW FLICKER — The visual effect of viewing the moving shadow of the wind energy conversion system (WECS) rotor blades when they are in a position between the receptor (person

viewing them) and the sun and/or the "strobe" lighting effect of this condition as perceived by the receptor whether directly or indirectly (as in a reflection off a light-colored wall).

SITE — The minimum area necessary for a wind energy facility to satisfy the required setbacks and any other standards in this section. The site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where an individual or group of individuals own or control adjacent properties, those properties may be combined for the purposes of this section through an easement or other legally enforceable agreement recorded in the real property records in the Niagara County Clerk's Office. The agreement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. Where multiple adjacent lots are in single ownership or are combined through such agreement, such multiple or combined lots shall together be considered the "site".

SOUND PRESSURE LEVEL — The level, expressed in decibels, which is equaled or exceeded a stated percentage of time. Sound pressure level is spectrally weighted to correspond to a spectrum of interest. For example, the A-weighted decibel scale (dBA) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale (dBC) approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale (dBG) is designed for infrasound. Sound measurements shall use sound meters that meet the American National Standard Institute Specifications for Integrating Averaging Sound Level Meters, SI. 43-1997, for Type I instruments and be capable of accurate readings (corrections for interval noise and microphone response permitted) at 20 dBA or lower.

SPECIAL USE PERMIT — A construction and operating permit granted in accordance with the provisions of this section.

TOTAL HEIGHT — The height of the tower from the finished ground elevation to the furthest vertical extension of the turbine rotor plane.

TOWER HEIGHT — The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

WIND ENERGY CONVERSION SYSTEM (WECS) or WIND ENERGY CONVERSION FACILITY — Any machine or wind facility that converts the kinetic energy in the wind into electricity, including all related infrastructure, electrical lines and substations, access roads and accessory structures, also known as a commercial/industrial wind energy conversion system. Excluded from the definition are noncommercial wind energy conversion systems having a height of 165 feet or less.

E. Applicability; severability.

- (1) No wind facility or wind energy conversion system shall be constructed, reconstructed, modified or operated in the Town of Hartland, except in compliance with this section, and in compliance with all conditions of approval established by the Town Board.
- (2) If any provision of this section conflicts with any other provision of the Town of Hartland Code, provisions of this section shall apply.
- (3) If any provision, section or requirement of this section shall be finally determined not

to apply, or to be unenforceable or void, by any court, state or federal agency having authority to so determine, it shall not affect the validity or enforceability of this section as a whole or any other part thereof.

- (4) Nothing in this section shall prevent the ability of the Town of Hartland to appeal or seek court determination of any action by any agency, tribunal, or lower court.

F. Applications for wind energy conversion systems.

- (1) An application for special use permit for a wind energy facility or a single WECS shall include the following:
 - (a) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - (b) Name and address of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that applicant is authorized to utilize the property for the intended purpose.
 - (c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.
 - (d) A description of the project, including the number and maximum rated power output capacity of each WECS.
 - (e) For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - [1] Property lines and physical dimensions of the site;
 - [2] Location, approximate dimensions and types of existing structures and uses on site, public roads, and adjoining properties within a three-thousand-foot radius of the proposed WECS.
 - [3] Location and ground elevation of each proposed WECS.
 - [4] Location of all above and below ground utility lines on the site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 - [5] Location and size of structures above 35 feet within a three-thousand-foot radius of any proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are considered structures.
 - [6] Location of and measured distances (accurate GPS measurements may be utilized) of each proposed WECS tower from every setback required pursuant to this section.

- [7] To help demonstrate compliance with the setback requirements of this section, circles drawn around each proposed tower site having a radius equal to:
- [a] Five times the total height of the proposed WECS;
 - [b] One thousand feet;
 - [c] Three thousand feet;
 - [d] One-half mile;
 - [e] One mile;
 - [f] One and one-half times the total height of the proposed WECS;
 - [g] Two times the total height of the proposed WECS; and
 - [h] Five thousand feet.
- [8] All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- [9] The names and addresses of all property owners within a three-thousand-foot radius of each WECS, as shown on the assessment roll of the Town of Hartland, together with the current use of all such property.
- (f) Elevation drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
 - (g) Landscaping plan: depicting vegetation and forest cover describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified by species and size of specimens at installation, and their locations.
 - (h) Lighting plan: showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the application shall so state and such determination shall be submitted prior to final approval.
 - (i) Decommissioning plan: A decommissioning plan as specified in this section.
 - (j) Complaint resolution plan: A complaint resolution plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.
 - (k) Information relating to the construction/installation of the wind energy facility as follows:

- [1] A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction.
 - [2] A description of the routes to be used by construction and delivery vehicles, the gross weights, and heights of those loaded vehicles.
- (l) Completed Part 1 of the full EAF.
 - (m) For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include manufacturers' material safety data sheet documentation for the type and quantity of all materials used in the operation of all equipment, including, but not limited to, all lubricants and coolants.
 - (n) As part of the application, or as a supplement to the application, simultaneously submitted, the following: Each submittal shall contain a thorough analysis/explanation of the ability and means to comply with the "Standards for commercial/industrial WECS," Subsection H of this section.
 - [1] Shadow flicker: The applicant shall submit a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this section.
 - [2] Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least several locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - [3] Fire Protection/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed wind energy facility to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.
 - [4] Noise analysis/study: A noise analysis by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS. The study shall document noise levels at property lines and at the property line of the nearest residences not on the site for each residence in a 360° circle of the site. The noise analysis shall be performed according to the International Standard for Acoustic Noise Measurement Techniques for

Wind Generators (IEC 61400-11), or other procedure accepted by the Town Board, and shall include both a dBA analysis and dBC analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the "Standards for commercial/industrial wecs," Subsection H of this section.

- [5] Property value analysis: Property value analysis prepared by a New-York-State-licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Hartland evaluating the potential impact of the project on values of properties in the Town of Hartland, and in addition a proposed means to protect property owners from decrease in values caused by the establishment and operation of the proposed WECS, and to comply with the property value preservation subsection set forth in the "Standards for commercial/industrial wecs," Subsection H of this section.
- [6] Electromagnetic interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference established systems.
- [7] Transportation impacts: An analysis of impacts on local transportation identifying impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS' materials; impacts on school bus routes; impacts of visitors to the WECS' facilities. Local roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.
- [8] Transportation plan: A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.
- [9] Ground water impacts: An analysis of impacts on local groundwater resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation decommissioning and post decommissioning of each WECS. A geotechnical report shall be provided and shall include: soil and geologic characteristics of the site based on site sampling and testing, a bedrock profile within one mile of the site, information on depth of well, average flow rate, and with

permission by owner, test of water equality for all wells within two miles of the site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.

- [10] An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the site preparation phase.
- [11] Cultural, historical and archeological resources plan: An analysis of impacts on cultural, historical and archeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.
- [12] Wildlife impacts: An analysis of impacts on local wildlife shall be prepared, addressing impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and the United States Fish and Wildlife Service studies, standards and recommendations and must at a minimum consist of pre-construction data of three years, and literature/studies/survey for threatened and endangered and species of concern and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Town Board to make a determination on any mitigation conditions or a denial of permits as provided in standards for commercial/industrial WECS section.⁶
- [13] Maintenance plan providing for regular periodic wind energy facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- [14] Blade throw report: A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be thoroughly explained and justified.) The frequency incidence of reported ice and blade throws and the conditions at

6. Editor's Note: See Subsection H.

the time of the ice and blade throw must be included and the report must specifically address the climatic and weather conditions found in the Town of Hartland.

- [15] Stray voltage report: An assessment, pre- and post-installation, of possible stray voltage problems on the site and neighboring properties within one mile of the project boundary to show what properties need upgraded wiring and grounding.
- [16] A health report utilizing available background health, including mental health, analysis for the Town, and the region including age, proliferation of known health disorders; effects of noise presence of WECS and flicker effect on people, as well as a proposed means of accessing a health background on individuals who wish to participate for determination of health effects if a WECS is constructed. A thorough analysis of the potential health effects, including mental health related to commercial/industrial wind turbines, and a plan to mitigate each affects and to address them.
- [17] An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Hartland. The report shall address effect of wind turbulence and disruption on fruit production, effect on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, microclimate effects and impacts on orchard and crop growing seasons.
- [18] A report/analysis of the effects on the economy of the Town, including income of residents and effects on other industries and jobs.
- [19] A report and analysis on any effect on any military installation in the County of Niagara, including the Niagara Falls Air Reserve Station, its potential effects on flight patterns, its potential to cause radar interference, effect on base siting evaluations, the potential economic effect on the County of Niagara should the base be closed, including job loss and economic impact.
- [20] A report and analysis on any outdoor activities common in the Town of Hartland, including hunting, hiking, biking, etc.
- [21] A complete report on:
 - [a] The need for the project including demand analysis, limitations on transport of power to high demand areas.
 - [b] Other "clean" energy power projects in the area, including the Niagara Power Project, with analysis of total clean power generated in Niagara County versus other areas in the state.
 - [c] The effect on Route 104 (Ridge Road), a historic highway.

- [d] Increase expenses imposed upon the Town of Hartland as a result of the proposed project.
- [e] All alternative sites identified by the applicant and its affected entities.
- [f] Local power needs in the Town of Hartland and total power generated.
- [g] Total disruption/burden placed upon the Town of Hartland for all power generation activities, including existing facilities and infrastructure. Compare to other areas of the state; use population/energy usage per capita verses total energy burden.
- [h] For any requirement of a report, analysis or study, required pursuant to this Subsection F(1)(n) or required by any other provision of this section, or by the Town Board in its review process, the Town may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board's choosing. Applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this section.
- [i] The applicant shall, prior to the receipt of a special use permit, provide proof that it has executed an interconnection agreement with the New York independent system operator and the applicable transmission owner. Applicant shall also provide proof of complying with Public Service Commission power purchase requirements.
- [j] A statement, signed under penalties of perjury that the information contained in the application is true and accurate to the best of applicant's knowledge.
- [k] Proof of continuous liability insurance in the amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year. This shall be submitted to the Town of Hartland indicating coverage for potential damages or injury to landowners and the public.
- [l] Disclosure of financial interests. For any financial interest held by a Municipal Officer or his or her relative in any wind development company or its assets within three years prior to the date of an application for a permit under this section, the wind company shall disclose the application the municipal officer or his or her relative, and the nature and scope of the financial interest of each person.
- [m] All wind speed data obtained by applicant from any wind measurement tower in the Town, including explanation of methodology utilized to obtain measurements.
- [n] The applicant shall fund an escrow as required by this section to

cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer exceed the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the escrow. If no agreement is reached prior to review, the fund shall be 1.5% of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this section. The escrow shall be funded prior to review of the application. If at the end of the review process, and decision on the application by the Town Board, funds remain in the escrow fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.

- [o] Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town Board and placed in the Town Library and Town Clerk's office as well as on the Town of Hartland website.

G. Application review process.

- (1) Applicants may request a preapplication meeting with the Town Supervisor, Town Code/Zoning Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.
- (2) An original executed and 15 copies of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward one copy to the Code/Zoning Enforcement Officer and five copies to the Town Supervisor and additional copies to such individuals as the Supervisor shall direct.
- (3) The Code/Zoning Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the application is deemed incomplete, the Town Code/Zoning Enforcement Officer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECS proposed is increased. When the application is complete, it shall be filed and the applicant shall be notified it has been accepted for filing.
- (4) Upon filing of a complete application, the Town Clerk shall transmit the application to the Board.
- (5) In addition to the public hearing requirement, the Town Board may in its discretion require the applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board and notice shall

be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the applicant regarding the project.

- (6) The Town Board shall hold at least one formal public hearing on the application. Notice shall be published in the Town's official newspaper, no less than 10 days before the hearing. In the event any hearing is adjourned by the Board to hear additional comments, no further publication or mailing shall be required. Notice shall also be given to property owners in the Town of Hartland at the address shown on the assessment roll of the Town of Hartland, or by publishing such notice in the Town's newsletter.
- (7) At the discretion of the Town Board, the public hearing may be combined with public hearings on any Environmental Impact Statement. Notice for SEQRA public hearings must meet the specification set out in 6 N.Y.C.R.R. § 617.12(c).
- (8) Notice of the project shall also be given, when applicable, to:
 - (a) The Niagara County Planning Board, if required by General Municipal Law § 239-1 and 239-m; and
 - (b) To adjoining towns where the project site is located within 3,000 feet of the adjoining town boundary.
- (9) SEQRA review. Applications for commercial/industrial WECS are deemed Type I projects under SEQRA. The Town Board may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town Board's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA.
- (10) After a thorough and detailed evaluation of the application in which the Town Board completes the required "hard look" of all materials and public input and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board shall approve, approve with conditions, or deny the application(s). The Board shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- (11) If approved, the Town Board will issue, to the applicant, a special use permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said permit. This authorizes the Code Enforcement Officer/Building Inspector to issue a building permit for each WECS, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this section.
- (12) The decision of the Town Board shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first-class mail.
- (13) If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

H. Standards for commercial/industrial WECS. The following restrictions on location, standards and conditions shall apply to all commercial/industrial WECS. Applications must demonstrate compliance with these standards.

(1) Restricted areas:

- (a) No commercial/industrial wind energy systems shall be allowed in any residential district (R-1, R-2, R-3, MH Districts), in the Business (B District) or in the Recreational Use District (REC District).
- (b) No commercial/industrial wind energy systems shall be allowed within the boundary areas of the Town of Hartland LWRP.

(2) Setbacks. No commercial/industrial wind energy systems shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.

- (a) From restricted areas: a minimum of 1,500 feet from any residential district boundary line (R-1, R-2, R-3 and MH Districts).
- (b) From structures: a minimum two times the total WECS height from any building.
- (c) From property lines: A minimum two times the total WECS height from any property line excluding adjoining lot lines of the project participants. Such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement recorded in the Niagara County Clerk's Office for a period of the life of the permit, that the affected adjacent landowner(s) agree to the elimination of the setback.
- (d) From public roads and highways: a minimum 1,500 feet or two times the total WECS height from any public road or highway, whichever is greater.
- (e) From aboveground transmission lines greater than 12 kilovolts: a minimum two times the total WECS height from any aboveground transmission line greater than 12 kilovolts.
- (f) From the boundary of the Village of Middleport: a minimum of 1/2 mile (2,640 feet).
- (g) From residences: a minimum of 2,000 feet.
- (h) From another commercial/industrial WECS turbine: a minimum of 2,000 feet.

(3) All power transmission lines from the tower to any building or other structure shall be located underground.

(4) No television, radio or other communication antennas may be affixed or otherwise made part of any commercial/industrial WECS, except pursuant to the Town site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this section and telecommunications facilities under the site Plan and Subdivision Law.

- (5) No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
- (6) Lighting of tower. No tower shall be lit except to comply with FAA requirements. Motion-sensitive on-demand lighting is required. Minimum-security lighting for ground level facilities shall be allowed as approved on the site plan.
- (7) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, nonreflective, matte-finished color. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, so as to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- (8) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS causing the interference.
- (9) All solid waste and hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all applicable rules and regulations.
- (10) WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All topsoil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity, which disturbed the soil.
- (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the United States Fish and Wildlife Service as threatened or endangered. When the Town Board determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed WECS, no permit may be issued.
- (12) WECS shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (13) Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- (14) For all aspects of the application and operations of WECS, the New York State

Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects in effect, as of the date of the application, and any other agricultural effects identified shall be mitigated shall be adhered to, both inside and outside of agricultural districts.

- (15) The maximum total height of any WECS shall be determined by application of all parts of this section to the application. The minimum feasible height shall be the maximum height of any WECS, and applicant shall justify any requested maximum height and demonstrate to the Town Board's satisfaction the reason why a lower height is not feasible. Notwithstanding the forgoing, no wind tower total height shall exceed 450 feet.
- (16) Construction of the WECS shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, unless a different schedule is approved by the Town Board.
- (17) If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the special use permit for the specific WECS causing the problems.
- (18) WECS shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community (i.e., high concentration of historic stone houses and buildings and old-style barns). This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of New York's Department of State guidelines for Scenic Areas of Statewide Significance shall be respected.
- (19) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (20) Fencing may be required, as determined by the Town Board.
- (21) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with twenty-four-hour-per-day, seven-day-per-week coverage. The Town Board may require additional signs based on safety needs.
- (22) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the tower structure.
- (23) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (24) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- (25) The owner and/or operator of a WECS that has received approval under this section

and for which a permit has been issued shall file with the Town Clerk on an annual basis an operation and maintenance compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the operation and maintenance plan. The annual report shall include a noise analysis by a qualified acoustical consultant performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11) or such other procedure as accepted by the Town Board during the permit review process which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this section and the permit as issued.

(26) Traffic routes.

- (a) Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process.
- (b) The applicant is responsible for remediation of damaged roads and infrastructure upon completion of the installation and/or maintenance of a WECS. The applicant shall comply in all requirements of any Town of Hartland Infrastructure, Preservation or Protection Law.
- (c) In addition to complying with any Town of Hartland Infrastructure Preservation or Protection Law, prior to placing the wind energy facility in operation, and for the life of the project, the applicant shall repair or reconstruct all state highways, county highways, Town highways and village streets and highways damaged by the applicant to the standards set forth by the Niagara County Highway Department regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.

(27) Noise standards for wind energy systems.

- (a) The equivalent level (LEQ) generated by a wind energy conversion system (WECS) shall not exceed the limits listed in Table 1 when measured at the nearest off-site residence existing at the time of application, or for which a building permit has been issued. If the A-weighted background sound pressure level, without the WECS, is within five dB of some or all of the limits in Table 1 or exceeds some or all of the limits in Table 1, then the A-weighted criterion to be applied to the WECS application for those affected limits shall be the A-weighted background level plus five dB. Note: For example, during daytime, if the background is less than or equal to 40 dB, then the limit is 45 dB. However, if the background is greater than 40 dB, say 44 dB, then the applicable WECS limit is the background level plus five dB which calculates to 49 dB for this example.
- (b) In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table 1 or based on the A-weighted background, as appropriate) plus 18 dB. The application shall include certification by a qualified acoustical consultant as to the predicted A- and C-weighted WECS sound levels at potentially impacted residential sites. The qualified acoustical consultant shall be a member of the Institute of Noise Control Engineering of

the USA. The background shall be measured and predicted in accordance with Subsection H(27)(c) below.

**Table 1. WECS Noise Limits At Residential Receivers
(1 Hour LEQ Derived Per ANSI S12.9 Part 4 and S12.100)**

	Daytime 7:00 a.m. to 8:00 p.m.	Nighttime 8:00 p.m. to 7:00 a.m.
A-weighted level (dB)	45	35
C-weighted level (dB)	63	50

- (c) A-weighted background community noise levels shall be based on measured hourly L90 levels gathered following the procedures specified in ANSI/ASA S12.9, Part 3 (R2013), Short Term Measurements with an Observer Present, and ANSI/ASA S12.100-2014, Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas. The day shall be divided into two time periods: 1) daytime, the hours from 7:00 a.m. to 8:00 p.m., and 2) nighttime, the hours from 8:00 p.m. to 7:00 a.m. If insect noise possibly can dominate some of the hourly L90 measurements then Ai weighting (see Schomer et al., 2010⁷ shall be used in lieu of the Standard A-weighting, or measurements shall not be made when insect noise possibly can dominate some of the hourly L90 measurements. (NOTE: In relatively quiet areas insect noise, especially during summer months, can easily dominate the A-weighted ambient sound level. This domination occurs partly because the primary frequencies or tones of many, if not most, insect noises are in the range of frequencies where the A-weighting is a maximum, whereas, most mechanical and WECS noises primarily occur at the lower frequencies where the A-weighting significantly attenuates the sound. Also, insect noise and bird song do not mask WECS noise at all because of the large differences in frequencies or tones between them.) The background shall be reported by time period, and computed as follows. The minimum hourly L90 shall be tabulated by time period and by day, and the arithmetic average by time period over all the periods of measurement shall be computed. These three averages of daily minima shall be reported as that site's daytime, evening, and nighttime A-weighted background, respectively.
- (d) Parcels three acres or smaller: The A-weighted background measurements shall be made along the line from the nearest proposed WECS to the dwelling in question. If the parcel of land has no dwelling, then the line shall terminate within 25 feet of the center of the parcel. The actual position of the microphone shall be within the property in question and should be within 25 feet to either side of the line, no closer than 50 feet from the property boundary, and no closer than 25 feet from the house or any other structures. If positioning within this "measurement box" is not possible because of unique site conditions such as the

7. Editor's Note: The full reference provided in this ordinance is as follows: Schemer, Paul D. et al., "Proposed 'Ai'-Weighting; a weighting to remove insect noise from A-weighted field measurements," InterNoise 2010, Lisbon Portugal, 13-16 June 2010.

position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified.

- (e) Parcels larger than three acres. The A-weighted background measurements shall be made along the line from the nearest proposed wind turbine to the property line of the residence, or vacant parcel. The actual position of the microphone shall be within the property in question, shall be at the property line closest to the any wind turbine, and shall be no more than 50 feet from the property boundary. If positioning within this "measurement box" is not possible because of unique site conditions such as the position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified. The microphone shall be no closer than 50 feet from the house or any other structures.
- (f) Measurement requirements. The microphone shall be situated between four and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI/ASA S12.9 Part 3 and 12.100 (see above), and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The meter noise floor shall be 20 dBA or lower. The report shall include each hourly measured A-weighted L90 level, the tabulated daily minima by time period, and the three time period averages. The report also shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted noise floor and the one-third-octave-band noise floors, if utilized, for each meter used.
- (g) Background prediction and measurement. Background measurements shall be conducted by the applicant throughout the area using sufficient sites to generally characterize the background in various areas of the community.
- (h) The starting point for predicting WECS A- and C-weighted levels at potentially impacted residential parcels shall be the manufacturer-supplied octave band sound power levels as measured by the manufacturer in accordance with International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11 and 61400-14 with all tolerances added to the Apparent Sound Power Level used in the model). At a minimum, the octave band data shall include the 10 octave bands with nominal center frequencies ranging from 16 Hz to 8,000 Hz (see ANSI S1.6-1984), and the sound power levels for these bands shall be tabulated in the report. Any data not available from the manufacturer shall be estimated from field measurements on like wind turbines already in use. Any such field measurements shall be described fully and documented in the report.
- (i) In the event audible noise due to wind energy facility operations contains a steady or pure tone, or an intermittent or reoccurring tone, such as a whine, screech, or hum, the tones shall be eliminated. (NOTE: Minimum distances or

setbacks are a very inexact means to limit WECS noise. It is far more appropriate to deal with each application on its own merits, taking into account the ground surface in the area, the number and placement of the wind turbines, and the sound power produced by the particular model of the WECS.)

- (j) Any noise level falling between two whole decibels shall be rounded to the nearest whole decibel.
- (k) The maximum noise level for any WECS measured from the property boundary lines of any school shall not exceed 40 dBA.
- (l) The Town, using the services of the Town Engineer, may conduct or contract for any measurements. In addition to report filed by the applicant/operator, the applicant/operator shall cooperate with any Town testing of noise levels, including providing access to all sites for that purpose.
 - [1] The duration of any WECS measurement shall be 30 minutes. During the thirty-minute period, the equivalent level (LEQ) generated by the WECS shall be measured. The WECS operator shall cooperate by turning the wind turbines on and off as needed for the test and to provide the SCADA information to confirm that the wind turbine was operating at full power and not in a noise-reduced mode. The measurement location shall be at any residential property as given in Subsection H(27)(a) and at any point on this residential property at which the background community noise may be measured per Subsection H(27)(c). Measurements shall be entirely within the appropriate time period, e.g., during nighttime for nighttime enforcement, and the WECS shall operate continuously during the thirty-minute measurement.
 - [2] The microphone shall be situated between four and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI/ASA S12.9 Part 3 and S12.100 as above, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument noise for shall be at least 10 dB below the lowest level measured.
 - [3] A calibrator shall be used as recommended by the manufacturer of the sound level meter. The fundamental level of the calibrator and the sensitivity of the sound level meter shall be verified annually by a laboratory using procedures traceable to the National Institute of Standards and Technology.
 - [4] A wind screen shall be used as recommended by the sound level meter manufacturer.
 - [5] An anemometer shall be used and shall have a range of at least zero to 15 miles per hour (zero to 6.7 meters per second) and an accuracy of at least plus or minus two miles per hour (± 0.9 meters per second). Measurements with wind speeds over 2.2 m/s shall be rejected.

- [6] A compass shall be used to measure wind direction to at least an eight-point resolution: N, NE, E, SE, S, SW, W, NW. Measurements shall be A-weighted, or, alternatively, in one-third-octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be one dB for a Type 1 meter and two dB for a Type 2 meter. For one-third-octave-band measurements, the meter shall meet the Type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), and the uncertainty of measurements shall be disclosed in each one-third-octave band along with the method used to calculate them.
- [7] For all measurements, the surface wind speed, measured at a 1.5-meter height, shall be less than 2.2 m/s.
- [8] All measurements shall be corrected for the background on the basis of mean square pressures. For one-third-octave-band measurements, each one-third-octave band shall be individually corrected for the background in that band. That is, both the WECS (which always includes the background) and the background alone shall be measured in each one-third-octave band. For either A-weighted data or one-third-octave band data, the background shall be measured during a like period when the WECS is not operating, and Table 2 shall be used to correct for the background, by band in the case of one-third octave-band data. A like period includes the same or like location, like surface wind speed and direction, like time of day and day of the week (e.g., Monday through Thursday night, Friday or Saturday night, or Sunday night), etc.
- [9] After correction, when using data measured in one-third-octave bands, all remaining bands, excluding bands set equal to zero, shall be converted to A-weighted bands and then shall be summed on a mean square pressure basis to establish the WECS background-corrected A-weighted sound level.

Table 2

Correction in dB that shall be subtracted from the WECS sound level measurement (which always includes the background sound level) because of the background sound so that the result is just the sound level of the WECS alone. (See Note a below.)

\hat{P} , difference (dB)	<3	3-4	5-6	7-10	>10
K, correction (dB)	Notes b, c	3	2	1	

NOTES:

- (a) This table provides a simple correction to measurements of WECS sound in the presence of the background. For example, the sound of a WECS (along with the background sound which is always present) is measured as 40 dB(A), and the background sound level alone (without the WECS) is measured as 34 dB(A). Then \hat{P} , the difference in decibels is 6 dB (first row, third column), and the corresponding correction shall be 2 dB (second row, third column). That is, 2 dB shall be subtracted from the measured 40 dB(A) level, and it

is adjusted to and reported as 38 dB(A). The same procedure is followed in each band for one-third-octave-band data.

- (b) When using directly measured A-weighted levels, if the difference between the WECS sound level (plus background sound level) and the background sound level alone is less than 3 dB, then it shall not constitute a violation of this section.
- (c) When using measured one-third-octave-band data, if the difference between the WECS sound pressure level (plus background sound pressure level) and the background sound pressure level alone, each in the same one-third-octave band, is less than 3 dB, then the WECS level for that one-third-octave band shall be set to zero.

[10] The report shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted noise floor and the one-third-octave band noise floors, if utilized, for each sound level meter used.

- (28) Economic effects. WECS shall be sited and constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural activities in accordance with conditions established by the Town Board.
- (29) Health effects. WECS shall not adversely affect the health, including mental health of the residents of the Town of Hartland. All available material and studies as well as baseline health reports of willing residents must be contained in a health maintenance plan for any WECS project. Preconstruction health exams shall be provided to willing residents. Reports of residents' exams shall be sealed or maintained in the possession of residents or their physicians unless they are made available by residents in accordance with HIPAA procedures.
- (30) No WECS shall be located in the Town of Hartland which, after all data, required reports and studies are considered, it is determined by the Town Board, will cause unacceptable interference with or danger to bird or bat populations, or to migration routes.
 - (a) When a WECS has been constructed in the Town of Hartland, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a monthly basis. The applicant/owner/operator shall also provide access to the site and surrounding area to the Town designated representative to inventory killed birds or bats on a daily basis, if requested.
 - (b) If a tower or towers in a WECS are determined to cause numbers of bird or bat kill which are determined to cause excessive, after consultation with the Department of Environmental Conservation and other involved agencies, remedial action shall be required up to and including suspension or revocation

of a permit or any part thereof.

(31) Real property value protection plan. The WECS owner(s) ("applicant") shall assure the Town of Hartland that there will be no loss in real property value within two miles of each wind turbine within their WECS. To legally support this claim, the applicant shall consent in writing to a real property value protection agreement ("agreement") as a condition of approval for the WECS. This agreement shall provide assurance to nonparticipating real property owners (i.e., those with no turbines on their property) near the WECS, that they have some protection from WECS-related real property values losses. The applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WECS. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WECS, may elect to exercise the following option:

(a) All appraiser costs are paid by the applicant, from the escrow account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("diminution value"), caused by the proximity to the WECS. This shall be determined by calculating the difference between the current fair market value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WECS was proposed or constructed.

[1] If the higher of the diminution valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("average diminution value": ADV).

[2] If the higher of the diminution valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest diminution valuations shall constitute the ADV.

[3] In either case, the property owner may elect to receive payment from applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner, to have such payment made.

(b) Other agreement conditions.

[1] If a property owner wants to exercise this option, they must do so within 10 years of the WECS receiving final approval from the Town of Hartland.

[2] A property owner may elect to exercise this option only once.

[3] The applicant and the property owner may accept mutually agreeable modifications of this agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g., confidentiality). If the

property owner accepts some payment for property value loss, based on an alternative method that is considered an exercise of this option.

- [4] This agreement applies to the property owner of record as of the date of the issuance of the permit, and is not transferrable to subsequent owners.
 - [5] The property owner of record as of the date of the issuance of the WECS permit must reasonably maintain the property from that time, until they choose to elect this option.
 - [6] The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
 - [7] The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WECS application.
 - [8] This agreement will be guaranteed by the applicant (and all its successors and assigns), for 10 years following the WECS receiving final approval from the Town of Hartland, by providing a bond (or other surety), in an amount determined to be acceptable by the County.
 - [9] Payment by the applicant not made within 60 days will accrue an interest penalty. This will be 12% annually, from the date of the written election from property owner.
 - [10] For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
 - [11] Upon application, the applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Hartland and held by the Town of Hartland. This surety account will ensure execution of all aspects of this Agreement (including compensation of eligible property owners in the case of default by applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the WECS permit.
- (32) Any other standard or requirement established by the Town Board as set forth as a condition of approval of an application shall apply.

I. Decommissioning.

- (1) If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant shall, without any further action by the Town Board, remove said system at its own expense in accordance with the provisions of Subsection I(3) of this section. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan.
- (2) Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make

available to the Town all reports from the purchaser of energy from individual WECS. Upon request of the Supervisor, the Supervisor may also require periodic documentation reporting the power output generated by the WECS.

- (3) Decommissioning and site restoration plan and requirements. An application for a wind energy facility permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.
 - (a) The plan shall provide for the removal from the project parcels, and lawful disposal or disposition of, all wind turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the project parcels wants removed. The plan shall provide for the restoration of the project parcels to farmland of similar condition to that which existed before construction of the WECS.
 - (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the nonfunctioning of the WECS.
 - (c) The plan shall include:
 - [1] The estimated decommissioning cost in current dollars;
 - [2] How said estimate was determined;
 - [3] The method of ensuring that funds will be available for decommissioning and restoration; and
 - [4] The method that will be used to keep the decommissioning costs current, by adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index.
 - (d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of nonfunctional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund and the balance of such fund in the form of an irrevocable bond in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.
 - (e) The plan shall include written nonrevocable authorization from the permit holder and the owners of all parcels within the project for the Town to access the parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s), and shall be recorded in the Office of the Niagara County Clerk.

(f) Use of decommissioning fund.

- [1] Any nonfunctional WECS or any WECS for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration within 180 days of the date on which the facility becomes nonfunctional or of the revocation of the special use permit, by the applicant or owner of the WECS.
- [2] If removal of the WECS is required and the applicant, permittee, or successors fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.
- [3] If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.

J. Limitations on approvals; easements on Town property.

- (1) Nothing in this section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy facility. Nothing in this section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy facility.
- (2) Notwithstanding anything to the contrary contained in this section or any other local law, ordinance, rule or regulation of the Town of Hartland, building permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located within a setback required by this section. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this section and/or as set forth in the permit.

K. Permit enforcement revocation.

- (1) Testing fund. A special use permit shall contain a requirement that the applicant perform periodic noise testing by a qualified acoustical measurement consultant, which shall be included in the annual operation maintenance and compliance report required under this section, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this section and shall include an evaluation of any complaints received by the Town. The Town may, if the Code/Zoning Enforcement Officer so determines, conduct or have conducted, such testing as it determines in addition to the applicant/operator. Such testing shall be paid for by the applicant.
- (2) Operation. A WECS shall be maintained in operational condition at all times, subject

to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions and requirements of this section. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition or any provision of this section, the owner, or operator shall immediately notify the Code Enforcement Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the noncompliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the WECS to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan in writing within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.

- (3) Notwithstanding any other enforcement provision under this section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, 1) order either remedial action within a particular timeframe, or 2) order suspension of the permit until compliance is achieved, or 3) order revocation of the wind energy permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town shall have the right to use the security posted as part of the decommission plan to remove the WECS.

L. Fees.

- (1) Nonrefundable application fees for WECS, wind measurement towers, and small WECS shall be established by the Town Board and reviewed periodically. The fee may be changed by resolution of the Town Board. Until established, the fee shall be \$1,000 per megawatt of rated maximum capacity submitted with the application.
- (2) Reimbursement of expenses related to a WECS project: The Town Board of the Town of Hartland has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant(s) hired by the Town to review the plans and inspect the work. The Town and the applicant will enter into an agreement for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000 in an escrow account with the Town which the Town may use to pay for any expenses it incurs related to this project. The fees established herein may be amended from time to time by resolution of the Town Board.
- (3) Nothing in this section shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

M. Project Management and Oversight.

- (1) Upon approval by the Town Board of a WECS special use permit application, and as a condition to the issuance of a WECS special use permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the WECS is in place. This person will have the authority to make management and technical decisions as situations demand. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.
- (2) As a condition to the issuance of a WECS special use permit, the services of an engineering firm will be retained by the Town of Hartland during the construction phase of the WECS project.
- (3) Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of the 3% of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a certificate of occupancy and approval of all state and federal agencies.
- (4) The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the engineering firm shall be on site at all times during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to same.
- (5) The engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance and they will be confirming that all project specifications are implemented. The firm's representative may recommend that the Code Enforcement Officer issue a "stop-work order" for issues including but not limited to:
 - (a) Safety;
 - (b) Developer compliance issues; and
 - (c) Insufficient project documentation.
- (6) The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative.
- (7) The applicant shall provide the engineering firm representative and the Code Enforcement Officer with "as-built" drawings within one week of completion of each

- portion of the construction phase or as requested by the engineering firm representative, or Building Inspector.
- (8) All upgrades or changes to the WECS project, as permitted, shall be reviewed and approved by the engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Town Board.
 - (9) A final maintenance plan shall be provided to and approved by the Code Enforcement Officer, which input from the engineering firm prior to issuance of a certificate of occupancy, including but not limited to:
 - (a) List of all items requiring regular maintenance.
 - (b) Duration of accumulated time between scheduled maintenance.
 - (c) Work to be completed during the maintenance operation.
 - (d) Person responsible for the maintenance.
 - (e) Process applicant uses to ensure maintenance is carried out appropriately.
 - (10) All performance data routinely monitored during turbine operation shall be provided to the Code Enforcement Officer. Data shall include but not limited to:
 - (a) Vibration levels.
 - (b) Noise levels.
 - (c) Rotational speeds.
 - (d) Kilowatt hours of production.
 - (11) All maintenance reports shall be filed with the Code Enforcement Officer monthly, or more frequently as required.
 - (12) In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected turbines until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report to the Code Enforcement Officer.
- N. Enforcement; penalties and remedies for violations.
- (1) This section shall be enforced by the Town Code Enforcement Officer.
 - (2) Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this section or operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.

- (3) The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator, to remedy the violation with specifications to be taken and an agreed schedule.
- (4) Special proceeding: In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a wind energy facility and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the Court deems appropriate.

O. Miscellaneous.

- (1) Nothing in this section, including the issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies including, but not limited to, actions in law or equity in the nature of nuisance proceedings, or tort or negligence proceedings.
- (2) The Town reserves its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subsection (8) of said law or by any other provision of law.

P. Effective date. This section shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

§ 144-20. through § 144-21. (Reserved)

ARTICLE IVA
Wireless Telecommunications Facilities and Telecommunications Towers
[Added 3-13-1997]

§ 144-21.1. Findings.

The Town Board of the Town of Hartland makes the following findings:

- A. Requests to site personal wireless telecommunications facilities have occurred and will be occurring in the Town of Hartland.
- B. The Town Board finds that the rural, pastoral beauty of the Town of Hartland requires the stringent regulation of telecommunications towers; that such towers inherently detract from the nature and character of the Town of Hartland and this amendment is necessary to direct the location of personal wireless telecommunications facilities within the boundaries of the Town of Hartland to minimize the number of such towers; to protect residential areas and other land uses from potential adverse impacts of personal wireless telecommunications facilities; to minimize adverse visual impacts of personal wireless telecommunications facilities and to encourage shared use and collocation of existing and new personal wireless telecommunications facilities and communications towers as a primary option rather than construction of additional single-use towers; and to protect the general welfare of the citizens of the Town of Hartland.

§ 144-21.2. Definitions.

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

TELECOMMUNICATIONS ACCESSORY STRUCTURE — Accessory buildings and structures, including base stations, designed and used to shelter telecommunications equipment and/or to support personal wireless telecommunications facilities.

TELECOMMUNICATIONS ANTENNA — An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission (FCC). Design examples of telecommunications antennas are described as follows: whip; panel; and dish.

TELECOMMUNICATIONS TOWER — A tower greater than 35 feet in height and which does not exceed 310 feet in height (including antenna) and which supports communication (transmission or receiving) equipment. The term "telecommunications tower" shall not include amateur radio operators' equipment as licensed by the FCC. Design examples of telecommunications towers are described as follows: self-supporting lattice; guyed; and monopole.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier exchange access services.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICE FACILITY — Persons, firms or corporations supplying personal wireless telecommunications service, including all equipment, apparatus, facilities and devices used in the supplying of personal wireless telecommunications service.

MAJOR MODIFICATION OF PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES — A modification of the height, silhouette and/or ground area of any telecommunications tower or telecommunications accessory structure, and/or the addition of telecommunications antennas of a new provider to an existing tower.

§ 144-21.3. Use districts where allowed.

Subject to the provisions of this article, personal wireless communications facilities and communications towers shall be allowed only in the Agricultural Use District (A District), the General Business Use District (B District) and the Light Industrial Use District (I District).

§ 144-21.4. General standards; applications; permits.

- A. The placement, construction and major modification of all personal wireless telecommunications facilities and telecommunications towers within the boundaries of the Town of Hartland shall be permitted only by special permit, upon site plan approval issued by the Planning Board and issuance of a building permit, and subject to all the provisions of this chapter and all other applicable regulations. This article shall supersede Article VI, § 144-38, for the uses regulated under this article. [Amended 12-8-2005 by L.L. No. 2-2005]
- B. All new telecommunications antennas which are not attached to telecommunications towers shall comply with the provisions of this chapter.
- C. All telecommunications towers permitted on the effective date of this article shall be allowed to continue their usage as they presently exist, but shall be subject to the provisions of the article relating to permit renewal and any other provision not inconsistent with the

permit, and additional new telecommunications antennas shall be permitted thereon without regard to the zoning district in which the tower is located. New construction other than routine maintenance on an existing telecommunications tower shall comply with the requirements of this article. Any applications pending on the effective date of this article shall be subject to the provisions of this article.

- D. To preserve the aesthetic and scenic value of the Town, new telecommunications facilities shall be sited on existing telecommunications towers unless the applicant demonstrates unequivocally collocation is not possible. Any existing permit shall, regardless of additional expense or modification of facilities, allow and encourage collocation on its facilities. If collocation is not possible, such facilities shall be located in the area already in use for telecommunications towers, as close as possible to existing towers.
- E. Applications under this article shall be made as follows: applicants for a special permit to place, construct or modify personal wireless telecommunications facilities within the Town of Hartland shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation: [Amended 12-8-2005 by L.L. No. 2-2005]
- (1) Visual environmental assessment form (visual EAF). Landscaping plan and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF, existing treelines and proposed elevations.
 - (2) A preliminary report prepared by a licensed professional engineer describing:
 - (a) The feasibility of collocation on existing structures and telecommunications facilities.
 - (b) The applicant's full map and grid coverage in the Town.
 - (c) Surrounding topography and relation to line of sight transmission.
 - (d) Available road access, electric power and landbased telephone lines and/or microwave link capability.
 - (e) Required improvements or construction activities, including those within the public right-of-way or lands owned or controlled by the Town of Hartland.
 - (f) The identity of location, ownership and usage of currently existing telecommunications facilities within the Town.
 - (g) Plans for construction of telecommunications accessory equipment building or structure and landscaping plan.
 - (h) Proposed mitigation measures for visual impacts.
 - (i) Proposed safety measures.
 - (j) Compatibility with existing telecommunications networks, New York State Thruway Authority telecommunications network and public safety and emergency networks such as fire, ambulance, police and 911.

- (3) In the case of an application for a telecommunications tower, additional information shall be provided describing the telecommunications tower's height and design, including a cross section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of calculation of capacity.
- (4) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating the existing structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
- (5) A demonstration of need for the proposed telecommunications facility showing the impracticality of upgrading or expanding an existing site.
- (6) A demonstration that the proposed site is the most appropriate available site for the location of the cellular telephone facility.
- (7) An inventory of existing telecommunications facilities within the Town outlining opportunities for shared use as an alternative to the proposed use. If collocation is not used, the applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility or an existing facility with modifications.
- (8) A description of the applicant's long-range plans which project market demand and long-range facility expansion needs within the Town.
- (9) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
- (10) A map showing the location of the premises for which the permit is sought and a sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the property boundaries of the proposed location.
- (11) In the case of an application for a telecommunications antenna or tower to be located on private lands owned by a party other than the applicant or the Town, a copy of the lease agreement with the property owner shall be provided.
- (12) Such other information as may be required by the Planning Board or the Town Engineer or Building Inspector.

F. Special permits issued for personal wireless telecommunications service facilities and telecommunications towers shall be subject to the following general conditions:

- (1) Separation distance. Telecommunications facilities shall be separated from all residential dwellings by a distance of 250 feet or 1 1/2 times the height of the tower, whichever is greater.
- (2) All telecommunications accessory structures shall comply with zoning setback regulations in the affected zone. In any event, a telecommunications tower shall be set

- back a distance at least equal to its height. This requirement may be waived by the Planning Board if other considerations require such waiver. Additional setbacks from all property lines may be required by the Planning Board in order to provide for the public safety and for aesthetic reasons. [Amended 12-8-2005 by L.L. No. 2-2005]
- (3) Minimal visual impacts. All telecommunications towers and telecommunications antennas shall be sited to have the least possible practical visual effect on the environment.
 - (4) Lighting. Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.
 - (5) Material and paint. Telecommunications towers and telecommunications antennas shall be of a galvanized finish or painted gray above the surrounding treeline and gray or green below the treeline; the mountings of telecommunications antennas shall be nonreflective and of the appropriate color to blend with their backgrounds unless otherwise required by the FAA.
 - (6) Screening and architectural character. Screening may be required by the Planning Board to screen portions of the telecommunications tower and tower base from nearby residential property or important views. Architectural character: design measures shall be used to integrate the facilities with existing buildings in the area. [Amended 12-8-2005 by L.L. No. 2-2005]
 - (7) Height. The size of telecommunications sites shall be limited to the minimum required to provide proposed telecommunications services but shall include consideration of height needed for collocation.
 - (8) Access roads. Plans for access roads shall be submitted as part of the permit application and shall be subject to approval by the Highway Superintendent.
 - (9) Telecommunications accessory structures. Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility.
 - (10) Telecommunications antennas. Due to their high visibility, dish and parabolic telecommunications antennas shall be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground-mounted on slopes below the ridgeline wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes shall be of mesh construction wherever possible.
 - (11) Utility service. At the discretion of the Planning Board, electrical and land-based telephone utilities extended to serve telecommunications sites shall be underground on the applicant's property. [Amended 12-8-2005 by L.L. No. 2-2005]
 - (12) Security provisions. Each site shall have a security program including physical features such as fencing, anticleimbing devices or elevating ladders on the telecommunications towers and/or monitoring either by staff or electronic devices to

prevent unauthorized access and vandalism.

- (13) Safe zone. Telecommunications towers shall be designed so that in the event of failure they will fall within the setback area of the site and/or away from adjacent development.
 - (14) Noise. Noise-producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties.
 - (15) Annual inspection and report. Unless waived by the Board, telecommunications towers over 100 feet in height, including towers existing on the effective date hereof, shall be inspected annually by a licensed professional engineer or at any other time upon a determination by the Town's Building Inspector that the telecommunications tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Building Inspector.
 - (16) Removal. All telecommunications facilities, including but not limited to antennas, towers and accessory structures, shall be dismantled and removed from the site when they have been inoperative, abandoned or had their special permit revoked for six months. Applicants shall post a bond or other suitable undertaking as a condition of the use permit in order to guarantee removal of abandoned structures.
 - (17) Postinstallation field report. A postinstallation field report identifying the facility's coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and collocated users of the telecommunications tower shall be submitted to the Town.
 - (18) Proof of insurance. The applicant shall annually provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
 - (19) Special permit term. Special permits granted pursuant to this section shall be issued for a term of one year. Permits may be renewed yearly without the need of a public hearing.
 - (20) To the extent determined by the Planning Board, the application shall provide for the placement of antennas and other telecommunications devices on its facilities for public safety organizations. [Amended 12-8-2005 by L.L. No. 2-2005]
 - (21) The applicant shall pay for the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.
 - (22) Application fee. The applicant shall pay an application fee in the amount of \$500 or such other amount as the Town Board may, from time to time, determine by resolution, upon filing of its application to cover the expense of processing the application, exclusive of costs covered by Subsection F(21), above. Such fees shall be paid for each annual renewal.
- G. The Planning Board may grant the special permit, deny the special permit or grant the special permit with written stated conditions. Denial of the special permit shall be by written decision based upon substantial evidence submitted to the Board. [Amended

12-8-2005 by L.L. No. 2-2005]

H. The special permit shall not be assignable or transferable.

§ 144-21.5. Revocation of special permit. [Amended 12-8-2005 by L.L. No. 2-2005]

If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit. Revocation may occur after the applicant is notified of the violations and the Planning Board holds a hearing on the same.

**ARTICLE V
Use Districts**

§ 144-22. Establishment of districts.

For the purpose of promoting the public health, safety and welfare of the residents of the Town of Hartland, the Town is hereby divided into the following use districts:

- A. Agricultural Use District, which may be commonly referred to as an "A District."
- B. One-Family Residential Use District, which may be commonly referred to as an "R-1 District."
- C. One- and Two-Family Residential Use District, which may be commonly referred to as an "R-2 District."
- D. Multiple Family Residential Use District, which may be commonly referred to as an "R-3 District."
- E. Mobile Home Use District, which may be commonly referred to as an "MH District."
- F. General Business Use District, which may be commonly referred to as a "B District."
- G. Light Industrial Use District, which may be commonly referred to as an "I District."
- H. Recreational Use District, which may be commonly referred to as a "Rec District."
- I. Agriculture-Business Use District, which may be commonly referred to as an "AB District." [Added 9-11-2014 by L.L. No. 3-2014]

§ 144-23. Establishment of subuse districts.

Recognizing that there are certain geographic features present in the Town of Hartland which traverse the use districts established by § 144-22, the following subuse districts are hereby established.

- A. Floodplain Subuse District, which may be commonly referred to as an "FP Subdistrict."
- B. Wetland Subuse District, which may be commonly referred to as a "WL Subdistrict."

§ 144-24. Zoning Map.

The use districts and subuse districts that are established by this chapter are shown on the Zoning

Map of the Town of Hartland, adopted simultaneously with this chapter, certified by the Town Clerk and accompanying this chapter at the end.⁸

§ 144-25. Interpretation of district boundaries.

Where district boundaries are indicated as approximately following or parallel to the center lines of highways or right-of-way lines, such center line or right-of-way shall be construed to be the boundary, and, if no distance is given, the dimension shall be determined by the Zoning Board of Appeals by use of the scale shown on the map. Where the boundary of any district follows a stream, the boundary shall be deemed to be the center of the stream bed.

§ 144-26. Regulations applicable to all districts.

Except as herein provided, no lot shall be occupied by more than one principal use and no building or land shall be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations specified for the use district in which the property is located. Furthermore:

- A. No yard or other open space located about any structures for the purpose of complying with the provisions of this chapter shall be considered an open space for any other structure.
- B. Every principal structure shall be built on a lot, with frontage on a public street, improved to meet the specifications of the Town. Where a building lot has frontage on a street which has a proposed right-of-way widening, the front yard depth shall be measured from the proposed right-of-way. All yards, open space, off-street parking and required landscaping must be contained within the district in which the use is permitted, unless the Planning Board may otherwise authorize.
- C. An accessory building attached to a principal building shall comply in all respects with the yard requirements for the principal building. Detached accessory buildings shall be constructed to the rear of the front building line of the principal building, and, if constructed in a side yard, it shall conform to side yard requirements of this chapter.
- D. If a new lot is formed so as to include within its boundaries any former lot on which there is an existing structure, the subdivision must be carried out in such a manner so as not to infringe on the provisions of this chapter or the proposed structure or use.
- E. At the intersection of two or more roads, no hedge, fence or wall shall be permitted which is three feet above the level of the shoulder of the road. No obstruction to vision of any type shall be permitted in the triangular area formed by the intersecting street line and a line adjoining each, 30 feet distant from said intersection along said street line.
- F. Existing natural features such as trees, brooks, drainage channels and views shall be retained. Whenever such features interfere with the proposed use of such property, a retention of the maximum amount of such features consistent with the use of the property shall be required.
- G. No structure shall be built within 50 feet of the bed of any stream which carries water on an

8. Editor's Note: The Zoning Map is included in a pocket at the end of this volume.

average of six months of the year.

- H. (Reserved)⁹
- I. No building utilized as a dwelling shall contain less than 1,000 square feet of floor area, exclusive of any basement, attic or attached garage. [Added 6-9-1994]
- J. (Reserved)¹⁰
- K. On any new construction, no dimension (depth, front to rear, or width, side to side) of any principal residence shall be less than 17 feet. [Added 4-10-1997]
- L. The top of the foundation wall of every building shall be not less than 18 inches above the crown of the pavement of the road upon which the building fronts. Whenever there is no foundation, the measurement shall be from the first-floor level. Specifications submitted with building permit applications must show this elevation. [Added 4-10-1997; amended 9-11-2014 by L.L. No. 2-2014]
- M. Whenever there is no full basement in a building, a meter pit as specified by the Building Inspector shall be constructed to house the water meter. [Added 9-11-2014 by L.L. No. 2-2014]

§ 144-27. Agricultural Use District.

- A. Permitted principal uses. The following are permitted principal uses in the Agricultural Use District:
 - (1) Single- and two-family dwellings.
 - (2) Churches and other similar places of worship, parish houses, convents and other such facilities of recognized religious groups.
 - (3) Municipal parks, playgrounds and recreation areas deemed necessary and appropriate by the Town Board.
 - (4) Professional offices and home occupation uses, provided that they are carried on in conjunction with a residential use on the property.
 - (5) Farms and related farming activities.
 - (6) Public buildings, libraries and public and nonprofit private schools accredited by the State Education Department.
 - (7) Offices and hospitals for the practice of veterinary medicine.
 - (8) Churches.
 - (9) Cemeteries.
- B. Permitted accessory uses. The following are permitted accessory uses in the Agricultural

9. Editor's Note: Former Subsection H, regarding mobile homes and trailers, added 6-9-1994, was repealed 4-10-1997.

10. Editor's Note: Former Subsection J, regarding foundations, added 4-10-1997, was repealed 9-11-2014 by L.L. No. 2-2014.

Use District:

- (1) Private garages.
- (2) Customary residential storage structures.
- (3) Animal shelters for domestic pets of the household.
- (4) Other customary residential structures, such as private swimming pools, fireplaces, trellises, lampposts and the like.
- (5) Customary farm buildings for the storage of products, equipment or farm animals, located on the same parcel as the principal use.
- (6) Accessory buildings used exclusively for the sale of homegrown agricultural products may be constructed, upon approval of the Planning Board, following submission of an approved site plan showing:
 - (a) That the application is for the use of the stand by the owner or tenant of the property in question.
 - (b) That the stand will be located in a location which shall encourage safety and discourage traffic congestion. No portion of any stand or any attendant use of land shall be closer than 35 feet from the closest highway pavement edge. Parking space for no fewer than three cars shall be maintained in connection with any stand, in a manner easily discernible by an approaching motorist.
 - (c) That trucks, trailers, tractors or other vehicles parked for the purpose of the sale or disposal to the general public of agricultural products shall be permitted only under the same limitations which apply to the use of accessory buildings for the sale of such products.
- (7) Signs in accordance with this chapter.
- (8) Parking in accordance with this chapter.
- (9) Public utility uses.
- (10) Camping grounds.
- (11) Excavation operations.
- (12) Cluster residential development.
- (13) Nursing and retirement homes.
- (14) Uses by special permit under Article VI.

§ 144-27.1. Agriculture-Business Use District. [Added 9-11-2014 by L.L. No. 3-2014]

- A. All permitted principal and accessory uses in the Agricultural Use District are permitted as principal and accessory uses respectively in the Agriculture-Business Use District. Uses that are permitted upon obtaining a special use permit in the Agricultural Use District are also permitted upon obtaining a special use permit in the Agriculture-Business Use District.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

AGRICULTURE-BUSINESS — A business located on the same premises as a working farm or on an adjacent premises with related ownership, and engaged in the promotion of agricultural tourism or agricultural entertainment.

WORKING FARM — A farm that is actively engaged in the raising of agricultural products, including crops, livestock, poultry or dairy products.

C. Agriculture-Businesses. The following agriculture-businesses are permitted secondary uses where the principal use is a working farm:

- (1) Retail stores that sell agricultural-related merchandise.
- (2) Restaurants that incorporate and serve locally grown products.
- (3) Banquet halls.
- (4) Distilleries, breweries, and wineries that incorporate locally grown products.
- (5) Rustic lodges.
- (6) Petting zoos.
- (7) Activity centers.
- (8) Museums.

§ 144-28. One-Family Residential Use District.

A. Permitted principal uses. Single-family dwellings are the only permitted uses.¹¹

B. Permitted accessory uses. The following are permitted accessory uses in the One-Family Residential Use District:

- (1) Private garages.
- (2) Customary residential storage structures.
- (3) Animal shelters for domestic pets of the household.
- (4) Other customary residential structures, such as private swimming pools, fireplaces, trellises, lampposts and the like.
- (5) Home occupation uses, provided that they are carried on in conjunction with a residential use of the property.
- (6) Cluster residential development.
- (7) Parking in accordance with this chapter.

C. Additional restrictions.

¹¹. Editor's Note: See also Subsection D, which authorizes two-family dwellings in the One-Family Residential Use District under certain conditions.

- (1) No accessory building may be erected or maintained in the One-Family Residential Use District, which occupies more than 25% of a rear or open yard area, exceeds 35 feet in height or is located within 10 feet of a principal building or other accessory building. [Amended 6-9-1994]
 - (2) Moreover, there shall be no open storage of boats, camping trailers, utility trailers, motorized camping vans or similar vehicles in the front yard area.
- D. Two-family dwellings may be permitted in the One-Family Residential Use District upon a permit issued after approval by the Zoning Board of Appeals and after recommendation made by the Planning Board to the Zoning Board of Appeals where the Zoning Board of Appeals finds the following criteria are met: [Added 4-10-1997]
- (1) The two-family dwelling will not cause undue congestion in the neighborhood.
 - (2) The area of the lot is sufficient to support a two-family dwelling without crowding.
 - (3) There is sufficient off-street parking for not less than four vehicles.
 - (4) The character of the neighborhood will not be adversely affected by the use.

§ 144-29. One- and Two-Family Residential Use District.

- A. Permitted principal uses. Single- and two-family dwellings, churches and cemeteries are the only permitted uses.
- B. Permitted accessory uses. The following are permitted accessory uses in the One- and Two-Family Residential Use District:
- (1) Private garages.
 - (2) Customary residential storage structures.
 - (3) Animal shelters for domestic pets of the household.
 - (4) Other customary residential structures, such as private swimming pools, fireplaces, trellises, lampposts and the like.
 - (5) Home occupation uses, provided that they are carried on in conjunction with a residential use of the property.
 - (6) Cluster residential development.
 - (7) Parking in accordance with this chapter.
- C. Additional restrictions.
- (1) No accessory building may be erected or maintained in the One- and Two-Family Residential Use District, which occupies more than 25% of a rear or open yard area, exceeds 35 feet in height or is located within 10 feet of a principal building or other accessory building. [Amended 6-9-1994]
 - (2) Moreover, there shall be no open storage of boats, camping trailers, utility trailers, motorized camping vans or similar vehicles in the front yard area.

§ 144-30. Multiple-Family Residential Use District.

- A. Permitted principal uses. Single- and two-family dwellings, rooming houses, nursing homes, retirement homes, multifamily dwellings, churches and cemeteries are the only permitted uses.
- B. Permitted accessory uses. The following are permitted accessory uses in the Multiple-Family Residential Use District:
 - (1) Private garages.
 - (2) Customary residential storage structures.
 - (3) Animal shelters for domestic pets of the household.
 - (4) Other customary residential structures, such as private swimming pools, fireplaces, trellises, lampposts and the like.
 - (5) Home occupation uses, provided that they are carried on in conjunction with a residential use of the property.
 - (6) Cluster residential development.
 - (7) Parking in accordance with this chapter.
- C. Additional restrictions.
 - (1) No accessory building may be erected or maintained in the one-family and two-family residential use district which occupies more than 25% of a rear or open yard area, exceeds 35 feet in height or is located within 10 feet of a principal building or other accessory building. [Amended 6-9-1994]
 - (2) Moreover, there shall be no open storage of boats, camping trailers, utility trailers, motorized camping vans or similar vehicles in the front yard area.
- D. Additional requirements applicable to multifamily dwellings. Multifamily dwellings, also known as "apartments," shall be subject to the following additional restrictions:
 - (1) Apartment structures shall not exceed a density of eight dwelling units per net acre of lot (area minus street).
 - (2) Driveways for ingress and egress for apartment developments shall connect with other than major streets; whenever possible, shall not be located within 200 feet of an existing street intersection; and shall have a pavement width of at least 22 feet, except where there is an on-street parking area, in which case, they shall not be less than 25 feet in width.
 - (3) The minimum yard requirements of the schedule apply only to the entire tract, and no building shall be located within such yard areas. The minimum distance between buildings in an apartment development shall be 25 feet, except that no wall containing an entrance to an apartment shall be closer to another apartment building than 50 feet. No apartment building shall be closer to a preexisting single-family or two-family lot than 50 feet.

- (4) Parking areas may be located in any yard other than the required front yard, but not closer than 10 feet to any property line, and shall comply with all of the requirements of the regulations applicable to all zones in this chapter. Where off-street parking areas or accessways abut residential zones, a planted buffer strip at least 10 feet wide shall be provided between the parking area or accessways and the adjoining property, maintained with two staggered rows of evergreen shrubs.
 - (5) Every apartment building shall have a minimum setback of 10 feet from all interior roads, driveways and parking areas.
 - (6) Every apartment development shall be provided with garbage and refuse storage and collection areas enclosed and screened from view and away from the front of apartment buildings.
 - (7) In addition to any storage area within individual apartment dwelling units, 200 cubic feet of storage area shall be provided for each dwelling unit in a convenient, centrally located area in the basement or ground floor or elsewhere, where personal belongings and effects may be stored under lock and separated from the belongings and effects of other occupants.
 - (8) The wall for an apartment structure or parallel walls of adjacent apartment structures shall not continue in the same place for a length of more than 75 feet without an offset of at least four feet.
 - (9) Each apartment development shall provide a playground area or areas in a standard of 500 square feet for each eight dwelling units. Outdoor play equipment shall be installed and maintained in each playground in a sufficient amount and variety to service the occupants of the development.
 - (10) The entire area of an apartment development not improved for driveways, parking areas or covered by buildings or walkways shall be attractively landscaped and seeded and properly maintained at all times.
- E. Additional requirements for nursing and retirement homes. Before issuing any permit for the construction or alteration of a nursing or retirement home, the Planning Board shall review the conformity of the proposal with the goals, objectives and contents of the Comprehensive Plan and with recognized principles of community development, land-use planning and civic design. The Planning Board may approve the proposal as submitted or, before approval, may require that the applicant modify, alter, adjust or amend the proposal as the Board deems necessary, to the end that it preserves the intent and purpose of this chapter to promote public health, safety and general welfare. The proposal, as approved by the Planning Board, shall then be reported to the Zoning Board of Appeals, whereupon the Zoning Board of Appeals may, after notice and public hearing, approve or disapprove said proposal in accordance with the intent and purpose of this chapter.

§ 144-31. Mobile Home Use District.

- A. Permitted principal uses. Mobile homes and mobile home courts are the only permitted uses in the Mobile Home Use District.

- B. There are no permitted accessory uses.
- C. Definitions. The following additional definitions shall apply in the interpretation of this section.

ACCESSORY STRUCTURE — A structure, the use of which is incidental to that of the mobile home and which is attached thereto or located on the same mobile-home lot. Accessory structures include, but are not limited to, portable, demountable or permanent enclosures, shade structures and carpets.

COMMUNITY AREA — An area or space within a mobile home court, including fences, walls and other minor structures, which is designated for the joint use of the occupants or restricted to nonresidential use.

COMMUNITY STRUCTURE — A structure within a mobile home court providing laundry, toilet, recreation, parking or other common facilities, including the management office and storage buildings.

HABITABLE SPACE — Space used for living, sleeping, eating or cooking purposes, excluding kitchenettes, bathrooms, toilet rooms, storage spaces and enclosures for equipment installations.

MECHANICAL SYSTEMS AND EQUIPMENT — Mobile homes' electrical, plumbing, heating, ventilating, air-conditioning systems and equipment used for living purposes, including cooking and refrigeration equipment.

MOBILE HOME COURT — A parcel of land which has been planned and improved for the placement of two or more mobile homes.

MOBILE HOME LOT — A designated site within a mobile home court for the exclusive use of the occupants of a single mobile home.

MOBILE HOME STAND — That part of an individual mobile home lot which has been reserved for the placement of a mobile home.

NATURAL OR ARTIFICIAL BARRIER — Any river, pond or canal, at least 200 feet in width, or a railroad embankment or any other barrier which, in the opinion of the Planning Board, is comparable in effect to a two-hundred-foot space requirement.

TRAILER (TRAVEL OR VACATION) — A movable living unit equipped with a chassis but lacking any of the following mechanical equipment; plumbing, heating, electrical, cooking and refrigeration. See mobile home.

- D. Restrictions on parking. No person shall store, park or otherwise locate a mobile home, except in an authorized mobile home park, for a period of more than 72 hours. No occupied travel or vacation trailer or other form of temporary type of living units shall be permitted in a mobile home court for more than three months in any year.
- E. Mobile home courts. The following shall apply to all mobile home courts:
 - (1) The size of all mobile home courts shall be a minimum of 25 acres, provided that the location and construction of such court is approved by the Planning Board and the Town Board of the Town of Hartland.

- (2) All mobile home courts containing 10 or more mobile home lots shall have access from two points along a single public street or highway, or, if bordering on two streets, access can be one for each street, such access points being separated by at least 100 feet.
- (3) Each mobile home court shall have frontage on an existing public highway equal to not less than 80% of the maximum dimension of the court measured parallel to such highway. In the event that a court is located at the intersection of two highways, this frontage is applicable to one of the highways, and the frontage on the second shall be equal to at least 35% of the maximum dimension of the court, as measured parallel to the second highway.
- (4) There shall be provided a buffer area between the right-of-way line of adjacent public highways and any portion of a mobile home lot of at least 100 feet. There shall also be provided between any portion of a mobile home and the boundary of the mobile home court a distance of at least 60 feet. Such buffer areas shall be primarily clear of obstruction, other than trees and other natural landscape material, and shall not be used for any aboveground structures.
- (5) The layout of interior roadways or driveways shall be such that no block is longer than 500 feet; provided, however, that this may be extended to 750 feet if an interior walkway is provided for pedestrian access across the center of the block.
- (6) All streets shall have a minimum width of 40 feet, which is completely clear of obstructions to a height of 12 feet. Culs-de-sac shall be provided in lieu of closed-end streets, with turnarounds having outside roadway diameters of at least 90 feet.
- (7) The maximum street grade shall be 7%. Entrance gradients shall be less than 3% for a distance of 75 feet from the edge of the right-of-way of the public highway.
- (8) The minimum radius of curvature for any street shall be 100 feet.
- (9) Streets shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle or intersection be less than 75°.
- (10) Street or driveway pavement shall be located in the center of the street clear zone. If parking provision is made within the street, such parking area may be off the pavement, and the clear zone (street width) shall be increased proportionately to provide therefor. If parking provision is made, in parking areas for three or more vehicles, in nodes throughout the court, such areas shall be located off the pavement considered to be the street or driveway and in such a manner as not to encroach upon the area considered to be the mobile home lot. Provision shall be made for the parking of three motor vehicles for each two mobile home lots.
- (11) Central auxiliary parking areas shall be provided, at a ratio of 200 square feet per mobile home lot, in a location which is not contiguous with the lot services, such area being screened from lots and public highways by a coniferous hedge or other effective vegetation. Auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, incapacitated or unregistered vehicles and such similar equipment and vehicles.

- (12) All lots shall be rectangular or trapezoidal unless otherwise approved by the Town Planning Board as meeting all other requirements of this chapter.
- (13) All lots shall be a minimum of 7,000 square feet if rectangular or trapezoidal and shall have a minimum width of 60 feet. In the case where unique and unusual lot designs are submitted for approval, and all other minimum distance requirements are met, the minimum lot size may be reduced to 5,000 square feet, provided that the density of mobile home units shall not exceed 6.2 dwelling units per net acre.
- (14) Corner lots shall be 1 1/2 times the width and area of regular lots. If a street makes a turn of 90°, the lot on the inside shall be considered a corner lot and the lots on the outside shall be considered radial lots, wherein the width shall be measured at the distance of 10 feet from the street line.
- (15) Double frontage lots shall not be permitted. If there is a situation where only one mobile home can be located between streets, then a buffer strip of at least 10 feet shall be created and suitably planted.
- (16) Walkways shall be laid out so as to connect all patios with the street and connect service buildings, dry yards and storage lockers with streets. Walkways shall also provide access to recreation areas if such areas are not located adjacent to a street. Additional walkways may also be placed along the rear of each lot.
- (17) Recreation space shall be provided in a central location and at a ratio of 300 feet per lot. Such space shall be enclosed with shrubs or evergreen hedges placed not farther than 10 feet apart nor higher than four feet.
- (18) If public telephones are provided within the court, they shall be located directly adjacent to service buildings.
- (19) Mailboxes shall be located at a location suitable to the local post office, but shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.
- (20) All existing trees shall be preserved insofar as possible in the design of the court.

F. Siting of mobile homes.

- (1) The following minimum distances shall be maintained when providing specific locations of mobile homes as related to each other within the court.
 - (a) Laterally (the side of one mobile home facing the side of the next): 15 feet.
 - (b) Longitudinally (the end of one mobile home facing the end of another): 15 feet.
 - (c) Perpendicularly (the end of one mobile home facing the side of another): 20 feet.
 - (d) In cases of nonrectangular or nontrapezoidal designs, these minimum distances may be reduced if the final configuration of mobile homes does not interfere with the provision of space for patios, walkways or storage; but in no case shall two mobile homes be closer than 15 feet from each other.

- (2) The following minimum distances shall be maintained when providing specific locations of mobile homes within the court and with respect to service or storage buildings:
 - (a) Laterally (the side of one mobile home and a building): 25 feet.
 - (b) Longitudinally (the end of one mobile home and a building): 15 feet.
- (3) The minimum setback from the street line (the clear zone rather than the pavement) shall be 10 feet. The maximum setback shall be five feet, in addition to the minimum established by the owner of the court.
- (4) The minimum distance between a mobile home and a parking space for motor vehicles shall be 10 feet.

G. Required improvements. The following improvements are required in all mobile home courts:

- (1) All water supply systems shall be installed as per plans approved by the Town Water Commissioner, and New York State Department of Health and/or the Niagara County Health Department. Such systems shall be designed to provide a sufficient supply of potable water, under adequate pressure, to outlets servicing mobile homes, community structures, drinking fountains, hose connections, hydrants and so on.
 - (a) Each mobile home lot shall be supplied with potable water from the approved water supply system by a pipe of at least 3/4 inch inside diameter to a cold-water tap at least four inches above the ground, with 30 pounds' pressure maintained at the outlet throughout the entire year. The water supply connection shall be located a safe distance from the sanitary drainage connection and shall not be subject to surface drainage. Means shall be provided for a suitable watertight connection, without cross-connection and danger of freezing.
 - (b) An adequate supply of hot and cold water shall be provided at all times in service buildings which provide washing and laundry facilities.
- (2) Sewers.
 - (a) All sewage disposal systems shall be installed in accordance with plans approved by a consulting engineer retained by the Town Board and/or the Niagara County Health Department. Such systems shall provide each mobile home and community structure containing plumbing fixtures with an adequate and safe method of sewage disposal. Waste from all sanitation and washing facilities, including washing machines at any location within the mobile home court, shall be discharged into a duly approved public sewage disposal system.
 - (b) Each mobile home lot shall, at a proper location relative to the mobile home, be provided with a trapped sewer of at least four inches in diameter, and piping shall have a continuous grade to the point of disposal in an approved public or private sewage disposal system. Such sewer shall have an airtight connection with all outfall pipes of any mobile home harbored on that lot. These connections shall be fitted with an airtight cover during periods of nonuse.

- (3) The electrical system shall be designed to provide adequate capacity to supply the connected load without exceeding the allowable current-carrying capacity of the conductors. Each mobile home lot shall be provided with a conductor and terminal capable of carrying a minimum current of 150 amperes.
- (a) An electrical connection receptacle or terminal box of an approved weatherproof type shall be provided at each mobile home lot. The receptacle shall be of the polarized type with grounding conductors and shall have a four-prong attachment for 115/220 volts.
- (b) Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night, Specifically, streetlighting standards shall be provided as follows:
- [1] Overhead streetlighting standards shall be placed no farther than 100 feet apart, have a minimum clearance above the pavement of 12 feet and shall have a capacity of 100 watts.
- [2] Alternate side streetlighting (post lamps) shall be placed not farther than 60 feet apart, as measured along the center line of the street [120 feet on one side of the street], have a minimum height of four feet and a maximum height of seven feet and shall have a capacity of 60 watts.
- [3] Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.
- [4] Streets and service buildings shall be illuminated during all hours of darkness and according to the following schedule:

	Dark to 11:00 p.m.	11:00 p.m. to Dawn
Streets	(watts)	(watts)
Overhead	100	40
Side lights	60	25
Service Buildings		
Entrances	50	none

- [5] All wires shall be located underground.
- (4) All gas piping systems, if installed, shall be designed to provide a supply of gas sufficient to meet the maximum demand without undue loss of pressure at the connection to the mobile home farthest from the source of supply. Gas connections shall provide a suitable gastight connection to the mobile home.
- (5) Each mobile home lot shall be provided with at least one twenty-gallon metal garbage can with a tight-fitting cover. The cans shall be kept in a sanitary condition at all times. It shall be the responsibility of the court owner to ensure that garbage and

rubbish shall be collected and properly disposed of outside of the mobile home court as frequently as may be necessary to ensure that garbage cans do not overflow. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, accident or fire hazard.

- (6) A mobile home court shall be provided with facilities for the safe and efficient storage of required fuels. Liquefied petroleum gas storage containers having a capacity exceeding 125 gallons shall be located not less than 25 feet from the nearest mobile home, structure, building and lot line and shall not be subject to damage from moving vehicles. Fuel oil and other flammable materials shall be stored so as not to be a fire hazard.
- (7) All streets within the court shall be paved with concrete, blacktop or macadam for the minimum width of 20 feet, in accordance with specifications effective for similar development in the balance of the Town, if such specifications are drawn, or, in absence of Town specifications, as per specifications approved by the Town Superintendent of Highways.
- (8) Areas for motor vehicle parking may be surfaced with uniform-sized gravel or crushed stone, to a minimum depth of eight inches, in the absence of fully hard or penetrated surface paving.
- (9) All walkways shall be a minimum width of three feet and thickness of four inches and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material.
- (10) Each mobile home lot shall contain a mobile home stand capable of containing a mobile home in a fixed position. The mobile home stand shall be concrete at least six inches in thickness. The elevation, distance and angle of the mobile home stand in relation to the accessway shall be such as to facilitate the safe and efficient placement and removal of the mobile home.
- (11) All mobile home lots shall be provided with patios constructed of concrete or blacktop and shall be a minimum size of eight feet by 20 feet and four inches in depth. Patios shall be located so as to provide safe and easy access from the mobile home.
- (12) Mobile home courts shall have adequate facilities for drainage of surface and subsurface water. The entire mobile home court shall be graded to facilitate the safe and efficient drainage of surface water and to permit no ponding areas where water will stand for lengths of time so as to constitute a health or other hazard. Drainage ditches shall be provided where necessary to provide for the removal of surface drainage. These ditches shall be provided in such a way as not to constitute a hazard to pedestrians. Gutters, culverts, catch basins, drain inlets, stormwater sewers, approved combined storm and sanitary sewers or other satisfactory drainage systems shall be utilized where deemed necessary and shall be of a size specified by the Town Planning Board.
- (13) Storage lockers shall be provided at a minimum ratio of 100 cubic feet per mobile home lot and shall be located no farther than 100 feet from the lot which they serve.

They shall be of waterproof construction on all surfaces, including the base. Such lockers may be provided in clusters or as individual structures on each mobile home lot.

- (14) Landscaping shall be provided as specified by the Town Planning Board.
 - (15) Property line monuments shall be provided at all corners of the mobile home court. The monuments shall be of material and size approved by the Planning Board.
- H. Service buildings. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot. If such buildings contain laundry facilities, they shall be so located no farther than 400 feet from any mobile home lot which they serve.
- (1) Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Building Code, the New York State Sanitary Code and/or all other applicable ordinances and statutes regulating buildings, electrical insulations and plumbing and sanitation systems.
 - (2) The service buildings shall be well lighted at all times from dawn to 11:00 p.m. and capable of being well lighted between 11:00 p.m. and dawn, shall be well ventilated with screened openings, shall be constructed of such moistureproof material, including painted woodwork, as shall permit repeated cleaning and washing and shall be maintained at a temperature of at least 60° F. during the period from October 1 to June 1. The floors of such buildings shall be of water-impervious materials and supplied with drains.
- I. Laundry facilities. Laundry facilities may be provided by the owner of the mobile home court. If such facilities are provided, they shall be located in a separate service building and shall provide for one single laundry tray and one automatic or semi-automatic-type operable washing machine for each 10 mobile homes or fractional number thereof. An ample number of individually fused and grounded electrical outlets shall be provided supplying current sufficient to operate each washing machine. Installation of such outlets shall be in accordance with all other Town regulations applying thereto.
- J. Fire protection and control. Every mobile home court shall be equipped at all times with fire equipment in good working order, in conformance with those standards duly adopted as applicable in the fire district within which the court is located. Fire protection equipment shall be provided as approved by the Town Fire Department.
- (1) No open fires shall be permitted at any place within the court which may endanger life or property.
 - (2) No fires shall be left unattended at any time.¹²

§ 144-32. General Business Use District.

- A. Permitted principal uses. Retail business establishments which are clearly of a community

¹². Editor's Note: Original Sections 559.1, 559.2, 559.3 and 559.4, which immediately followed this section and provided for licensing and permits for mobile home courts, were repealed 2-24-1983.

service character and dispense a service or merchandise are the only permitted uses in the General Business District.

B. Permitted accessory uses. The following are permitted accessory uses in the General Business Use District:

- (1) Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use.
- (2) Dwelling units, accessory to the principal business use, provided that they are located in the principal building and comply with the area and yard requirements of the R-3 District, except side yard requirements which shall be waived when the dwelling unit is above the first floor and the first floor is used commercially.
- (3) Signs in accordance with this chapter.
- (4) Parking in accordance with this chapter.
- (5) Public utility uses, except maintenance and storage yards.

C. Additional restrictions. The following additional restrictions shall apply to structures and uses in the business district:

- (1) No goods shall be displayed for sale purposes nor shall coin-operated vending machines of any type be placed in any location which would infringe upon the required yard area specified in this chapter.
- (2) No business use shall occupy any part of the lot within 50 feet of any R District.
- (3) Truck loading and unloading facilities shall be provided on the property to permit the transfer of goods in other than the front yards or public street. A planted buffer strip shall be required where such loading area abuts any residential district and shall consist of a staggered row of compact evergreen shrubs not less than three feet in height in an area not less than 10 feet in width.
- (4) Where off-street parking areas or accessways abut residential zones, a planted buffer strip at least 10 feet wide shall be provided between the parking area or accessways in the adjoining property, maintained with two staggered rows of evergreen shrubs.
- (5) Where the frontage on one side of the street is zoned partly residential and partly business, the front yard depth in the B District in such block frontage shall be equal to the required front yard depth of the residential district for a distance of 50 feet into the B District.
- (6) Where a lot in a B District abuts a lot in any residential district, there shall be provided along such abutting lines a yard equal in width or depth to that required for the adjacent yard in said residential district.

D. Additional requirements applicable to motor vehicle service stations.

- (1) The entire area of the site traveled by motor vehicles shall be hard surfaced.
- (2) All fuel pumps shall be located at least 20 feet from any street or property line, and,

in addition to such other signs as are permitted by this chapter, each motor vehicle service station shall be permitted to have one freestanding or pylon sign setting forth the name of the station and the principal products sold on the premises, including company or brand name, insignia or emblem, provided that such sign shall not exceed 40 square feet in area on either of two sides and shall be hung within the property line and no less than 10 feet nor more than 25 feet above the ground. A service station may also exhibit one temporary sign, located no less than 10 feet inside the property line, specifically setting forth special seasonal servicing of automobiles, provided that such sign does not exceed seven square feet in area.

§ 144-33. Light Industrial Use District.

A. Permitted principal uses.

- (1) Any use of a light industrial nature is permitted, which involves only the manufacture, processing, assembly, packaging or storage of previously refined materials, provided that at no time will such use result in or cause:
 - (a) Dissemination of dust, smoke, smog, observable gas, fumes or odors or other atmospheric pollution, objectionable noise, glare or vibration.
 - (b) A hazard of fire or explosion or chemical or nuclear pollution or other physical hazard to any adjacent building or to any plant growth on any land adjacent to the site or to any person working on the site or working or living adjacent thereto.
- (2) Also permitted in the Light Industrial Use District are office buildings for executive, engineering and administrative purposes; scientific or research laboratories devoted to research, design and/or experimentation in processing and fabricating incidental thereto; the warehousing and/or storage of goods and products, such as building materials, farm supplies and the like, which may be stored or sold from the premises to the general public.

B. Permitted accessory uses. The following are the permitted accessory uses in the Light Industrial Use District:

- (1) Private garages and storage buildings which are necessary to store any vehicle, equipment or materials on the premises.
- (2) Signs in accordance with this chapter.
- (3) Parking in accordance with this chapter.

C. Additional restrictions.

- (1) All industrial processes shall take place within an enclosed building.
- (2) Incidental storage of materials out of doors shall be permitted.
- (3) Industrial uses shall be located so as to be a minimum of 50 feet from any property line abutting a nonindustrial district. This fifty-foot buffer strip shall be perpetually maintained with plantings to provide a visual screen between the industrial use and

the adjoining nonindustrial use.

§ 144-34. Recreational Use District.

- A. Permitted principal uses. Theaters, playhouses, amusement parks, arcades, camping grounds, playgrounds and athletic fields are the only permitted uses.
- B. Permitted accessory uses. The following are permitted accessory uses in the Recreational Use District:
 - (1) Administration buildings.
 - (2) Recreation halls.
 - (3) Customary recreation structures such as swimming pools, rest rooms, showers, on-site refreshment stands, laundries and stores, which are designed to serve only those people using the recreation facilities.
- C. Additional restrictions. No structure, permanent or temporary, shall be erected, established or maintained in the Recreational Use District until the same has been approved by the Planning Board, the New York State Department of Health and/or the Niagara County Health Department.

§ 144-35. Floodplain Subuse District.

Recognizing that certain areas of the Town of Hartland are subject to a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, swamps or other inland areas of water, additional use restrictions are placed on such areas in order to comply with the National Flood Insurance Program, as administered by the Department of Housing and Urban Development, Federal Insurance Administration.

- A. Notwithstanding anything contained in this chapter, the following are the only permitted uses in the Floodplain Subuse District:
 - (1) Farming and the sale of agricultural products grown, raised or produced on the premises.
 - (2) Open recreation uses such as parks, playgrounds, riding instruction and academies, golf courses, swimming clubs, driving ranges and tennis clubs, but not including such intensive commercial recreation uses as a racetrack or amusement park.
 - (3) Wildlife, game and forest preserves.
 - (4) Off-street parking areas, provided that no overnight parking is permitted.
 - (5) Lawns, gardens and play areas.
 - (6) Historic, scientific and scenic area preservation.
 - (7) Uses by special permit under Article VI.
- B. The following special provisions shall be applicable in the Floodplain Subuse District:

- (1) No structure (temporary or permanent), built for any purpose; deposit; obstruction; storage of materials or equipment; or other uses shall be permitted which, acting alone or in combination with existing or future uses, will unduly affect the efficiency or the capacity of the floodway or unduly increase flood heights, cause increased velocities or obstruct or otherwise catch or collect debris which will obstruct flow under flood conditions.
- (2) Structures shall not be used for human habitation, shall have a low flood-damage potential, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters (i.e., longitudinal axis parallel to the direction of flood flow and placed approximately on the same flood flow lines as those of adjoining structures) and shall be firmly anchored to prevent flotation which may result in damage to other structures, restrictions of bridge openings and other narrowing of the stream or river. Service facilities, such as electrical and heating equipment, shall be constructed at or above the flood-protection elevation for the particular area or shall be floodproofed.
- (3) In making any request for a special use permit, the applicant shall submit a plan certified by a registered professional engineer that the floodproofing measures are consistent with the flood-protection elevation and associated flood factors for the particular area. Floodproofing measures may be required for all buildings and structures, other than those which have a low-flood-damage potential. Such measures may include the following, where appropriate:
 - (a) Anchorage to resist flotation and lateral movement.
 - (b) Reinforcement of walls to resist water pressure.
 - (c) Installation of watertight doors, bulkheads and shutters.
 - (d) Use of paints, membranes or mortars to reduce seepage of water through walls.
 - (e) Addition of mass or weight to resist flotation.
 - (f) Installation of pumps to lower water levels in structures.
 - (g) Construction of water supply and waste treatment systems so as to prevent the entrance of floodwaters.
 - (h) Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.
 - (i) Elimination of gravity flow drains.
 - (j) Construction to resist rupture or collapse caused by water pressure or floating debris.
 - (k) Elevation of structures to or above the necessary flood-protection elevation.

§ 144-36. Wetland Subuse District.

Recognizing the necessity to preserve, protect and conserve freshwater wetlands and the benefits

derived therefrom; to prevent the despoliation and destruction of freshwater wetlands; to regulate use and development of such wetlands; and to secure the natural benefits of freshwater wetlands consistent with the general welfare and beneficial economic, social and agricultural development of the Town of Hartland, additional use restrictions are placed on such area pursuant to Article 24 of the Environmental Conservation Law.

- A. Notwithstanding anything contained in this chapter, farming is the only use to which a wetland may be put without a special use permit.
- B. A special use permit shall be required before anyone may drain, dredge, excavate or remove soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; conduct any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erect any structure, road, driving of pilings or placing of any other obstructions, whether or not changing the even flow of the water; contribute any form of pollution, including but not limited to installing a septic tank, running a sewer outfall, discharging sewage treatment or effluent or other liquid waste into, or so as to drain into, a freshwater wetland; or conduct any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in Article 24 of the Environmental Conservation Law.

ARTICLE VI
Special Uses

§ 144-37. Special use permit required. [Amended 12-8-2005 by L.L. No. 2-2005]

The uses set forth in this article may be permitted in the use district specified for each use, provided that a special use permit is obtained from the Planning Board under the terms and conditions specified in this chapter.

§ 144-38. Public utilities.

Public utility uses, such as dial equipment centers, telephone and electrical substations, bus stops and stations and railroads, but no service or storage yards, may be permitted in any district with a special use permit. No special use permit shall be issued unless it is determined that:

- A. The proposed installation in the specific location requested is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
- B. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the zone in which it is located.
- C. Adequate and attractive fences and other safety devices will be provided.
- D. A buffer strip 10 feet in width shall be provided around the perimeter of the property.
- E. Adequate off-street parking shall be provided.

F. All of the area, yard and building coverage requirements of the respective zone will be met.

§ 144-39. Camping grounds. [Amended 12-8-2005 by L.L. No. 2-2005]

Camping grounds may be permitted in any district with a special use permit. No use permit shall be issued unless the Planning Board shall determine that:

- A. The camp is located on a well-drained site, suitable for the purpose, with an adequate entrance road at least 20 feet wide.
- B. Trailer lots shall have an area not less than 2,400 square feet, with a minimum width of 40 feet and a minimum depth of 60 feet.
- C. No house trailer shall be located within 100 feet of any highway or street line nor within 50 feet of any adjacent property line. Each house trailer shall have an entrance platform of concrete construction to conform with the overall plan.
- D. Each camp shall provide sanitary conveniences, such as toilets, wash rooms and laundries, and services and utilities, including water supply, sewage disposal, lighting, garbage disposal and incinerator, as approved by the Niagara County Health Department.
- E. Playground areas shall be provided and shall be restricted to such use. These areas shall be protected from the main highway and from parking areas. A minimum of 100 square feet per camping space shall be made available in one or more places for such playground areas.
- F. In no event shall any camp space be occupied continuously for more than six months, and each space shall remain unoccupied for at least three months of each year.

§ 144-40. Excavation of earth products; ponds. [Added 12-8-2005 by L.L. No. 2-2005¹³]

- A. Excavation of earth products.
 - (1) Mining is prohibited in the Town of Hartland. No person shall strip, excavate, mine or otherwise remove, in any use district, soil, gravel, fill, or an earth product from the soil, except as required for the construction or alteration of buildings, structures, roads or infrastructures on the premises, and excavation and/or grading incidental thereto, or the construction of ponds in conformance with Subsection B.
 - (2) No such materials shall be removed from the premises, provided that where an approved residential, commercial or industrial building or development, other than the construction of ponds, requires more soil removal than can be utilized on or integrated into the premises or the subdivision in which it is located, as determined by the Planning Board, soil may be trucked off site after all requirements of the site are met. No such material shall be removed for sale or resale.
- B. Regulations and restrictions applying to ponds.
 - (1) Restrictions. No pond shall be constructed in the Town of Hartland except in

13. Editor's Note: This local law also repealed former § 144-40. Commercial excavation operations, as amended.

conformance with this section and after obtaining a special use permit in accordance with the provisions of this section and such additional requirements as shall be determined by the Planning Board.

(2) Definitions. As used herein, the following terms shall have the meanings indicated:

POND — Any man-made body of water, with a surface area greater than 100 square feet and/or a depth of more than 18 inches, except:

- (a) Concrete or prefabricated swimming pools;
 - (b) Prefabricated or concrete decorative basins less than 18 inches in depth;
 - (c) Drainage retention or detention ponds specified, necessary solely for drainage purposes, designed and/or approved as part of an approved site plan or subdivision development or otherwise mandated by the Town of Hartland.
- (3) Districts where allowed. Ponds shall be constructed only in A (Agricultural), R-1 (One-Family Residential), and REC (Recreational) Districts.
- (4) Dimensional requirements; restrictions.
- (a) Ponds may not be closer than 200 feet to any road right-of-way.
 - (b) Ponds shall not be closer than 100 feet to any property line.
 - (c) Ponds shall not be closer than 100 feet to any residential building.
 - (d) No pond shall be constructed in excess of two acres.
 - (e) No earth materials shall be removed from the premises on which the pond is constructed.
- (5) Design standards; procedure.
- (a) No pond shall be constructed without site plan approval by the Planning Board.
 - (b) All new ponds shall conform to the requirements of the Soil Conservation Service (SCS) of the United States Department of Agriculture or its successor agency.
 - (c) The pond shall be designed by the SCS or by a licensed professional engineer.
 - (d) The site plan application shall be to scale and shall be accompanied by a pond design report meeting the following requirements:
 - [1] The report shall include site soil types and groundwater levels.
 - [2] The site plan shall reference SCS standards.
 - [3] The site plan shall indicate how the pond will maintain appropriate water depths.
 - [4] The site plan shall show any inflow or outflow piping/ditches and the location of any ditches, swales or watercourses on the site and shall detail

side slopes.

[5] Any other information required by the Planning Board shall be included.

- (e) No pond may adversely interfere with or impede the natural flow of water nor adversely impact any floodplain or wetland area.
 - (6) Maintenance. All ponds shall be maintained so as to assure that they do not become offensive to neighboring properties by reason of stagnation, algae, mosquito breeding and similar conditions.
 - (7) Earth material excavated for the construction of a pond that cannot be utilized on or integrated into the premises in which it is located, as determined by the Planning Board, may be trucked off site to another premises located within the Town of Hartland or within one mile of said pond upon specific authorization by the Planning Board. Notwithstanding the above, no such material shall be removed for sale or resale. [Added 3-12-2015 by L.L. No. 2-2015]
- C. The provisions of this § 144-40 shall not apply to premises used solely to supply earth material to the Town of Hartland for Town purposes.

§ 144-41. Echo uses. [Added 12-8-2005 by L.L. No. 2-2005¹⁴]

A. Findings. The Town Board of the Town of Hartland makes the following findings:

- (1) An aging population, with extended life expectancy, the rural nature of the Town of Hartland and the high cost of custodial or semicustodial care and of adult-care residences, as well as the shortage of appropriate housing for senior citizens with some disabilities or infirmities in the Town of Hartland, and the need for family support and proximity for aging parents, cause a need for alternative forms of living for elderly parents of residents of the Town of Hartland.
- (2) Some, but not all, properties in the Town of Hartland are so located, and contain sufficient area, to allow for the establishment of temporary second residences in the Town on the same lot as the principal residence, without unduly interfering with the nature and character of the neighborhood in which they are located or with the value, use and enjoyment of the neighboring or nearby properties, for parents of the owners of said premises.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ECHO RESIDENCE — A second residence located on a lot as an accessory building occupied by a parent or grandparent of the lot owner, where the lot owner or the lot owner's spouse is the occupant of the principal residence on said lot.

C. Permits. The Planning Board may permit as a special use an echo residence in an R-1, R-2, R-3 or A District upon such terms and conditions as the Planning Board may deem appropriate, only where the parent or grandparent is over the age of 60 and the Planning

14. Editor's Note: This local law also repealed former § 144-41, Cluster residential development, and superseded the ordinance on echo uses adopted 6-22-1995. For current provisions regarding cluster residential development, see § 144-16.

Board finds that said parent or grandparent for medical reasons is in need of some assistance in living and should be in close proximity to his or her children. The applicant must submit medical evidence sufficient to establish this criteria in such form as the Planning Board may deem appropriate.

D. Permit renewal; termination of permit.

- (1) Said residence may continue upon annual renewal for so long as the conditions at the time of the application continue and the other criteria of this section are satisfied.
- (2) The special permit shall immediately terminate on the happening of the following:
 - (a) The death of the occupant of the echo residence.
 - (b) The absence of the occupant of the echo residence for a period of 60 days for any reason.
 - (c) The child or grandchild ceasing to reside in the principal residence.
 - (d) The admission of the echo resident to an extended-care facility or any other place of residence.
 - (e) The failure to pay the annual fee established for said permit or to renew the permit as set forth in § 144-41H.
 - (f) The failure to meet any condition of the permit.

E. Removal. The echo residence shall be completely removed from the property within 30 days following the expiration or the permit.

F. General conditions.

- (1) The echo residence may be serviced by water from the principal residence, installed in accordance with the applicable building codes.
- (2) The echo residence shall be serviced by a sufficient private sewage facility to meet all Town, county and other governmental requirements and shall otherwise meet all building code requirements, except that the echo residence may be a mobile home.
- (3) The echo residence shall not be closer to the street than the front facade of the principal residence, and the lot shall meet all setback and area requirements of this chapter.
- (4) The echo residence shall be of sufficient size to comfortably accommodate the occupants. Travel trailers and motor homes shall not be allowed.
- (5) The occupants of the echo residence shall be limited to the parents or grandparents and their spouses of lot owners and their spouses.

G. Required findings; issuance of permit. Prior to the granting of such a permit, the Planning Board shall hold a public hearing. The Planning Board shall take into consideration the comments of those attending the public hearing and shall not direct issuance of a permit unless a specific finding is made that the allowed use will not be disruptive to the use and enjoyment of properties in the general neighborhood, their value, or the character of the

neighborhood. Upon direction by the Planning Board, the Zoning Enforcement Officer shall issue the permit, provided that all other zoning and building laws and regulations are met.

- H. Fees; annual renewal. Any person applying for a permit shall pay an application fee as determined by the Town Board by resolution. If the permit is granted, such fee shall also constitute the first year's permit fee. Annually, on or before the anniversary date of the granting of the permit, the permit holder shall submit to the Zoning Enforcement Officer a renewal fee as determined by the Town Board by resolution. Existing permits may be renewed by the Zoning Enforcement Officer upon determining that all conditions of the permit are being met and that an event causing termination of the permit has not taken place.

§ 144-42. Junkyards.

Junkyards may be permitted in only the A District and only with a special use permit. Junkyards are subject to the following additional restrictions:

- A. No junkyard shall be permitted nearer to a public highway or lot line than a distance of 400 feet.
- B. Junkyards, in existence at the time of the adoption of this chapter, less than 400 feet from a public highway or lot line shall be surrounded by a seven-foot painted board or other type fence within a period of two years after the adoption of this chapter.
- C. (Reserved)¹⁵
- D. Before any special use permit can be issued for a junkyard, the Planning Board must specifically find: [Amended 12-8-2005 by L.L. No. 2-2005]
 - (1) That the creation and maintenance of a junkyard on the proposed site is in the best interest of the public.
 - (2) That the proposed junkyard will not adversely affect the nature of the neighborhood.
 - (3) That adequate plans have been made for the periodic ultimate disposal of the contents of the junkyard.
- E. Before any special use permit can be granted for a junkyard, the Planning Board must require a minimum refundable cash deposit of \$2,000, to insure that the conditions of this section are met. [Amended 12-8-2005 by L.L. No. 2-2005]

§ 144-42.1. Resident-owner/operator businesses.¹⁶ [Added 12-8-2005 by L.L. No. 2-2005; amended 9-12-2013 by L.L. No. 2-2013]

- A. Permit required.

¹⁵ Editor's Note: Former § 144-42C, requiring approval of 4/3 of Planning Board members as to junkyard location, was repealed 12-5-2005 by L.L. No. 2-2005.

¹⁶ Editor's Note: Former § 144-42.1, Special use permits for compatible nonoffending uses, added 10-2-1997, was repealed 12-9-2004 by L.L. No. 3-2004.

- (1) A resident-owner/operator business shall be allowed in Residential, Agricultural, and Mobile Home Use Districts upon the issuance of a special use permit by the Planning Board. Said permit shall be issued for a period of 12 months, upon application to the Planning Board. The activities covered by the permit may be conducted by the applicant during the hours of 8:00 a.m. to 5:00 p.m., unless the Planning Board authorizes other hours.
- (2) Resident-owner/operator permits may only be issued where the Planning Board determines that there will be no exterior evidence of the business conducted except:
 - (a) A sign, unlit or lit by exterior lighting that is constant in intensity and color, and not to exceed 16 square feet in area. No part of the sign may revolve, rotate, oscillate, or otherwise move.
 - (b) Parking for not more than three extra vehicles not owned by the residents of the premises for personal use.
 - (c) In the case of vehicle sales or repair, the vehicles.
 - (d) Limited storage of inventory or materials for the business as approved by the Planning Board.
- (3) No resident-owner/operator business shall be allowed for vehicle sales or repair unless a buffer of not less than 100 feet is provided between any vehicle and any adjacent premises.
- (4) Vehicle sales or repair businesses shall not have more than five vehicles for sale or being repaired on the premises at any time.

B. Application. Applications for a permit for a resident-owner/operator business shall be made to the Planning Board in writing on forms prescribed by the Board, and shall be filed in the office of the Zoning Enforcement Officer. The applicant shall be required to set forth:

- (1) The applicant's name and address.
- (2) Whether the applicant is an individual, corporation, or some other entity.
- (3) If the applicant is an individual, his or her name and residence address; if the applicant is a corporation or other entity, the names and addresses of its president, vice president, secretary and treasurer.
- (4) The precise nature of the resident-owner/operator business for which the permit will be issued.
- (5) A site plan to scale indicating the location of the resident-owner/operator business, any buildings to be used in the business, and any other areas of the premises to be used for business purposes, including, but not limited to, parking and storage areas.
- (6) The size, location and illumination of any outdoor sign or advertising on the premises and the placement and number of all outdoor lighting devices.
- (7) Such other information as may be reasonably required by the Planning Board to carry out the purposes of this article.

- C. Such permit shall be for one year and shall thereafter be automatically renewed from year to year upon payment of the renewal fee, unless the Planning Board shall require an appearance and further hearing on notice to the applicant.
- D. Fee. The applicant shall pay such fees as the Town Board shall determine from time to time by resolution.
- E. Display of permit. The permit for a resident-owner/operator business shall be displayed at the site of the enterprise.
- F. In granting any such permit the Planning Board shall establish such conditions and restrictions as it determines are necessary to protect the health, safety, character and aesthetics of the neighborhood and neighboring properties.
- G. Revocation. The permit shall be revoked by the Planning Board if the applicant misstated the nature of the business on the application or the applicant does not conform to the terms and conditions of the permit.

ARTICLE VII
Parking and Loading Space

§ 144-43. General requirements.

The following are parking and loading space requirements which must be provided at the time any building or structure is erected, enlarged or increased in capacity in the Town of Hartland:

- A. In all use districts, parking and/or loading space shall be required for motor vehicles, in accordance with the requirements of this and other applicable sections of this chapter. All such space shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner.
- B. Whenever there is a change in use or an increase in floor area, except in an R-1 District, or other unit of measurement and such change and such increase creates a need for an increase of more than 10% in the number of off-street parking spaces, as determined by the requirements of this section, additional off-street parking spaces shall be provided in accordance with this section for that additional or change in use.
- C. Access drives or walkways to the B or I Districts through any R District shall not be permitted as this would constitute an illegal use of residentially-zoned land.
- D. In churches and other places of assembly in which patrons or spectators occupy benches, pews or other similar seating facilities, each 25 inches of such seating facilities shall be counted as one seat for the purpose of parking standards.

§ 144-44. Number of parking spaces required.

- A. The number of off-street parking spaces required for a structure in the Town of Hartland shall be as follows:
 - (1) Auditorium: one parking space for each three seats.
 - (2) Automobile or machine sales and service: one parking space for each 300 square feet

of floor area.

- (3) Banks and business and professional offices: one parking space for each 200 square feet of floor area.
 - (4) Bowling alleys: five parking spaces for each alley, plus the necessary space as set forth in this section for affiliated uses, such as bars, restaurants or other commercial uses.
 - (5) Churches: one parking space for each five seats in the place of worship.
 - (6) Dance halls and assembly halls without fixed seats; exhibition halls, except church assembly rooms in conjunction with an auditorium: one parking space for each 100 square feet of floor area used for assembly or dancing.
 - (7) Dwellings: two parking spaces for each family or dwelling unit.
 - (8) Funeral homes and mortuaries: one parking space for each four seats in the auditorium.
 - (9) Roominghouses and lodging houses: one parking space for each bedroom.
 - (10) Libraries: one parking space for each 600 square feet of floor area.
 - (11) Manufacturing plants, research or testing laboratories and bottling plants: one parking space for each 300 square feet of floor area.
 - (12) Restaurants and taverns: one parking space for each three seats.
 - (13) Retail stores, shops, etc.: one parking space for each 200 square feet of floor area.
 - (14) Sanatoriums, convalescent homes, homes for the aged and nursing homes: one parking space for each three beds.
 - (15) Assembly halls, other than schools: one parking space for each five seats.
- B. In the case of a use not specifically mentioned above, the requirements for off-street parking facilities to which said use is similar shall be established by the Planning Board.

§ 144-45. Design standards for off-street parking spaces.

The requirements for off-street parking spaces shall be as follows:

- A. The size of all off-street parking spaces shall be 10 feet wide by 20 feet long for all angle parking or eight feet wide by 23 feet long for all parallel parking.
- B. Off-street parking facilities shall be located as hereinafter specified, where the distance shall be measured from the nearest point of the parking facility to the nearest point of the building or use that such facility is required to serve. Off-street parking spaces shall be allowed in required yards, except where specifically prohibited by this chapter.
 - (1) Multi-unit dwellings: not more than 200 feet from the building they are required to serve.

- (2) For uses located in the B District and for sanatoriums, convalescent, nursing and rest homes, homes for the aged, retirement homes, private clubs, lodges and offices: not more than 100 feet from the building they are required to serve.
- (3) For uses other than those specified above: not more than 300 feet from the building they are intended to serve.
- C. Necessary passageways, alleys and/or driveways for entrance to and exit from parking spaces shall be provided.
- D. All parking areas, passageways, alleys and driveways, except where provided in connection with one-family residences, shall be appropriately surfaced, clearly marked for car spaces and shall be adequately drained, all subject to the approval of the Town of Hartland Planning Board.
- E. The collective provision for off-street parking areas by two or more buildings or uses located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately, and further provided that the land upon which the collective facilities are located is owned or leased by one or more of the collective users.
- F. All parking areas and appurtenant passageways, alleyways and driveways serving commercial uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided by commercial users to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.
- G. Off-street parking areas located in the B District and which provide parking for 20 or more vehicles shall be provided with shade trees of a type approved by the Planning Board and located not greater than 60 feet on center.
- H. Notwithstanding any provision of this chapter, all commercial enterprises shall have a minimum of two parking spaces.

§ 144-46. Loading spaces.

The following are the requirements for loading spaces under this chapter:

- A. Loading spaces shall be provided and maintained on the same premises with every building, structure or part thereof, erected, occupied, enlarged or intended to be used, involving the receipt or distribution by vehicles of material, supplies or merchandise.
- B. Such space shall be adequate for standing, loading and unloading services in order to avoid undue interference with the use of public transportation.
- C. Loading and unloading space shall not be occupied or considered as any part of the off-street parking.
- D. All B District uses shall include a loading space of 10 by 25 feet, with a fourteen-foot height clearance, for every 20,000 square feet or fraction thereof of building floor or land use for the above-mentioned purposes.

ARTICLE VIII
Signs

§ 144-47. Regulations applicable to all signs.

All on-premises and off-premises advertising signs are subject to the following restrictions:

- A. The highest point of any sign, measured from ground level to the top thereof, shall not exceed a height of 25 feet, be located within 25 feet of any lot line, have less than three feet between the ground level and the bottom of the sign or be less than 10 feet from the nearest boundary line of the street, road or highway right-of-way.
- B. No sign or any part thereof shall revolve, rotate, oscillate or otherwise move.
- C. No sign shall be lighted or illuminated in such a manner as to obstruct or impair the vision of a motorist using the adjacent highway, nor shall any sign be illuminated by artificial light which is not maintained stationary or constant in intensity and color at all times when the sign is in use.

§ 144-48. On-premises advertising signs.

On-premises advertising signs are permitted under the following circumstances:

- A. A sign in any use district, advertising the sale or rent of the premises, provided that the sign area does not exceed nine square feet.
- B. A sign in the A District, advertising the sale of home-grown agricultural products raised on the premises, provided that the sign area does not exceed 32 square feet.
- C. A sign in the A District or any R District, advertising a home occupation, provided that the sign area does not exceed nine square feet.
- D. A sign in the B or I District, advertising the name of the business or industry and describing the products sold or manufactured, provided that the sign area does not exceed 100 square feet and the sign is no longer than 15 feet on its longest side.
- E. Such other signs as may be permitted by the Zoning Board of Appeals, provided that:
 - (1) An application fee of \$25 shall have been paid for the erection, modification or alteration of each sign.
 - (2) An annual fee of \$25 per year is paid for the maintenance of said sign.
 - (3) Application for said sign is made on a form prescribed by the Zoning Board of Appeals.

§ 144-49. Off-premises advertising signs.

Off-premises advertising signs are permitted in the A, B and I Use Districts, provided that:

- A. A permit has been obtained from the Zoning Board of Appeals, upon payment of a fee of \$25 for the erection, modification or alteration of each such sign.
- B. An annual fee of \$25 per year is paid for the maintenance of said sign.

C. Application for said sign is made on a form prescribed by the Zoning Board of Appeals.

§ 144-50. Compliance required.

- A. All signs in violation of § 144-48C of this chapter must be brought into compliance within six months of its adoption.
- B. All signs in violation of § 144-48D of this chapter must be brought into compliance within one year of its adoption.
- C. All signs in violation of § 144-49 of this chapter, now existing as of the date of the adoption of this chapter, shall be deemed to be nonconforming signs and shall be given a permit for their continued existence, provided that the permit fee of \$25 is paid and the annual fee of \$25 is paid.

ARTICLE IX
Administration

§ 144-51. Maintenance of certified copies.

The original copies of this chapter and Zoning Map shall be kept at all times in the office of the Town Clerk. Similar certified copies of this chapter, with map attached, shall be placed on file with the County Clerk at Lockport, New York. Whenever this chapter is amended as prescribed herein, certified copies of the amendments, as adopted, shall be filed in the office of the Town Clerk and also in the office of the County Clerk at Lockport, New York.

§ 144-52. Zoning Enforcement Officer.

The duty of administering and enforcing the provisions of this chapter is hereby conferred upon the Zoning Enforcement Officer, who shall be appointed by the Town Board and shall have such powers as are conferred upon him by this chapter, and as reasonably may be implied. In the pursuit of his duties, the Zoning Enforcement Officer shall:

- A. Cause all plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this chapter.
- B. Where, in the course of his duties, he determines that any plans, buildings or premises are in violation of the provisions of this chapter, order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered and the time permitted for such action, the penalties and remedies which may be involved by the Town and the violator's rights of appeal. On the serving of notice by the Zoning Enforcement Officer to the owner of any violation of the provisions of this chapter, the certificate of occupancy for such building or use shall be held to be null and void. A new certificate of occupancy shall be required for any further use of such building or premises.
- C. Maintain a permanent record of all matters considered and all actions taken by him. Such records shall form a part of the records of his office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following: An individual permanent file for each application for a permit provided

for by this chapter shall be established at the time application is made. This file shall contain one copy of the application and all supporting documents, maps, plans, notations regarding pertinent dates and fees and the like and, as appropriate, one copy of the resolution of the Board of Appeals acting on the application and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

- D. Prepare a monthly report for the Town Board. This report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him, all permits and certificates issued or denied and all complaints of violations received and all violations found by him and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted to the Planning Board and the Zoning Board of Appeals at the same time it is transmitted to the Town Board.

§ 144-53. Certificates and permits.

The following certificates and permits are hereby established for the equitable enforcement and administration of the provisions of this chapter. A zoning permit or a special use permit shall be a prerequisite to the issuance of a building permit.

- A. The Zoning Enforcement Officer is hereby empowered to issue a building permit for any plans regarding the construction or alteration of any building, or part of any building, or construction of aboveground and in-ground swimming pools or the change in use of any land or buildings or part thereof, where he shall determine that such plans are not in violation of the provisions of this chapter.
- B. Upon the written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this chapter. [Amended 12-8-2005 by L.L. No. 2-2005]
- C. The Zoning Enforcement Officer is hereby empowered to issue a certificate of occupancy which will certify that all provisions of this chapter have been complied with in respect to the location and use of the building, structure or premises in question.

§ 144-54. Building permits.

- A. All applications for building permits shall be made to the Zoning Enforcement Officer in the form prescribed in this chapter. Where the proposed is a permitted principal or accessory use in an R-1 or Agricultural District, the Zoning Enforcement Officer shall carefully consider the applications' supporting documents for compliance with this chapter and either issue or deny the building permit applied therefor. When the application is for any other use in any district, the Zoning Enforcement Officer shall, prior to issuance of any permit, refer one copy of such plans, drawings and statements to the Planning Board for their review and recommendations. The Planning Board shall determine that the proposed site plan and structures will compare favorably with community standards, other nearby community improvements and the properly intended and planned appearance throughout any street or adjacent area.
- B. The Planning Board shall, within 45 days after receipt of said materials, approve or disapprove the proposed development, use or construction. In the event of disapproval, the

reason shall be stated clearly to the Zoning Enforcement Officer in writing. The Zoning Enforcement Officer shall deny a zoning permit for the proposed construction until such conditions as the disapproval is based upon have been corrected. The absence of a reply from the Planning Board within the forty-five-day period shall constitute approval, and the Zoning Enforcement Officer shall proceed on the basis of such approval.

- C. The Zoning Board of Appeals shall conduct a public hearing on applications referred to it by the Zoning Enforcement Officer, in accordance with the procedures and requirements established elsewhere in this chapter. Within 60 days from the date of such public hearing, the Zoning Board of Appeals shall, by resolution, either approve or disapprove the application so heard. In approving an application, the Zoning Board of Appeals may impose modifications or conditions specified in this chapter to protect the health, safety or general welfare of the public.
- (1) If an application is approved by the Board of Appeals, the Zoning Enforcement Officer shall be furnished with a copy of the approving resolution of the Board and he shall issue the permit applied for in accordance with the conditions imposed by the Board of Appeals.
 - (2) If any application is disapproved by the Board of Appeals, the reason for such denial shall be set forth in the Board's resolution, and a copy of such resolution shall be transmitted to the Zoning Enforcement Officer. The Zoning Enforcement Officer shall deny the application accordingly by providing the applicant with a copy of the Board's reasons for disapproval.
- D. The term of expiration for a building permit shall be set for a period of two years from the date of issuance, with the exception that a one-year extension may be granted for an additional fee equal to 50% of the original cost of the permit, as deemed necessary by the Zoning Officer. [Added 12-5-1985]

§ 144-55. Certificates of occupancy.

Following the completion of construction, reconstruction or alteration of any building, where a change in the use of a structure is proposed, the applicant shall transmit to the Zoning Enforcement Officer a letter stating that such construction has been completed or that a new use has been proposed. Within seven days of the receipt of this letter, the Zoning Enforcement Officer shall make all necessary inspections of the completed structure and proposed use to determine the conformance with this chapter. A certificate of occupancy shall be issued only if the inspection finds that the construction and proposed use comply with all the requirements and provisions of this chapter.

§ 144-56. Contents of applications.

Each application for a zoning permit or special use permit shall be made in triplicate on forms prescribed by this chapter and with accompanying site plan. The material to be submitted with each application shall clearly show the conditions on the site at the time of the application, the features of the site which are to be incorporated into the proposed use or building and the appearance and function of the proposed use or building. As a minimum, the application shall include the following information and plans for both before and after conditions:

- A. The location, use, design and dimension and height of each use and building.
- B. The location and arrangement of vehicular accessways and the location, size and capacity of all areas used for off-street parking, loading and unloading.
- C. The location and dimensions of sidewalks, walkways and other areas established for pedestrian use.
- D. The design and treatment of open areas, buffer areas and screening devices maintained, including dimensions of all areas devoted to lawns, trees and other landscaping devices.
- E. Provisions for water supplies, sewage disposal, and storm drainage, including Niagara County Health Department approval thereof.
- F. Such other data and plans as the Zoning Enforcement Officer or the Zoning Board of Appeals may require to properly take action on the application.

ARTICLE X
Permitted Modifications and Nonconformance

§ 144-57. Height modifications.

- A. The height limitations of this chapter shall not apply to belfries, bulkheads, chimneys, church spires, cupolas, domes, skylights, ventilators, water tanks and other necessary mechanical devices usually carried above the roof level. Such features, however, shall be erected only to such heights as are necessary to accomplish the purpose they are required to serve and shall not occupy in the aggregate more than 25% of the roof area of the main building.
- B. In any district, any principal building may be erected to a height in excess of that specified for the district, provided that such front, side and rear yards are increased two feet for each one foot of such additional height.

§ 144-58. Yard modifications.

Requirements of this chapter may be modified as follows:

- A. In such cases, in residential districts, where the frontage on the same side of the street within 500 feet is 50% or more developed than the required front yard for a new structure, the front yard requirement may be modified to the average of such existing development.
- B. In the case of lots which cannot comply with the side yard requirements, as specified in the schedule, side yards may be reduced by six inches for each foot by which a lot is less than the minimum lot width required, specified in the schedule for the zone in which it is located. In any case, the side yard width shall be reduced to no more than 50% of the requirement of the schedule.
- C. Where the side wall of a principal building is not parallel with the side lot line, the average width of the side yard may be interpreted as the side yard width, provided that at no point is the actual side yard width less than 10 feet.
- D. Projections into required yards:

- (1) Balconies and bay windows limited in total length to 1/2 the building wall may project into any yard.
 - (2) Chimneys, ornamental features and roofs may extend not more than 30 inches into any required yard.
 - (3) Notwithstanding any other provision of this section, no projection shall extend into any required yard more than 1/4 of the required width or depth of such yard or within 10 feet of any accessory building.
- E. On every corner lot in any R District, there shall be provided a side yard equal in depth to the required front yard depth in that district. On such corner lot where two front yards are required, the rear yard distance may be waived as long as at least two side yard distances are provided as stipulated in the schedule.

§ 144-59. Continuance of nonconforming uses.

If any areas are hereafter transferred to another district by a change of district boundaries, by an amendment or repeal of the regulations prescribed for such district or part thereof, any nonconforming use of building existing at the time of such change, amendment or repeal shall be allowed to continue within such transferred area, provided that:

- A. No nonconforming lot shall be further reduced in size.
- B. No nonconforming building, including a trailer or mobile home, shall be enlarged, extended or increased unless such enlargements would tend to reduce the degree of nonconformance.
- C. No nonconforming use may be expanded except in conformance with the district in which it is located.

§ 144-60. Amendment of district boundaries or provisions.

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification or whenever text of this chapter shall be changed with respect to the uses permitted in a district, the provisions of § 144-59 shall also apply to any nonconforming uses existing therein.

§ 144-61. Discontinuance of nonconforming uses.

In any district where a nonconforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished, and all future uses shall be in conformity with the provisions of this chapter. Such discontinuance of the continual operation of such nonconforming use, or a part or portion thereof, for such a period of one year is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of any intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structure, machinery, equipment and other evidences of such nonconforming use of the land and premises, abandonment shall be construed and considered to be completed, and all rights to reestablish or continue such nonconforming use shall thereupon terminate.

§ 144-62. Restoration or reconstruction of nonconforming buildings.

Any nonconforming building, including a trailer or mobile home, can be restored and reconstructed under any of the following circumstances:

- A. Any building, including a trailer or mobile home, damaged by fire or other unintentional causes to the extent of less than 75% of its true value may be restored or reconstructed within a period of 12 months, in conformity with the regulations of this chapter.
- B. Any nonconforming building, including a trailer or mobile home, or portion thereof, declared unsafe by a proper authority, but not ordered to be demolished, may be restored to a safe condition.
- C. Restoration and reconstruction consisting of alterations or structural changes to a building, including a trailer or mobile home, which is nonconforming due to insufficient yard distances or lot area, may be accomplished within the existing frame of said building, but any exterior additions shall conform to the specific setback and yard distance requirements of this chapter.
- D. Any nonconforming building, including a trailer or mobile home, may be restored or reconstructed or structurally altered during its life, provided that the extent of such restoration, reconstruction or alteration does not exceed 50% of the true value of the building. If the costs exceed 50%, the building may be restored, reconstructed or structurally altered only in accordance with the requirements of this chapter.

§ 144-63. Extension or modification of nonconforming uses.

A nonconforming use shall not be extended, but the extension of a lawful use into any portion of a nonconforming building which existed prior to the enactment of this chapter shall not be deemed the extension of a nonconforming use. Once changed to a conforming use, no building, or trailer or mobile home, or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of more restricted classification with the consent of the Zoning Board of Appeals, and, when so changed to a more restricted classification, such use thereafter shall not be changed to a less restricted classification.

§ 144-63.1. Temporary use of mobile homes. [Added 11-7-1985; amended 12-5-1985]

Any trailer and/or mobile home may be placed on private property for emergency living purposes during reconstruction after a fire or natural disaster, or during new home construction, and will be removed 90 days after completion of the same.

ARTICLE XI
Planned Unit Development

§ 144-64. Purpose.

This article recognizes that while the standard zoning function (use in bulk) and the subdivision function (planning and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, these controls present a type of preregulation, regulatory rigidity and uniformity which may be detrimental to the techniques of

land development contained in the planned unit development concept. Further, this article recognizes that a rigid set of space requirements, along with bulk and use specifications, would frustrate the application of this concept. In order to encourage sound planning and provide opportunity for coordinated community development, notwithstanding any other provision of this chapter, there may be planned unit development where appropriate conditions prevail and standards are maintained. Thus, where planned unit development techniques are deemed appropriate to the rezoning of land to a Planned Unit Development District, hereinafter referred to as a "P.U.D. District," by the Town Board, the set of use and dimensional specifications set forth elsewhere in this chapter are herein replaced by an approval process in which an approved plan becomes the basis for continuing land use controls.

§ 144-65. Objectives.

In order to carry out the intent of this article, a P.U.D. shall achieve the following objectives:

- A. Provision of a maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential Town residents at all economic levels.
- B. Conservation of usable open space and recreation areas.
- C. Development of more convenience in location of accessory commercial and service areas.
- D. The preservation of trees, outstanding natural topography and geologic features and the prevention of soil erosion.
- E. A creative use of land and related physical development.
- F. An efficient use of land resulting in smaller systems of utilities and streets and thereby lower housing costs.
- G. A development pattern in harmony with the objectives of the Town Comprehensive Master Plan.
- H. A more desirable environment than would be possible by the strict application of other articles of this chapter.

§ 144-66. Design requirements.

- A. The minimum required land for a planned unit development shall be 50 contiguous acres. If, however, the total number of contiguous acres exceeds 400 and if the Planning Board finds special reasons, conditions or circumstances which justify the consideration of additional areas which are not contiguous but under the same ownership as part of the overall planned development, then the Planning Board, with the approval of the Town Board, may allow the planned unit development to include the noncontiguous land, provided, further, that the entire area to be developed is fully serviced by a system of public services for water, sewage and drainage as set forth in this chapter and that all other provisions set forth in this section for planned unit development shall be extended to apply to the entire area so included.

- B. The developer shall provide within such planned unit development a sanitary sewage disposal system which shall be of sufficient size and design to collect, dispose of or treat all sewage from all present and probable structures in said planned unit development and shall be otherwise constructed and maintained in conformity with the regulations of the State and County Health Departments.
- C. The developer shall provide within said planned unit development a storm drainage system which shall be of sufficient size and design as will, in the opinion of the Town Engineer, collect, carry off and dispose of all predictable surface water runoff within said planned unit development.
- D. The developer shall provide municipal water within said planned unit development. The developer shall also provide fire hydrants within 600 feet of each structure and provide for a pressure to be approved by the Town Board at each said hydrant.
- E. The developer shall provide within the planned unit development a liberal and functional landscaping scheme which shall comply with the minimum standards as set forth in this chapter.
- F. The developer shall provide land equal to not less than 10% of the total land area of the planned unit development to be devoted exclusively to permanent recreation sites, general open space and municipal uses. All land set aside for permanent recreation sites and open space shall be of such location and nature to be, in the opinion of the Planning Board, suitable for such use. The ownership and future maintenance of all areas for such uses shall be subject to the approval of the Town Board, or such areas shall be offered for dedication to the Town. Said recreation sites and open space shall meet the standards set forth in this chapter.
- G. The developer shall provide elementary school sites within the planned unit development, where required by the School Board. Such elementary school sites shall be offered to the Board of Education of the Central School District and shall meet the minimum standards as set forth in this chapter.
- H. The developer shall provide fire prevention sites to serve the planned unit development. Said fire protection site shall meet the standards set forth in this chapter.

§ 144-67. Permitted uses.

All uses within an area designated as a P.U.D. District are determined by the provisions of this section and the approval of the project concerned.

- A. Residential uses. Residences may be of any variety of types. In developing a balanced community, the use of a variety of housing types and densities shall be deemed most in keeping with this article. The developer must demonstrate that he is reaching as broad an economic market as possible. In making this determination, the Planning Board shall consider the size of the site, its location with respect to community services and facilities, transportation and area-wide market surveys as are available from several sources in Niagara County.
- B. Intensity of land uses. Because land is used more efficiently in a P.U.D., improved

environmental quality can often be produced with a greater number of dwelling units per gross building acre than usually permitted in traditionally zoned districts. The Town Board shall determine in each case the appropriate land use intensity of dwelling unit density for individual projects. The determination of land use intensity ratings for dwelling unit densities shall be completely documented, including all facts, opinions and judgments justifying the selection of the rating or density.

C. The uses may include:

- (1) One-family dwellings.
- (2) Townhouses.
- (3) Planned accessory commercial, service and other nonresidential uses. Commercial, service and other nonresidential uses may be permitted (or required) where such uses are scaled primarily to serve the residents of the P.U.D. Consideration shall be given to the project as it exists in its larger settings in determining the appropriateness of such uses.
- (4) Public and private parks, playgrounds, play fields and recreation areas.
- (5) Public, private and parochial education institutions.
- (6) Churches and other similar places of worship.

D. Customary accessory or associated uses, such as private garages, storage spaces and community activities, shall also be permitted as appropriate to the P.U.D.

§ 144-68. Standards for development.

The following standards for development shall be applied to each P.U.D.:

A. Elementary school sites. The location and adequacy of all elementary school sites shall be approved by the Planning Board and Town Board after the advice and consent of the Board of Education.

- (1) An area of no less than 15 acres shall be provided for each required elementary school site.
- (2) The number of individual elementary school sites to be provided by the developer shall be based upon an estimated number of children generated by the proposed planned unit development.
 - (a) This estimate shall be based as follows:
 - [1] Single-family townhouse: 1.5 children per unit.
 - [2] Two-bedroom townhouse: 0.25 children per unit.
 - [3] Three-bedroom townhouse: 0.50 children per unit.
 - [4] Four-bedroom townhouse: 0.85 children per unit.
 - [5] Efficiency garden apartment: zero children per unit.

- [6] One-bedroom garden apartment: 0.04 children per unit.
- [7] Two-bedroom garden apartment: 0.40 children per unit.
- [8] Three-bedroom garden apartment: 1.0 children per unit.
- [9] Efficiency high-rise apartment: zero children per unit.
- [10] One-bedroom efficiency high-rise apartment: 0.02 children per unit.
- [11] Two-bedroom efficiency high-rise apartment: 0.20 children per unit.

(b) The number of school sites to be provided per number of children is as follows:

- [1] One hundred to 799 children: one school site.
- [2] Eight hundred to 1,599 children: two school sites.
- [3] One thousand six hundred to 2,399 children: three school sites.
- [4] Two thousand four hundred to 3,199 children: four school sites.

B. Fire prevention sites are to be developed as follows:

- (1) The developer shall provide land for one fire prevention site if the total number of dwelling units is less than 2,000 and two sites if the number of dwelling units exceeds 2,000.
- (2) Each required site shall be a minimum of one acre in area.
- (3) All sites shall be approved by the Planning Board and Town Board, with the advice of the Niagara County Fire Coordinator and the local fire companies.

C. Recreation sites of at least one acre for active recreational purposes for every 100 dwelling units shall be provided by the developer.

D. The minimum developmental requirements for a residential area is as follows:

- (1) An individual lot for a detached house shall contain a minimum of 7,500 square feet.
- (2) Lot coverage by buildings or individual detached houses: housing lots shall not exceed 30% of the total area.
- (3) Residential buildings, except high-rise buildings, shall not exceed 35 feet in height.
- (4) Individual lots for townhouses shall have a minimum width of 18 feet and have a depth of not less than 80 feet.
- (5) Individual townhouse dwelling unit lots shall have a building coverage of that lot not in excess of 50% of the total individual lot.

E. Minimum commercial developmental requirements of parking, landscaping, fence and access regulations pertaining to the typical business district shall apply to commercial developments under this section of this chapter.

§ 144-69. Applications.

In order to provide for an expeditious method of processing a proposed planned unit development application, the application in the form of a letter of intent and an accurate preliminary plan drawn to scale shall be provided in triplicate to the Town Board. The Town Board, upon receipt of the proposal, shall send one copy to the Town Planning Board for review and recommendation. All planning, zoning and subdivision matters relating to the platting, use and development of the proposed plan shall be determined and established by the Town Board after recommendations to the Town Board by the Town Planning Board. The application shall explain and show the following information:

- A. The location and extent of all proposed land use, including open space.
- B. All interior streets, roads, easements and their planned public or private ownership, as well as all points of access from existing public rights-of-way.
- C. Specific delineation of all uses, indicating the number of residential units and the density of each residential housing type, as well as the overall project density.
- D. The overall water and sanitary sewer system with proposed points of attachment to existing systems; the proposed stormwater drainage system in its relation to existing systems; evidence of a preliminary discussion and approval of the New York State Department of Health and Niagara County Health Department of the proposed sewer and water systems or their recommended notifications.
- E. A description of the manner in which any areas that are not to be publicly owned are to be maintained, including open space, streets, lighting and other related items according to the proposals.
- F. If the development is to be phased, a description and graphic representation of the phasing of the entire proposal, in terms of length of time, type and number of units or objectives completed per phase.
- G. Evidence is required by the Reviewing Boards of the applicant's ability to complete the proposed planned unit development.
- H. A description of any covenants, grants of easement or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.
- I. A written statement by the landowner setting forth the reasons why, in his opinion, the proposal would be in the best public interest and would be consistent with the Town goals and objectives.

§ 144-70. Planning Board review.

The Planning Board's review of a preliminary development plan for a planned unit development shall include, but is not limited to, the following considerations:

- A. The adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
- B. The adequacy and arrangement of pedestrian traffic access and circulation, including

separation of pedestrians from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience.

- C. The location, arrangement, appearance and sufficiency of off-street parking and loading.
- D. The location, arrangement, size and design of buildings, lighting and signs.
- E. The adequacy, type and arrangement of trees, shrubs, and other landscaping constituting visual and/or noise-detering buffers between adjacent uses and adjoining lands.
- F. In the case of multiple-family dwellings, the adequacy of usable open space for playgrounds and informal recreation.
- G. The adequacy of stormwater and sanitary waste disposal facilities.
- H. The adequacy of structures, roadways and landscaping in areas with moderate-to-high susceptibility to flooding, ponding and/or erosion.
- I. The protection of adjacent properties against noise, glare, unsightliness or other objectionable features.
- J. The relationship of the proposed land uses to adjacent land uses and the use of buffer areas and open space to provide a harmonious blending of existing and proposed uses.
- K. Conformance with other specific recommendations of the Town Board, which may have been required in the Town Board's examination of the proposed plan for development.
- L. In its review, the Planning Board may consult with the Town Engineer, architectural or planning consultants and other Town and county officials, as well as with representatives of federal and state agencies, including the Soil Conservation Service of the New York State Department of Environmental Conservation. The Planning Board may require that the design of all structures be made by, or under the direction of, a registered architect, whose seal shall be affixed to the plans. The Planning Board may also require such additional provisions and conditions that appear necessary for the public health, safety and general welfare.

§ 144-71. County and regional review.

No plans submitted under this article shall be granted tentative or final approval until such plan has been referred for review and comment to the Niagara County Planning Board. The Town Board shall transmit a copy of the proposed plan to the Niagara County Planning Board and said Board shall, within 30 days of receipt of the copy of such tentative or final plan, report its recommendations thereon to the Town Board. If the County Planning Board recommends modifications of the plan so referred, the Town Board shall not act contrary to such recommendation, except after adoption of a resolution fully setting forth reasons for such contrary action.

§ 144-72. Public hearings; action by Town Board.

- A. Within 60 days after receipt of the recommendations of the Town Planning Board, the Town Board shall hold one or more public hearings as needed, notice of which shall be

given according to the provisions of the Town Law, to determine the advisability of the proposed planned unit development.

- B. The Town Board shall, within 45 days following the conclusion of the hearings, either grant tentative approval of the planned unit development as submitted or grant tentative approval of the planned unit development subject to specified written conditions imposed by the Town Board or deny tentative approval of the proposal. In the event that tentative approval is granted, either of the proposal as submitted or with conditions, the Town Board shall, as part of its resolution, specify that the inclusion of the drawings, specifications and performance bond is required with the application for final approval by the Board. The landowner shall, within 10 days, notify the Town Board in writing as to whether or not he accepts or rejects all specified conditions of the tentative approval. If the landowner refuses to accept the conditions as outlined, the Town Board shall be deemed to deny tentative approval. If the landowner accepts the proposal, it shall stand as granted. Tentative approval shall not qualify a proposal for recording nor authorize development or the issuance of building permits.

§ 144-73. Application for final approval.

- A. An application for final approval may be for all the land included in a plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the Town Board and to the Town Planning Board, within the time or times specified by the resolution granting tentative approval. The application shall include such drawings, specifications, covenants, easements and conditions in the form of performance bonds as were set forth by written resolution by the governing body at the time of tentative approval. A public hearing on an application for final approval of the plan, or part thereof, shall be required, unless the plan or part thereof submitted for final approval is, in the judgment of the Town Board, in substantial compliance with the plan previously given tentative approval.
- B. In the event that a public hearing is not required for final approval and the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof and as required by the resolution of tentative approval, the Town Board shall, within 30 days of such filing and after receipt of a report thereon by the Town Planning Board, grant such plan as submitted. If the plan as submitted contains variations from the plan given tentative approval or remains in substantial compliance with the plan as submitted for tentative approval, the Town Board may, after a meeting with the landowner, refuse to grant final approval and shall, within 30 days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth the reasons why one or more of said variations are not in the public interest. In the event of said refusal, the landowner may file his application for final approval without the variations objected to by the Town Board on or before the last day of the time within which he was authorized by the resolution granting tentative approval to file for tentative approval or within 30 days from the date he received notice of said refusal, whichever date shall occur last, or treat the refusal as a denial of final approval and so notify the Town Board.
- C. Plans not in substantial compliance.

- (1) In the event that the plan as submitted for final approval is not in substantial compliance with the plan as given tentative approval, the Town Board shall, within 30 days of the date the application for final approval is filed, so notify the landowner, in writing, setting forth the particular ways in which the plan is not in substantial compliance. The landowner may:
 - (a) Treat said notification as a denial of final approval.
 - (b) Refile his plan in a form which is in substantial compliance with the plan as tentatively approved.
 - (c) File a written request with the Town Board that it hold a public hearing on application for final approval.
 - (2) If the landowner shall elect either alternative listed in Subsection C(1)(b) or (c) above, he may refile his plan or file a request for a public hearing, as the case may be, on or before the last day of the time within which he was authorized by his resolution granting tentative approval to file for final approval or 30 days from the date he receives notice of said refusal, whichever date shall last occur. Any such public hearing shall be held within 30 days after request for the hearing is made by the landowner, and notice thereof shall be given and the hearing shall be conducted in the manner prescribed in § 144-72. Within 45 days after the conclusions of the hearing, the governing bodies shall, by resolution, either grant final approval to the plan or deny the same. The grant or denial of final approval of the plan shall, in cases arising under this subsection, contain the findings required for resolution on an application for tentative approval.
- D. A plan or any part thereof which has been given final approval by the Town Board shall be so certified without delay by the Town Clerk and shall be filed on record forthwith in the office of the Niagara County Clerk before any development shall take place in accordance therewith. Upon the filing of record of the plan, the zoning and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto. Pending completion within five years of said planned unit development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of such plan or any part thereof, as finally approved, shall be made nor shall be impaired by an act of the Town Board without the consent of the landowner.
- E. In the event that a plan or section thereof is given final approval and thereafter the landowner shall abandon said plan or the section thereof that has been fully approved and shall so notify the Town Board in writing, or in the event that the landowner shall fail to commence and carry out the planned unit development within a period of two years after final approval has been granted, no further development shall take place on the property included in the plan until after said property is resubdivided and is reclassified in accordance with the applicable provisions of this chapter.

§ 144-74. Changes in final plan after approval.

No changes may be made in the approved final plan during the construction of the planned unit development, except upon application to the appropriate agency under the procedures provided

below:

- A. Minor changes in the locating, siting and height, length and width of buildings and structures may be authorized by the Planning Board if required by engineering or other circumstances not foreseen at the time the final plan was approved. No change authorized by this section may increase the volume of any building or structure by more than 10%.
- B. All other changes in use, any rearrangement of blocks, lots and building tracts, any changes in the provision of common open spaces and all other changes in the approved final plan must be approved by the Town Board under the procedures authorized in this article. No amendments may be made in the approved final plan unless they are shown to be required by changes in the development policy in the Town of Hartland.

ARTICLE XII Miscellaneous Provisions

§ 144-75. Penalties for offenses.

In addition to remedies herein provided, any person violating this chapter or any provision thereof may be proceeded against by the Town Board, by the Zoning Enforcement Officer or such other persons as designated by the Town Board by appropriate action or proceeding to prevent or enjoin any threatened or real violation of this chapter. Moreover, violation of this chapter shall be deemed to be a violation and is punishable by a fine not exceeding \$250 and/or imprisonment for a period of not more than 15 days, or by both such fine and imprisonment. Each week that a violation is permitted to exist shall constitute a separate violation.

§ 144-76. Amendments.

The Town Board may from time to time, on it's own motion, upon petition or upon recommendation from the Planning Board, amend, supplement or repeal any of the regulations, provisions, Articles or sections of this chapter after proper and legal requirements have been met. Every such proposed amendment shall be referred to the Planning Board for a report thereof before a public hearing is had on the amendment. The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendment and shall cause notice to be given as follows:

- A. By publishing a notice at least 10 days prior to such meeting, stating the time, place and date thereof, in the official Town newspaper.
- B. A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of the state park or parkway shall be given to the Regional State Park Commission having jurisdiction over such state park or parkway, at least 10 days prior to the date of such public hearing.
- C. A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any city, village, Town or county shall be given to the Clerk of such municipality and to the Clerk of the County Legislature, at least 10 days prior to the date of such hearing.
- D. Where the owners of 20% or more of the land area within 100 feet of the area sought to be

rezoned protest against such change, such amendment shall not become effective except by the favorable vote of at least 4/5 of all members of the Town Board.

- E. Whenever any person, firm or corporation desires that any amendment or change be made in this chapter, including the text and/or map, as to any property in the Town, and there shall be presented to the Board a petition requesting such change or amendment and clearly describing the property and its boundaries as to which the change or amendment is desired, duly signed by the owners of 50% of the area of all real estate included within the boundaries of said tract as described in said petition and, in addition, duly signed by the owners of 50% of the area of all real estate lying outside said tract but within 250 feet of the boundaries thereof, it shall be the duty of the Town Board to call a public hearing on said petition within 45 days of its filing and to make a decision thereon within 90 days. Whenever any petition for an amendment, supplement or change in the zoning regulations herein contained or subsequently established shall have been denied by the Town Board, then no new petition, including the text and/or map, covering the same property or the same property and additional property, shall be filed with or considered by the Town Board until three months shall have elapsed from the date of the filing of the first petition.

§ 144-77. More stringent requirements to prevail.

Whenever the requirements of this chapter are at variance with any other lawfully adopted rules, regulations, local laws or ordinances, the most restrictive requirements or those imposing the higher standards shall govern.

§ 144-78. Fees. [Added 6-9-1994]

Wherever in this chapter fees are established, the fee shall be the initial fee. Fees shall be increased, decreased, modified or established from time to time by resolution on simple majority of the Town Board of the Town of Hartland. The Town Clerk and Zoning Enforcement Officer shall maintain a schedule of fees which shall set forth any fee which differs from the initial fee set forth in this chapter.

§ 144-79. Preexisting lots. [Added 7-11-1996; amended 10-11-2012 by L.L. No. 2-2012]

Any lot existing in an Agricultural Use District established by § 144-27 or a One-Family Residential Use District established under § 144-28, and which was a separate lot prior to June 9, 1994, having a minimum frontage of 100 feet, may be improved by residential and access or improvements allowed in such districts, as the lot otherwise complies with all provisions of this chapter.