

ARTICLE XI
Regulations Governing Special Permit Uses

Section 1100 General Provisions

The uses specified in this Article are hereby declared to possess unique characteristics requiring that each proposal for any such use shall be considered by the ~~Town~~ **Planning Board** [1998] as an individual case. Upon application complying with the requirements of Article III, special use permits may be issued by the Board in accordance with the administrative procedure set forth in Article III and only after it has found that each and all of the following standards have been met:

- A. The proposed special use is consistent with the general intent of the Town's Land Use and Development Plan and with each of the specific purposes set forth in Article I herein.
- B. The location, size and use of the structures involved, nature and intensity of the operations involved and size and layout of the site in relation to the proposed special use are such that it will be compatible with the orderly development of the use district.
- C. Operation of the proposed special use is not more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use.
- D. The proposed special use satisfies each and all standards and conditions specified for such special use by the relevant provisions of this Article. Failure to comply with the conditions specified herein shall be grounds for the revocation of the special use permit.
- E. The ~~Town~~ Planning Board [1998] may impose additional conditions or restrictions as it may deem necessary prior to approving any special use permit application in order to protect public health and safety, the quality of the Town's natural resource base and the value of property.
- F. No site preparation or construction shall commence nor shall existing structures be occupied for any special permit use until final site plan approval has been granted by the ~~Town~~ Planning Board [1998] and permits have been issued by all governmental agencies involved.
- G. **All special use permits issued by the Planning Board, including but not**

limited to Home Occupations Major and Home-Based Businesses, are not personal to the applicant, but affixes to, and runs with, the ownership of the land. [2004]

- H. For all Home Occupations Major and Home-Based Businesses for which a special use permit is required, a new or modified special use permit is also required for all changes and expansions of such uses unless planned changes are specified in the special use permit. [2004]**
- I. All special use permits must be renewed within one (1) year after the original permit immediately following the first year of operation and then every three (3) years thereafter. The renewal process for a special use permit shall be brought before the Planning Board. [2004]**
- J. Special use permits for Home Occupations Major and Home-Based Businesses may be revoked by the Planning Board for cause after reasonable notice to the permit holder and following a public hearing held in accordance with this local law. [2004]**

Section 1101 Essential Services

- A. Essential services as defined in Article II herein may be allowed as a special permit use in any zone district upon the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- B. The ~~Town~~ Planning Board [1998]shall determine the following prior to approving a special use permit:
 - 1. The proposed installation in a specific location is necessary and convenient for the efficiency of the essential service or the satisfactory and convenient provision of service to the area in which the particular use is located.
 - 2. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located.
 - 3. Adequate and attractive fences and other safety devices will be provided.
 - 4. A buffer strip not less than fifteen (15) feet in depth shall be provided

around the perimeter of the property.

5. Adequate off-street parking shall be provided.
6. All other applicable requirements of this Law shall be met.

Section 1102 Motor Vehicle Service Stations and Public Garages

- A. Motor vehicle service stations and public garages may be permitted as special permit uses in the B-Business District **and Industrial Districts** upon the approval of a special use permit by the Planning Board.[1998]
- B. In addition to the information required in the special permit application and enumerated in Article III herein, the site plan submitted shall also show the location and number of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, and number and location of fuel pumps to be installed.
- C. Where a motor vehicle service station abuts a residential district, it shall be buffered by a buffer area not less than fifteen (15) feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the district boundary line. The Planning Board shall determine on an individual case basis how close to the right-of-way the landscaped buffer shall be required to be installed. Such buffer area shall have a minimum height of six (6) feet above the ground. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate buffer area, the Zoning Officer shall direct the property owner to replace said shrubs.
- D. The entire area of the site traveled by motor vehicles shall be hard surfaced.
- E. All repairs of motor vehicles, except for minor servicing, shall be performed in a fully enclosed building. No motor vehicle parts, or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- F. No commercial parking shall be allowed on the premises of a motor vehicle service station or public garage.
- G. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans, and/or antifreeze and similar

products may be displayed on the respective island if provided for in a suitable stand or rack.

- H. In addition to the signs permitted by Article X hereof, motor vehicle service stations may also exhibit one (1) temporary sign for a period of up to forty-five (45) days setting forth special seasonal servicing of automobiles. Such temporary sign shall not exceed nine (9) square feet in area, be located not less than ten (10) feet inside the property line and shall be removed when no longer current.
- I. No motor vehicle service station or public garage may display more than two (2) unlicensed vehicles for sale outside of an enclosed building at any one time.
- J. There shall be no more than two (2) driveways, with a combined width of not more than one-third (1/3) the site frontage on each public street fronting the site.
- K. No driveway shall be closer than fifty (50) feet to the intersection of two street corner lot lines, or within twenty (20) feet of an adjacent lot line.

Section 1103 ~~Home Occupations or Home Professional Occupations~~

- ~~A. Home occupations may be allowed as special permit uses in the A-Agricultural and R-R Rural Residential Districts upon the approval of a special use permit by the *Town Planning Board*. [1998]~~
- ~~B. No more than one (1) person other than a member of the immediate family occupying such dwelling shall be employed as part of the home occupation or profession.~~
- ~~C. A home occupation must be conducted within a dwelling which is bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.~~
- ~~D. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emission of sounds, noises or vibrations.~~
- ~~E. No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.~~
- ~~F. No sign shall be permitted except in accordance with the provisions of Article X.~~

- ~~G. Off street parking shall be provided in accordance with Article X.~~
- ~~H. No commercial vehicles with a rated capacity in excess of one and one half (1½) ton shall be used in connection with the home occupation or parked on the property.~~
- ~~I. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.~~
- ~~J. No more than *thirty (30)* **twenty** percent (**20%**) of the gross floor area of such residence shall be used for the conduct of a home occupation or profession. *No more than forty (40) percent of the floor area of an accessory structure shall be used for a home occupation or profession.*[1998] [2004]~~

Section 1104 Excavation Operations

- A. Excavation operations may be permitted as special permit uses in the A-Agricultural District upon the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- B. The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.
- C. The minimum lot area for any such use shall be ten (10) acres.
- D. All buildings and excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.
- E. All equipment used for excavations and processing shall be constructed, maintained and operated in such a manner as to eliminate as far as is practicable noises and vibrations, and dust conditions which are injurious or a nuisance to persons living in the vicinity.
- F. All operations shall be conducted between the hours of seven o'clock in the

morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or Holiday operations, and except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

- G. All land which has been excavated must be rehabilitated in accordance with reclamation plans approved by the ~~Town~~ Planning Board as part of the site development plan review and approval process. Whenever possible, the ~~Town~~ Planning Board shall encourage excavation operators to reacclimate areas on an ongoing basis as part of the excavation operation. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator. The rehabilitation plan shall be prepared by a licensed engineer, landscape architect or surveyor and provide for at least the following objectives: [1998]
1. The removal of all buildings and structures used in the operations.
 2. All excavations must either be made to a water-producing depth if permitted by applicable New York State laws, or graded and back-filled, and piles of waste material must be leveled.
 3. Excavations made to a water-producing depth shall be properly sloped to the water line, with banks sodded or surfaced with soil of an equal quality to adjacent land area top soil, and shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible.
 4. Excavations not made to a water-producing depth must be graded or back-filled with non-noxious, non-flammable, non-combustible solid material and in a topographic character which will result in a substantial general conformity to adjacent lands. Such grading or back-filling and leveled piles of waste materials shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to that of adjacent land area and planted with trees, shrubs, legumes or grasses upon the parts of such areas where revegetation is possible.
- H. A performance bond, or some other financial guarantee, shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out.
- I. Each tract of land to be granted a permit for excavation shall use only direct

access to ~~major~~ improved **state or county** highways and demonstrate proof of legal right to that access. [1998]

- J. All access roads shall be constructed to buffer as much as feasible, excavation and appurtenant activities from public view. The junction of the access and the public road must be at an angle of not more than ten (10) degrees deviation from a right angle (90 degrees).
- K. All topsoil and subsoil shall be stripped from the active excavation area and stockpiled and seeded for use in accordance with the restoration plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.
- L. Existing hills, trees and ground cover fronting along public roads or adjacent property shall be preserved, maintained and supplemented by selective cutting, transplanting and addition of new trees, shrubs and other ground cover for the purpose of buffering and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees or shrubs, grade back overburden around the perimeter of the excavation site to create a “berm” for the purpose of buffering and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.
- M. Lateral support shall be sufficient to prevent the hazard or damage to persons, adjacent properties and public roads by reason of slides, sinking or collapse.
- N. All access routes leading to public highways shall be dust and mud free. All precautions such as applying calcium chloride or watering daily, or more frequently if and when necessary shall be taken to prevent dust and sand from being blown from the premises. Also, the first two hundred (200) feet of access from a public road shall be improved to meet written specifications provided by the ~~Town~~ Planning Board to insure its suitability to carry heavy traffic.[1998]
- O. Operations shall not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property.
- P. An adequate and comprehensive drainage system shall be provided to convey the storm water runoff originating on and crossing the premises in accordance with the natural direction of runoff for the total watershed area. No excavation shall be

allowed within fifty (50) feet to a natural stream. Sediment control measures shall be installed to keep sediment damage, if any, totally within the applicant's property. The ~~Town~~ Planning Board shall determine whether or not the system and control measures are adequate and, in force, prior to approval of the original or renewal permit.[1998]

- Q. The applicant shall include a plan for the control of soil erosion and excessive ground water seepage upon public roads, streams and adjacent property. The ~~Town~~ Planning Board shall determine whether or not the controls are adequate and, in force, prior to approval of the original or renewed permit.[1998]
- R. All applications for a permit under this section must contain an operations plan in sufficient detail to describe the excavation operation including active excavation and storage areas.
- S. Excavation permits shall be issued for a period of one (1) year and shall be subject to periodic site inspection and review by the ~~Town~~ Planning Board and Zoning Officer. If all operations undertaken pursuant to any permit issued hereunder have been conducted in full compliance with the term of such permit and all provisions of this ordinance, such permit may be renewed by the ~~Town~~ Planning Board for a period of one (1) year. At least ten (10) days before taking any such renewal action, the ~~Town~~ Planning Board shall cause a notice to be published in the official town newspaper and posted on the Official Sign Board a notice of the proposed renewal and a statement indicating clearly both the property affected and the nature of the operation. All ordinances and regulations in effect at the time a renewal is granted shall apply to the renewal permit in the same manner as when a new or original permit is issued.[1998]
- ~~T. Prior to taking action on any proposal for a permit under this section, the Planning Board shall request and receive a written report from a qualified professional engineer on the adequacy and/or appropriateness of the proposed excavation.~~
[1998]

Section 1105 Private Airstrips

- A. Private airstrips may be allowed as special permit uses in the A-Agricultural District with the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- B. The ~~Town~~ Planning Board shall determine that not more than twenty-five (25) percent of the site area proposed for use as a private airstrip contains prime

agricultural soils as defined by the Town of Warsaw.[1998]

- C. An application for the establishment, construction, enlargement or alteration of an airstrip shall include, in addition to requirements for special use permits outlined in Article III, the following statements and information:
1. Name and address of the proponent.
 2. Classification of the proposed airport (commercial, non-commercial or restricted).
 3. Type of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, etc.).
 4. Number of aircraft expected to utilize the airport initially and within five (5) years.
 5. Type of aircraft expected to be based at the airport (single engine, multi-engine, turboprop jet, etc.).
 6. Whether an instrument approach procedure will be offered.
 7. Statement as to the anticipated number of daily operations.
 8. Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
 9. A copy of the New York State Commissioner of Transportation's determination concerning this airport in accordance with the provisions of 249 of the New York State General Business Law.
 10. A site development plan of the airport, as approved by the ~~Town~~ Planning Board, which includes the following:
 - a. Scale no smaller than one inch equals one hundred feet (1" = 100').
 - b. Location of existing and proposed structures.
 - c. Alignment of existing and/or proposed runways shall be shown in exact location and magnetic bearing to the nearest 30 minutes.
 - d. Existing and proposed contours at five (5) foot intervals.

- e. Location of aircraft parking and tie-down areas.
 - f. Provisions for access and off-street parking.
 - g. Provisions for sanitary waste disposal and water supply.
 - h. Location and method of fuel storage.
11. An area map at a scale of not less than one inch equals five hundred feet (1" = 500') showing:
- a. Distances from buildings, roads, natural features, power lines or other possible obstructions within two thousand (2,000) feet of the ends of runways shall be accurately plot.
 - b. Properties within one thousand (1,000) feet of the airport boundary shall be plotted, owners identified and the location and height of each building demarcated.
12. Permits issued for the operation of an airstrip shall be valid for a period of one (1) year. Said permit may be extended by action of the ~~Town~~ Planning Board for successive periods of one (1) year if the operation conforms to the initial proposal and the conditions on which the initial permit was issued are unchanged. [1998]
13. The ~~Town~~ Planning Board, in considering a request for a special use permit or the extension of a permit to operate an airstrip, may impose any conditions it deems necessary to protect the health, safety and public welfare of the Town. [1998]

Section 1106 Camping Grounds

- A. Camping grounds may be allowed as special permit uses in the A-Agricultural District with the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- ~~B. The Planning Board shall determine that not more than five (5) percent of the site area proposed for use as a camping ground contains prime agricultural soils as defined by the Town of Warsaw. [1998]~~
- B. Camping grounds shall be occupied by travel trailers, pick-up coaches, motor

homes, camping trailers and recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation and recreation purposes. No permanent external appurtenances such as carports, cabanas or patios may be attached to any travel trailer or other vehicular accommodation parked in a camping ground, and the removal of wheels and placement of a unit on a foundation in a camping ground is prohibited. No travel trailer or recreation vehicle in excess of thirty-eight (38) feet in length shall be permitted in any camping ground.

- C. Minimum site area: ten (10) acres.
- D. Not more than a total of ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
- E. Location and access. A camping ground shall be so located that no entrance or exit from a site shall discharge traffic into any residential district nor require movement of traffic from the camping ground through a residential district. A camping ground shall have a minimum of two hundred (200) feet of frontage on a public street.
- F. Site conditions. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion of the camping grounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- G. Accessory uses. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions:
 - 1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camping ground.
 - 2. Such establishments shall be restricted in their use to occupants of the camping ground.

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3. Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
- H. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Environmental Conservation and the Wyoming County Department of Health and shall receive approval from said agencies.
- I. Streets in camping grounds shall be private, but shall be constructed with a stabilized travelway and shall meet the following minimum stabilized travelway width requirements:
1. One way, no parking - twelve (12) feet.
 2. One way with parking on one side, or two way with no parking - eighteen (18) feet.
 3. Two way with parking on one side - twenty-seven (27) feet.
 4. Two way with parking on both sides - thirty-four (34) feet.
- J. Sites. Each travel trailer site shall be at least two thousand five hundred (2,500) square feet in area and have a minimum width of forty (40) feet.
- K. Recreation facilities. A minimum of ten (10) percent of the gross site area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area or utility site shall be counted as meeting recreational purposes.
- L. Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and radii of curbs and pavements at intersections shall be such as to facilitate easy turning movements for vehicles with trailers attached. All such exits and entrances shall be approved by the appropriate Highway Department.
- M. Off-street parking and loading. In connection with use of any camping ground,

no parking, loading or maneuvering incidental to parking or loading shall be permitted on any public street, sidewalk, or required buffer or right-of-way, or any public grounds, or on any private grounds not part of the camping ground, unless the owner has given written permission for such use. Each camping ground shall provide off-street parking, loading and maneuvering space, located and scaled so that the prohibitions above may be observed, and camping ground owners shall be responsible for violations of these requirements.

- N. An adequate lighting system shall be provided for the camping ground.
- O. All utilities shall be underground.
- P. Not less than one (1) covered twenty (20) gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- Q. **All applicable sanitation standards promulgated by the State of New York shall be met, and the owner of the campground shall supply the Zoning Officer yearly with a copy of the contract for garbage removal, which shall be part of the yearly renewal of its permit with the Planning Board.** [1998]
- R. No camp structure, except fences, gates and permitted signs shall be located within two hundred (200) feet of any street or property line.

Section 1107 Not-for-Profit, Public and Semi-Public Uses and Buildings, Recreational for Profit, and Private for Profit

- A. Public and semi-public uses of institutional , health, education, recreational, religious or cultural nature may be allowed as special permit uses in the A-Agricultural and R-R Rural-Residential Districts upon the approval of a special use permit by the ~~Town~~ Planning Board. **This may include, but not be limited to golf courses, motor cross, race tracks, open-air theaters or any type of business or activity that would encourage a large number of people to gather.**[1998]
- B. A statement setting forth the details of the operation of the use along with evidence of the proposed activity’s eligibility as a “Not-for-Profit” use as defined in Article II shall be submitted to the ~~Town~~ Planning Board.[1998]
- C. The proposal shall meet the minimum area and yard requirements for such uses as specified in the Schedule.

- D. The proposed use shall meet the minimum off-street parking and loading and unloading requirements of this Ordinance as may be appropriate.
- E. The ~~Town~~ Planning Board, in considering the request for a special use permit, may impose conditions it deems necessary to protect the health, safety and public welfare of the Town.[1998]

Section 1108 Kennels

- A. Kennels may be permitted as special permit uses in the A-Agricultural District upon the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- B. The minimum lot area for such uses shall be five (5) acres.
- C. Shelters for animals within kennels shall not be closer than one hundred (100) feet to any lot line.
- D. No outdoor area enclosed by fences for the use of animals shall be permitted within the front yard. Fenced areas shall be setback not less than fifty (50) feet from any side or rear property line.
- E. An appropriate Animal Waste Management System shall be utilized according to Section 1006 of this ORDINANCE. **The applicant shall provide an acceptable method of animal waste disposal or contract with approved waste hauler for disposal in a sanitary way.** [1998]
- F. **The Planning Board in considering the request for a special use permit, may impose conditions it deems necessary to protect the health, safety and public welfare of the Town.** [1998]

Section 1109 Rooming Houses

- A. Rooming houses may be permitted as special permit uses in the A-Agricultural and R-R Rural-Residential Districts upon the approval of a special use permit by the ~~Town~~ Planning Board.
- B. No rooming house shall provide shelter for more than four (4) tenants who are not family members.
- C. Off-street parking shall be provided as follows: At least two (2) spaces for the family residing on the premises plus not less than one (1) additional space for

each roomer.

Section 1110 ~~Windmills, Wind Generators, and Wind Towers~~ Wind Energy Conversion Device

- ~~A. Windmills or wind generators **Towers** may be permitted as an accessory use in any district upon the approval of a special use permit by the Town Planning Board.~~
- ~~B. In addition to the requirements for special use permits outlined in Article III, the site plan shall also show:
 - ~~1. Location of tower on site, tower height, including blades, rotor diameter and ground clearance.~~
 - ~~2. Underground utility lines within a radius equal to the proposed tower, generator, or windmill Tower's height, including blades **appurtenances**.~~
 - ~~3. Dimensional representation of the various structural components of the tower construction including the base and footings.~~
 - ~~4. Design data indicating the basis of design, including manufacturer's dimensional drawings, installation and operation instructions.~~
 - ~~5. Certification by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind load requirements for structures, **as established by the New York State Fire and Building Code**.~~~~
- ~~C. No windmill, including blades **Tower, including appurtenances**, shall extend more than seventy five (75) feet above the average ground level measured at the base of the tower except in the Agricultural District where the height may extend to one hundred (100) feet.~~
- ~~D. No more than one (1) windmill or tower shall be permitted as an accessory use to any property.~~
- ~~E. Towers may be located in either a rear or side yard. Applicants seeking a side yard siting shall demonstrate that such a location is essential to the viability of the proposed investment.~~
- ~~F. All sites proposed for windmills towers shall have sufficient access to unimpeded~~

air flow for adequate operation. The Siting Handbook for Small Wind Energy Conversion System, PNL-2521, or another nationally recognized reference should be used as a guide in siting the location of towers.

- G. ~~No windmill **tower** shall be erected in any location where its overall height, including blades **appurtenances**, is greater than the distance from its base to any property line.~~
- H. ~~Access to a tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing apparatus to no lower than twelve (12) feet from the ground.~~
- I. ~~No windmill **tower** shall be installed in any location along the major axis of an existing microwave communications link where the operation of the windmill is likely to produce an unacceptable level of electromagnetic interference, unless the applicant provides sufficient evidence satisfactory to the Planning Board indicating the degree of expected interference and the possible effect on the microwave communications link.~~
- J. ~~**No tower shall be installed in a location where the impact of the neighborhood character is determined by the Planning Board to be detrimental to the general neighborhood character.** [1998]~~
- K. ~~If the windmill **tower** is to be interconnected to an electric utility distribution system, the applicant shall provide evidence of approval of the proposed interconnect by the New York State Electric and Gas Company.~~
- L. ~~Guy wires and anchors for towers shall not be located closer than forty (40) feet to any property line. All towers and guy anchors shall be enclosed by a fence not less than six (6) feet in height or otherwise sufficiently protected from trespassing or vandalism.~~
- M. ~~All windmills **towers and appurtances** shall be designed with a regulating device to prevent over speeding and excessive pressure on the tower structure.~~
- N. ~~The minimum distance between the ground and any protruding blades **appurtances** shall not be less than eight (8) feet as measured at the lowest point of the arc of the blades.~~
- O. ~~Windmills or wind generators **Towers** may also be permitted in conjunction with businesses established to further research, design, development and implementation of innovative technologies in the field of wind energy. Due to the~~

~~nature of such installations, such uses may only be permitted in the A-Agricultural District upon the approval of a special permit by the Town Planning Board. In addition to the requirements for special use permits outlined in Article III, the following regulations shall apply in such instances:~~

- ~~1. Prior to erecting any windmill or tower, the applicant shall submit a site plan which, in addition to the requirements specified in Article III, also show:
 - a. Location of tower on-site, tower height, including blades **appurtenances**, rotor diameter and ground clearance.
 - b. Underground utility lines within a radius equal to the proposed tower height, including blades appurtenances.
 - c. Dimensional representation of the various structural components of the tower construction including the base and footings.~~
- ~~2. No tower windmills, including blades, shall extend more than one hundred fifty (150) feet above the average ground level measured at the base of the tower.~~
- ~~3. No tower shall be located in a front yard.~~
- ~~4. All requirements and standards specified in Section 1110 G through N. [1998]~~

A. Design Requirements

1. Fifty-five percent (55%) of all electricity or power generated on site by a Wind Energy Conversion Device is required to be utilized on the same site with the maximum turbine power output limited to 10 KW. This is intended to prohibit commercial wind turbines within our community.
2. Location
 - a. A Wind Energy Conversion Device may only be located in A-Agricultural Districts and I - Industrial Districts with the issuance of a special use permit and shall not be closer than fifteen hundred (1,500) feet to the boundary of any R-Rural Residential District or M-H Mobile Home Park District.

- b. A Wind Energy Conversion Device may not be located within one-quarter mile (1,320 feet) of any State Forest, public park or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal or local government designation; or within two hundred fifty (250) feet of a State-identified wetland.

3. Set Backs

- a. The tower for a Wind Energy Conversion Device must meet the following set back requirements (all set back distances shall be measured from the center of the base of the tower).
- b. Every Wind Energy Conversion Device must be set back (as measured from the center of the base of the tower):
 - i. from the property line of the parcel of which the Wind Energy Conversion Device is located by a minimum distance of three hundred (300) feet, or twice the height of said tower, whichever is greater, unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the abutting landowner and an area variance is granted by the Zoning Board of Appeals.
 - ii. from any residence or building that is on any parcel by a minimum distance of four hundred (400) feet, unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the abutting landowner and an area variance is granted by the Zoning Board of Appeals.
 - iii. from any public building that is on any parcel by a minimum distance of four hundred (400) feet or an area variance is granted by the Zoning Board of Appeals.
 - iv. from the right-of-way of any public road by a minimum distance of three hundred (300) feet or twice its total height, whichever is greater or an area variance is granted by the Zoning Board of Appeals.

ARTICLE XI

4. Spacing and Density - A Wind Energy Conversion Device must be separated from any other Wind Energy Conversion Device by a minimum distance equal to twice the height of the Wind Energy Conversion Device and by a sufficient distance so that the Wind Energy Conversion Device does not interfere with other Wind Energy Conversion Devices.
5. Structure - A Wind Energy Conversion Device must be of monopole construction to the extent practicable. If monopole construction is not practicable, a Wind Energy Conversion Device must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a Wind Energy Conversion Device may be guyed. If the Wind Energy Conversion Device is guyed, fencing will be required around each guy wire at a height of ten (10) feet.
6. Clearance - The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least thirty (30) feet.
7. Access and Safety
 - a. Security - A Wind Energy Conversion Device, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
 - b. Climbing Aids - Monopole Wind Energy Conversion Devices shall have all climbing aids and any platforms locked and wholly inside the tower.
 - c. Operational Safety - Wind Energy Conversion Devices shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
8. Lightning - Wind Energy Conversion Devices shall provide a continuous electrical path to the ground to protect the tower from lightning.
9. Access Roads -All Wind Energy Conversion Devices shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

10. Electrical Wires
 - a. Location - All electrical wires associated with a Wind Energy Conversion Device must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction section under Agricultural Mitigation).
 - b. Transmission Lines - All Wind Energy Conversion Devices shall combine transmission lines and points of connection to local distribution lines.
 - c. All electrical work shall meet the National Electrical Code or successive regulations.
11. Lighting - A Wind Energy Conversion Device and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board, If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed,. If more than one (1) lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.
12. Buildings and Outdoor Storage - Any ancillary buildings and any outside storage associated with a Wind Energy Conversion Device must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns.) Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.
13. Aesthetics and Visual Assessment
 - a. Appearance, Color and Finish - The exterior surface of any visible components of a Wind Energy Conversion Device must be a nonreflective, neutral color. Wind Energy Conversion Devices that are located within view, or within one (1) mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.

- b. Visual Impact Assessment - The application shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed modifications to any existing Wind Energy Conversion Device prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:
 - i. “Before and after” photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.
 - ii. Alternative Wind Energy Conversion Device designs.
 - iii. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the Wind Energy Conversion Device as determined and directed by the Planning Board.
 - iv. A viewshed map of the proposed Wind Energy Conversion Device with a radius of three (3) miles from any portion of the Wind Energy Conversion Device.
 - v. An inventory of all aesthetic resources in the viewshed defined in item iv.
 - vi. The assessment of the visual impact shall also include, but not be limited to , an analysis of the lighting or illumination of the Wind Energy Conversion Device and assessment of any shadowing or other visual effect of the Wind Energy Conversion Device relating to the level of natural or artificial illumination.
- c. Visual Impacts Mitigation Plan - The applicant may be required to prepare the implement a Visual Impacts Mitigation Plan to

mitigate negative impacts on aesthetics of a proposed Wind Energy Conversion Device. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

14. Signs - No wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device may be used to advertise or promote any product or service. A weather resistant sign or plate, no greater than two (2) square feet in size, containing the current address of such owner/operator, emergency phone number and current address of such owner/operator shall be located on the exterior surface of the tower of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other work or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device so as to be visible from any public road.
15. Agricultural Mitigation - The following shall apply to construction areas for Wind Energy Conversion Devices located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. For larger project, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields.
 - a. Siting
 - i. Minimize impacts to normal farming operations by locating structures along field edges where possible.
 - ii. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - iii. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
 - iv. All existing drainage and erosion control structures such as

diversion, ditches and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

b. Construction

- i. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- ii. Where necessary, culverts and water bars shall be installed to maintain natural drainage patterns.
- iii. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and lay down areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- iv. Topsoil from work areas (tower sites, parking areas, “open-cut” electric trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least fifty (50) feet of temporary workspace is needed along “open-cut” electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site “working set” of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- v. In cropland, hayland and improved pasture a minimum depth of forty-eight (48) inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth

of thirty-six (36) inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero (0) to forty-eight (48) inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no times will the depth of cover be less than twenty-four (24) inches below the soil surface.

- vi. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.
 - vii. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
 - viii. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.
 - ix. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel cran pads at all times.
 - x. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
 - xi. Any permits necessary for disposal under local, State or /or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.
- c. Restoration
- i. Restoration scheduling will be consistent with the seasonal limitations identified by Ag and Markets and will be

incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).

- ii. Following construction, all disturbed agricultural areas will be decompacted to a depth of eighteen (18) inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four(4) inches and larger in size will be removed from the surface of the topsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a sit-specific basis by the landowner in consultation with Ag and Markets. All parties involved should be cognizant that areas restored after October 1st, may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.
 - iii. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
 - iv. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
 - v. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
 - vi. Following restoration, all construction debris will be removed from the site.
- d. Three-Year Monitoring and Remediation

- i. The applicant will provide a monitoring and remediation period of no less than three (3) years immediately following the completion of initial restoration. The three (3) year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
- ii. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operations and New York State Ag and Markets.
- iii. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.
- iv. When the subsequent crop productivity within the affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not terminate the applicant's responsibility to fully readdress all project impacts.
- v. Subsoil compaction shall be tested using an appropriate soil

penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

16. Noise - Audible noise due to the operation of any part of a Wind Energy Conversion Device shall not exceed fifty (50) dBA for any period of time, when measure at any residence, school, hospital, church, public park or public library, unless the project developer has obtained a noise easement.
17. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers of nay other part or parts of the generation and transmission facility.
18. Shadow Flicker
 - a. Shadow Flicker Map - Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
 - b. Shadow Flicker Duration - Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.
19. Electromagnetic Interference (EMI) - All Wind Energy Conversion Devices shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio,

telephone or television signals caused by any Wind Energy Conversion Device or the applicant shall mitigate any such interference.

20. Avian Analysis

- a. The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Devices upon bird and bat species, if requested and required by the Planning Board. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information or critical flyways.
- b. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.
- c. This analysis can be submitted as part of the application or can be included in a Draft Environmental Impact Statement (DEIS).

21. Height Limitation

- a. The maximum height for an Wind Energy Conversion Device shall be seventy-five (75) feet or less on parcels between one (1) and five (5) acres of land and one hundred twenty-five (125) feet or less on parcels of five (5) or more acres, measured as follows:
 - i. From the highest vertical point of the wind turbine when the turbine is in vertical position perpendicular to its base.
 - ii. Other maximum building structure height restrictions within other section of the Zoning Law are not applicable.

C. Site Plan

1. Wind Energy Conversion Devices may not be constructed, erected, located, altered or used without first obtaining review and approval pursuant to this law.
 - a. The site plan, as specified herein, for all Wind Energy Conversion Devices must be reviewed by the Planning Board and it designated

expert.

- b. Upon completion of the Planning Board review of the Wind Energy Conversion Device site plan, the Planning Board shall approve, deny or impose conditions on the Wind Energy Conversion Device site plan.
2. An applicant proposing a Wind Energy Conversion Device must submit the following site plan material:
- a. Survey of the property showing existing features such as contours, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property and vehicular access;
 - b. Site plan showing the location of propose structures;
 - c. Preliminary layout plans, including the location of new access roads and transmission lines;
 - d. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
 - e. Anticipated construction schedule;
 - f. Description of operation (including anticipated regular and unscheduled maintenance);
 - g. Storm Water Management Plan; and
 - h. All construction plans for Wind Energy Conversion Devices shall be stamped by a certified engineer.
3. These site plan materials are required in addition to the items set forth in Article III, Section 305.
4. The Planning Board may waive these submission requirements if this information is included in a Draft Environmental Impact Statement (DEIS).

- D. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).
- E. Application Fee
 - 1. To initiate the review process contemplated by this Section, including site plan review, an applicant for a Wind Energy Conversion Device shall remit an application fee to the Town in the amount of two hundred and fifty dollars (\$250.00) for each anticipated device. Said sum shall not be refundable in whole or in part.
 - 2. The applicant shall pay the fees and the expenses of any consultant(s) used by the Planning Board to assist in the review of the application.
 - 3. The Planning Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
 - 4. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.
- F. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents and employees arising from the negligence, active or passive, of the applicant.
- G. Removal of Obsolete/Unused Facilities
 - 1. Upon the original issuance of a special use permit for a Wind Energy Conversion Device, the applicant agrees to dismantle and remove the Wind Energy Conversion Device from the property when the Wind Energy Conversion Device ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the special use permit is revoked or not renewed.
 - 2. The decision the applicant's performance to dismantle and remove the Wind Energy Conversion Device once the same ceases to be used for the intended purpose, the following will be complied with:
 - a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town, per Wind

Energy Conversion Device, in an amount to be determined by the Town's engineer and to be held in escrow (the "Escrow Fund") by the Town pursuant to the terms of this local law.

- b. The Planning Board reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Wind Energy Conversion Device, said deposit shall be returned to the applicant.
4. In the event that the Wind Energy Conversion Device is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Wind Energy Conversion Device dismantled and removed and charge the cost thereof against the Escrow Fund.
 5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Wind Energy Conversion Device, the balance shall be returned to the applicant.
 6. If the cost to dismantle and remove the Wind Energy Conversion Device is in excess of the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
 7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.

H. Maintenance and/or Performance Bond

1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said Wind Energy Conversion Device during its lifetime and provide for its removal.

2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the Wind Energy Conversion Device and site.
 3. In furtherance of the forgoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.
- I. Inspection of Wind Energy Conversion Devices - All Wind Energy Conversion Devices will be subject to a bi-annual inspection by the Zoning Officer unless said requirement is waived by the Planning Board.
- J. Transfer of Facility
1. No transfer of any Wind Energy Conversion Device, nor sale of the entity owning such facility shall occur without prior approval fo the Town, which approval shall be granted upon:
 - a. The receipt of proof of the ability of the successor to meet all requirements of this local law; and
 - b. The written acceptance of the transferee of the obligations of the transferor under this local law.
 2. No transfer shall eliminate the liability of an applicant or of any other party under this local law. [2006]

Section 1111 Stables or Riding Academies

- A. Stables for the commercial boarding of horses or riding academies may be permitted in the A-Agricultural District upon the approval of a special use permit by the ~~Town~~ Planning Board.
- B. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the ~~Town~~ Planning Board and permits have been issued by all governmental agencies involved.
- C. The permitted use may include any of the following:

1. Storage of horse vans for conveying or vanning of horses as may be accessory to the principal use.
 2. Sale or rental of horses for use by the public by the hour, day, month or year.
 3. Rides on horses by the public.
 4. Rental of horse vans.
 5. Riding lessons to the public.
- D. The land devoted to this use shall not be less than twenty (20) contiguous acres.
- E. One principal single family dwelling may be located on the land devoted to this use provided that it complies with the requirements for this ordinance. The land area on which the principal single family dwelling is located shall not be considered as part of the land “devoted to this use” as set forth in paragraph D above.
- F. The number of horses that may be boarded and/or trained at such property shall not exceed twenty-five (25) horses for the first twenty (20) acres of land devoted to this use, plus one horse for each additional half acre.
- G. The stable and the facilities for the storage of manure shall be located on the land devoted to this use and not less than two hundred (200) feet from any boundary line.
- H. Exercise tracks and riding rings shall meet the following requirements:
1. Any riding ring or exercise track shall be at least one hundred fifty (150) feet from any boundary line.
 2. Horses shall not be left unattended in any roofless area which is enclosed by a fence less than five (5) feet in height.
- I. Accessory buildings such as barns (not housing horses) sheds and the like, may be located on the land devoted to this use provided that: (a) they are set back at least two hundred (200) feet from the street line and 100 feet from each side boundary line; and, (b) they are not used for the storage of manure.

- J. Structures on the land devoted to this use (not including the principal dwelling) shall not in the aggregate cover more than five percent of the area of the land devoted to this use.
- K. No structure shall exceed thirty-five (35) feet in height.
- L. Suitable and adequate off-street parking in accordance with the reasonable requirements of the ~~Town~~ Planning Board shall be provided. No parking shall be permitted within two hundred (200) feet of any property lines.
- M. Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining streets and prevent any nuisance to adjoining property.
- N. Exterior loudspeakers shall be installed or used on the premises so as to minimize potential nuisances to adjacent properties.
- O. No manure shall be permitted to be stored within one hundred (100) feet of any lot line in any district.
- P. The maintenance of the structures and hygiene conditions connected with the use here permitted shall be under the continuous supervision of the ~~Town~~ Planning Board and the Department of Public Health to the extent necessary. If conditions are found to exist which are dangerous to the health, safety and welfare of humans or horses, or if any of the requirements of this or any other section of this Law or of any condition attached to the permit issued hereunder are not complied with by the operator of the boarding stable, the permit issued hereunder may be revoked or suspended by the ~~Town~~ Planning Board after public hearing. [1998]

Section 1112 Multiple Family Developments

- A. Multiple family developments may be permitted in the R-R Rural-Residential District upon the approval of a special use permit by the ~~Town~~ Planning Board.[1998]
- B. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the ~~Town~~ Planning Board and permits have been issued by all governmental agencies involved.
- C. The minimum land area required for such use shall be ten (10) acres.

- D. The maximum gross density shall not exceed ten (10) units per acre.
- E. Apartment buildings shall contain no more than twelve (12) dwelling units.
- F. Townhouse buildings shall contain no more than six (6) dwelling units.
- G. Minimum habitable floor area requirements:
 - 1. Townhouse unit, two (2) bedrooms or less: eight hundred fifty (850) square feet.
 - 2. Townhouse unit, three (3) bedrooms or more: one thousand (1,000) square feet.
 - 3. Apartment unit, efficiency: five hundred fifty (550) square feet.
 - 4. Apartment unit, one (1) bedroom: seven hundred fifty (750) square feet.
 - 5. Apartment unit, two (2) bedroom: nine hundred (900) square feet.
 - 6. Apartment unit, three (3) bedroom: one thousand (1,000) square feet.
- H. Unit Distribution:
 - 1. No more than thirty (30) percent of the total units within a multiple family dwelling development shall be efficiency units.
 - 2. No more than thirty (30) percent of the total units within a multiple family dwelling development shall be three (3) or more bedroom units.
- I. Setback Requirements. Minimum area and yard requirements for each multiple family structure within a multiple family development shall be as follows:
 - 1. Setback: front and rear, seventy-five (75) feet; and, side, fifty (50) feet.
 - 2. Minimum distance between buildings: eighty (80) feet.
 - 3. Direct line of sight visibility from one building to another shall not be less than one hundred twenty-five (125) feet.
 - 4. Every building shall have a minimum setback of twenty-five (25) feet from all interior roads, driveways and parking areas.

5. A strip of land at least six (6) feet in width surrounding each building shall be kept completely open except for foundation plantings of less than six (6) feet in height.
 6. Court yards bounded on three sides by the wings of a single building or by the walls of separate buildings shall have a minimum court width of two (2) feet for each one (1) foot in height of the tallest adjacent building.
- J. No exterior wall shall exceed one hundred (100) feet in length unless there is a lateral offset of at least eight (8) feet in its alignment not less frequently than along each one hundred (100) feet of length of such exterior wall.
- K. All stairways to the second floor or higher shall be located inside the building.
- L. Access to public road:
1. All multiple family dwelling developments shall have direct access to a public road.
 2. If there are more than twelve (12) dwelling units in a multiple family dwelling development, direct access must be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
 3. If there are more than fifty (50) dwelling units in a multiple family development, or if in the opinion of the Planning Board the location or topography of the site indicate the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.
- M. Requirements for off-street parking as provided in Article X of this Ordinance shall be met, except that the location of off-street parking lots may be modified to conform with the approved site plan, provided that such lots shall not be located with the front yard or the required side yard setback.
- N. The aggregate lot coverage of multiple family dwelling developments shall not exceed thirty (30) percent of the total lot area.
- O. Services:
1. Each dwelling unit shall contain complete kitchen facilities, toilet, bathing and sleeping facilities.

2. There shall be a minimum common storage area in each building for bicycles, perambulators and similar type of equipment of forty (40) square feet in area, a minimum of five (5) feet in height and not less than four (4) feet in width per dwelling unit.
3. Sufficient laundry, drying, garbage pick-up and other utility areas shall be provided and shall be located with a view both to convenience and to minimizing the detrimental effect on the aesthetic character of the building(s) and shall be enclosed and shielded from view by fencing, walls or shrubbery of at least six (6) feet in height around the perimeter. Fencing and walls shall be not more than fifty (50) percent open on the vertical surface.

P. Recreation, open space, maintenance:

1. Multiple family dwelling complexes shall be designed to create useable private open space. A minimum of ten (10) percent of the total tract area, exclusive of the required setback areas, buffer strip and parking areas shall be designated for common recreational purposes.
2. No recreational area shall be less than ten thousand (10,000) square feet in area nor less than one hundred (100) feet in width. Areas designated for recreation purposes shall be approved by the Planning Board.
3. Multiple Family dwelling complexes shall be attractively shrubbed and properly maintained. Open space adjacent to, around, or between driveways, parking areas, structures or other required improvements shall be graded and seeded to provide a thick stand of grass or other plant material.

Q. Utilities:

1. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
2. An adequate supply of water shall be provided for multiple family dwellings. Where public water is available, connection thereto shall be used exclusively. If a public system is not available, the development of a private water supply system shall be approved by the New York State Department of Health or other authorities having jurisdiction thereof.

3. An adequate and approved system shall be provided in all multiple family developments for conveying and disposing of sewage from dwellings, service buildings and other accessory facilities. Where public sewers are available, connection thereto shall be used exclusively. If a public system is not available, the development of a private sewage system shall be approved by the New York State Department of Health or other authorities having jurisdiction thereof.

Section 1113 Cluster Residential Developments

- A. Cluster residential developments of one-family detached dwellings may be permitted in the R-R Rural-Residential District upon the approval of a special use permit by the ~~Town~~ Planning Board.
- B. A site plan shall be submitted in conformance with the requirements of Article III of this Ordinance.
- C. The minimum tract size shall be ten (10) acres.
- D. The lot size, yard, area and height requirements shall conform to the schedule of this Ordinance.
- E. The number of lots (density of development) in a cluster plan shall not exceed that which could be created under a conventional development plan for the same tract of land.
- F. The developers shall provide an area no less than twenty (20) percent of the gross acreage of the tract to be devoted exclusively to permanent recreation areas or open space.
- G. All recreation or open space areas shall be suitable for such uses in the opinion of the ~~Town~~-Planning Board. The ownership and future maintenance of such recreation areas shall be subject to the approval of the ~~Town~~ Planning Board, or such areas shall be offered for dedication to the Town. [1998]

Section 1114 Satellite Dishes

- A. Satellite dishes may be permitted in the A-Agricultural, R-R Rural Residential, B-Business Districts, or Industrial Districts upon the approval of a special use permit by the ~~Town~~ Planning Board. **For purposes of this Ordinance “Satellite**

Dishes” shall refer only to those privately owned and utilized satellite dishes with an average radius of over three (3) feet.

- B. Not more than (1) dish may be permitted for each property.
- C. Satellite dishes may be located on the ground or on buildings in the B-Business District but shall be restricted to ground locations in the A-Agricultural and R-R Rural Residential Districts.
- D. Satellite dishes which are ground mounted shall be secured on a pad of poured concrete (3500 lb. or greater) which measures three (3) feet wide by (3) feet long and four (4) feet in depth. The frame of the satellite dish shall be attached to the pad by the appropriate hardware (J-bolt, super stud, etc.) of a size equal to or greater than 5/8" diameter. Dishes which are mounted on buildings shall be adequately secured to resist potential wind damage.
- E. No dish shall be more than twelve (12) feet in diameter and more than sixteen (16) feet above the surface to which it is attached.
- F. No ground mounted dish shall be located closer to the street or front lot line than the front of the building to which the dish is an accessory use within the required setbacks established for accessory uses for each district.
- G. The required setbacks established for accessory uses for each district shall apply in regulating the location of satellite dishes.
- H. All electrical wires shall be enclosed in either P.V.C. or rigid conduit and buried a minimum of 18 inches below ground. The frame shall be grounded by means of an eight (8) foot grounding rod connected to the frame through No. 4 gauge copper wire. All circuits of 110 volts or larger shall be protected by a ground fault interrupter, unless a factory-installed grounding unit is provided.
- I. The location and design of a dish shall attempt to reduce to a minimum the visual impact on surrounding properties through the use of architectural features, earth berms, buffering, and/or landscaping that harmonizes with the elements and characteristics of the property. The materials used in the construction of the antennae shall not be unnecessarily bright, shiny, garish or reflective. [1998]

Section 1115 Communications Towers

~~A. Enabling Authority:~~

~~The Planning Board is hereby authorized to review and approve, approve~~

~~with _____ modifications, or disapprove special use permits and site plans consistent with Town Law 274-a and 274-b.~~

~~B. **Definitions:**~~

~~1. **Communication Tower (telecommunication tower)**—A structure on which transmitting and/or receiving antenna(e) are located.~~

~~2. **Antenna**—A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radionavigation, radio, television, and microwave communications. The frequency of these waves generally range from 10 hertz to 300,000 megahertz.~~

~~3. **Accessory Facility**—An accessory facility serves the principle use, is subordinate in area, extent and purpose to the principle use, and is located on the same lot as the principle use. Examples of such facilities include transmission equipment and storage shed.~~

~~4. **Special Use**—A use which is deemed allowable within a given zoning district, but which is potentially incompatible with other uses and, therefore, is subject to special standards and conditions set forth for such use subject to approval by the Planning Board.~~

~~C. **Purpose:**~~

~~The purpose of these supplemental regulations is to promote health, safety and general welfare of the residents of the Town, to provide standards for the safe provision of telecommunications consistent with applicable Federal and State regulations, and to protect the natural features and aesthetic character of the Town with special attention to our rural and agricultural character.~~

~~D. **Application** of Special Use Regulations:~~

~~1. No transmission tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.~~

~~2. These regulations shall apply to all property within any Zone for which application is made and accepted via special permit or~~

~~variance. Telecommunications Towers shall be considered under application for a special permit in Agricultural Zones, and only under Variance in all other zones, subject to any exceptions herein.~~

~~3. Exception to these regulations are limited to (a) new uses which are accessory to residential uses and (b) lawful or approved uses existing prior to the effective date of these regulations.~~

~~4. Where these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply, except for tower height restrictions which are governed by these special use standards.~~

~~E. Special Use **Standards:**~~

~~1) (a) **Site Plan**~~

~~5. An applicant shall be required to submit a site plan **as required in accordance with Section 274 b of Town Law.** The site plan shall show all existing and proposed structures and improvements including roads and shall include grading plans for new facilities and roads. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennae and justification for any land or vegetation clearing required.~~

~~(b) Additionally, the~~

~~6. Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF) and a landscaping plan addressing other standards listed within and outside of the municipality as identified in the Visual EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual AEF.~~

~~2) (a)~~

~~7. **Shared Use** At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on pre-existing structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other pre-existing structures as an alternative to a new construction.~~

~~(b)~~

~~8. An applicant intending to share use of an existing tower shall be required to document intent from an existing tower owner to share use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site buffering, and other changes including real property acquisition or lease required to accommodate shared use.~~

(e)

~~9. In the case of new towers, the applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for share use shall be provided.~~

~~3-10. **Setbacks**—Towers and antennae shall comply with all existing setbacks within the affected zone. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice fall or debris from tower failure and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts including guy wire anchors, and to any accessory facilities.~~

~~4. (a11) **Visibility**—All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.~~

~~(b12) Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green or black below the surrounding treeline unless other standards are required by the FAA. In all cases, guyed towers shall be preferable to free-standing structures. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.~~

~~© Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.~~

~~(d) Towers shall not be used to incorporate, hold, or in any way support any form of advertising, except as is minimally necessary for identification of owner and/or contact for emergency information. The~~

use of any signs shall be limited by this ordinance.

5. ~~**Existing Vegetation** 13)~~ Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special permit use. Clearcutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
6. ~~**Buffering** 14)~~ Deciduous or evergreen tree plantings may be required to buffer portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative buffering shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten feet in height within two years of planting shall be provided to effectively buffer the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- 7) ~~**Access and Parking** 15)~~ A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the top of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived in meeting the objectives of this subsection.
- 8) ~~**Safety fencing** 16)~~ All communications towers, guy anchors, and accessory structures if applicable, shall be enclosed by a fence not less than eight (8) feet in height or otherwise sufficiently protected from trespassing or vandalism.
- 9) ~~**Removal Bond** 17)~~ Applicant shall provide a removal bond, renewable every 5 years (or less), with an appropriate adjustment to reflect the then current estimate of dismantling and removing the entire facility. The Town shall be listed as receiver of notice of failure to renew or pay for premiums.

- ~~F. Authority to Impose Conditions:18) The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower special use or site plan. [1998]~~

Section 1115 Animal Waste Management Systems

- ~~A. Animal waste management systems, including aerobic lagoons, may be permitted in the A Agricultural District upon the approval of a special use permit by the Town Board.~~
- ~~B. All applications for special use permits for animal waste management systems, shall be submitted to the Wyoming County Soil and Water Conservation District for review and approval. The Town shall not consider an application for establishing an animal waste management system unless the proposal has been approved by the Soil and Water Conservation District Board and a letter to that effect is transmitted as part of the application for the special use permit.~~
- ~~C. Plans and specifications for waste management systems shall confirm to the most current Soil Conservation Service standards and procedures. No component of an overall waste management system shall be installed until an overall waste management system has been planned and approved by the Town Board.~~
- ~~D. Waste should be used to the fullest extent possible by recycling it through soil and plants.~~
- ~~E. Clean water should be excluded from concentrated waste areas to the fullest extent practical.~~
- ~~F. Manure shall be collected and safely spread on land, treated, or stored until it can be safely spread. Adequate storage shall be provided to allow spreading during favorable weather and at times compatible with crop management and available labor.~~
- ~~G. Polluted runoff and seepage from concentrated waste areas shall be intercepted and directed to storage or treatment facilities for future disposal or be directly applied to land in manner acceptable to the Soil and Water Conservation district.~~
- ~~H. Waste water from processing shall be collected and directly applied, stored, or treated prior to re-use.~~

- I. ~~Adequate drainage, erosion control, and other soil and water management practices shall be incorporated to prevent system-related problems and potential adverse impacts on nearby properties.~~
- J. ~~The minimum land area required for an overall system shall be determined by the Soil and Water Conservation District. The overall system shall include sufficient land for proper use or disposal of waste at locations, times, rates and volumes that maintain desirable water soil, plant, and other environmental conditions. Appropriate waste handling equipment shall be available for effective operation of the system.~~
- K. ~~The system should be outside major viewsheds to conserve visual resources. Vegetative buffers and other methods should be provided, as appropriate, to improve visual conditions.~~
- L. ~~No manure or waste associated with such a system shall be stored outside of a fully enclosed building within three hundred (300) feet of any public street or property line.~~
- M. ~~System components shall be planned and installed in a sequence that insures that each will function as intended without being hazardous to others or to the overall system.~~
- N. ~~Safety features and devices shall be included in waste management systems, as appropriate, to protect animals and humans from drowning, dangerous gases, and other hazards. Fencing and warning signs shall be provided as necessary, to prevent livestock and others from using the facilities for other purposes. Safety features, fences and other devises shall be subject to approval of the Soil and Water Conservation District.~~
- O. ~~Aerobic lagoons which include a discharge pipe may only be approved after an operating permit is approved by the Wyoming County Health Department.~~
- P. ~~Wherever possible waste management systems shall be located where prevailing winds will carry odors away from residences and public areas.~~
- Q. ~~Waste management systems shall not be located in areas of special flood hazard unless it is protected by dikes, levees or other means.~~
- R. ~~The owner or operator shall be responsible for operating and maintaining the system. An operation plan shall be prepared for this use. The plan shall be~~

~~approved by the Soil and Water Conservation District and shall provide specific details concerning the operation of each component. At a minimum the plan shall include:~~

- ~~1. Timing, rates, volumes, and locations for application of waste and, if appropriate, approximate number of trips for hauling equipment and an estimate of the time required.~~
2. Minimum and maximum operation levels for storage and treatment practices and other operations specific to the practice, such as estimated frequency of solids removal.
3. Safety warnings, particularly where there is a danger of drowning or exposure to poisonous or explosive gases.
- ~~4. Maintenance requirements for each of the practices.~~

~~S. The special permit issued shall become null and void if the system is operated in a manner which is contrary to any of the conditions of the provisions for either the issuance of the permit or the operations plan.~~ [1998]

Section 1116 Adult Bookstores, Cabarets and Theater

A. Findings; statement of policy.

In the development and execution of this chapter, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, that such activities are deleterious to the health, welfare and well-being of the Town of Warsaw and those who live within the town and that the concentration of such activities in any one (1) area can and does adversely and seriously endanger the adjacent areas thereto. It is further recognized that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Warsaw. Therefore, it is recognized that special regulation of these uses is necessary to ensure that the adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land uses and to prevent their accessibility to minors.

1. **ADULT BOOKSTORE** - An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, films for sale or viewing on the premises, by use of motion picture devices or any other coin-operated means, and other periodicals which are distinguished or

characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section devoted to the sale or display of such material, which excludes minors by virtue of age.

2. ADULT ENTERTAINMENT CABARET - A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers, which excludes minors by virtue of age.
3. ADULT MINI-MOTION-PICTURE THEATER - An enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment is customarily not open to the public generally, but only to one (1) or more classes of the public, excluding any minor by reason of age.
4. ADULT MOTION-PICTURE THEATER - An enclosed building, with a capacity of fifty (50) or more persons, used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment is customarily not open to the public generally, but only one (1) or more classes of the public, excluding any minor by reason of age.
5. SPECIFIED ANATOMICAL AREAS:
 - a. Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
 - b. Acts of human masturbation, sexual intercourse or sodomy.
 - c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
6. SPECIFIED SEXUAL ACTIVITIES:
 - a. Human genitals in a state of sexual stimulation or arousal.

- b. Acts of human masturbation, sexual intercourse or sodomy.
- c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

B. Designation as regulated uses.

Adult bookstores, adult cabarets and adult motion-picture theaters are hereby deemed to be regulated uses.

C. Location restrictions.

Adult uses, including but not limited to adult bookstores, adult motion-picture theaters, adult mini-motion-picture theaters and adult entertainment cabarets, shall be permitted, subject to the following restrictions:

1. No such adult use shall be allowed within five hundred (500) feet of another existing adult use.
2. No such adult use shall be located within five hundred (500) feet of the boundaries of any zoning district which is zoned exclusively for residential uses.
3. No such adult use shall be located within five hundred (500) feet of a pre-existing school, place of worship, cemetery, park or playground or other area where large numbers of minors travel or congregate.
4. No such adult use shall be located in any zoning district except an industrial district.

E. Registration.

1. The owner of a building or premises, his agent for the purpose of managing or controlling rents or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register the following information with the Town Clerk of the Town of Warsaw:
 - a. The address of the premises.

- b. The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
- c. The name of the business or establishment subject to the provisions of this chapter.
- d. The name(s) and addresses of the owner, the beneficial owner and the major stockholder(s) of the business or the establishment subject to the provisions of this chapter.
- e. The date of the initiation of the adult use.
- f. The nature of the adult use.
- g. If the premises or building is leased, a copy of said lease.

2. It is a violation of this chapter for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult use without having properly registered said adult use with the Town Clerk.

D. Display of registration.

The owner, manager or agent of a registered adult use shall display in a conspicuous place on the premises of the adult use a copy of the registration filed with the Town Clerk.

E. Prohibition regarding public observance.

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

F. Special use permit.

1. No use as described in this chapter shall be established until the issuance of a special use permit by the Zoning Enforcement Officer of the town.

Applications for such special use permit shall be in writing to the Zoning Enforcement Officer and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Zoning Enforcement Officer. The Planning Board shall call a public hearing for the purpose of considering the request for a special use permit. At least ten (10) days' notice of the time and place of the public hearing shall be given by the publication of a notice in a newspaper of general circulation in the town, indicating the general nature of the public hearing and the fact that those persons interested therein may be heard at the time and place of such hearing.

2. A special use permit issued under the provisions of this section shall not be transferable.

G. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding two hundred fifty dollars (\$250.) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. [1998]

Section 1117 Home Occupations Major

A. Findings; Statement of Policy.

Recognizing the fact that many residents of the Town of Warsaw currently maintain home occupations/businesses, or may choose to do so at some point in the future, the Town has determined to provide a mechanism for permitting such uses, subject to appropriate review and the implementation of mitigation measures where appropriate.

The Town Board recognizes that Town residents historically have operated small businesses from their homes, which provide services to the community and finds that these businesses have not impacted negatively on the appearance and character of these agricultural and residential districts. Conversely, the town recognizes that unrestricted use of residentially zoned properties for nonresidential purposes carries with it the potential for conflicts with and detrimental impacts on the purposes and character of the areas zoned for residential and agricultural uses. In the Board's judgment, it finds that in order to maintain the economic viability of the town, to maintain the rural quality of life and in the interests of the welfare of the residents, home occupations/businesses should be permitted.

In order to further the benefits of home occupations/businesses while mitigating the potential detrimental off-site impacts of the same, the town has enacted these regulations. Recognizing that different home occupations/businesses exhibit varying potentials for generating off-site impacts, the Town adopts three (3) tiers of businesses for the purposes of establishing review procedures and approval conditions. The three (3) tiers are: (1) Home Occupations Minor; (2) Home Occupations Major; and (3) Home-Based Businesses.

See Section 1118 of this Article for Home-Based Businesses regulations and Section 1007 of Article X for the Supplementary Regulations governing Home Occupations Minor.

B. Home Occupations Major

1. Permitted District - Home Occupations Major are permitted in Agricultural (A) Districts only, with the issuance of a special use permit and provided that the following standards are satisfied.
2. Permitted Structure - Home Occupations Major are permitted within a single-dwelling unit, or in a building or structure accessory to a dwelling unit, located in any district. No more than one (1) Home Occupations Major shall be permitted for each residential property.
3. Required Procedures - A site plan review is required by the Town Planning Board. No additional public hearing shall be required, unless the Town Planning Board determines that there is a need to hold such a hearing. The site plan must show the location of the business, including floor plans indicating the portion of the principal and accessory buildings to be used for the business, the location of any vehicles and equipment to be parked outdoors, and any outdoor areas proposed for storage or display of goods or supplies. The above listed procedures are in addition to all regulations set forth in Article III, Section 302.
4. Limitations or Thresholds - Recognizing that the primary purposes of residential and agricultural districts are not the accommodation of business uses, the burden of proof in demonstrating compliance with these regulations in order to develop and maintain a home occupation shall be upon the applicant. In addition to all of the limitations applicable to the district in which it is located, no Home Occupations Major shall be permitted unless it complies with the following restrictions. The applicant shall bear the burden of satisfactorily demonstrating that the Home Occupations Major will conform with all of the following items:

- a. Employees on Site - No more than two (2) employees or assistants in addition to the members of the family occupying such dwelling may be engaged on the premises in the Home Occupations Major at any given time.
- b. Outdoor Storage of Materials and Equipment - Materials and equipment actively used in connection with the Home Occupations Major shall be stored indoors to the extent practicable. Where such storage cannot be reasonably provided, the materials and equipment shall be buffered from public rights-of-way and neighboring properties by intervening landforms, fencing and/or vegetation through all seasons of the year and stored in a manner that does not visually detract from the appearance of the neighborhood and community and such storage does not pose a nuisance to adjacent property owners. No outdoor storage of materials or equipment shall be permitted in the front yard of the premises nor less than fifty (50) feet from any property boundary.
- c. Commercial vehicles - Not more than three (3) vehicles used in connection with Home Occupations Major may be on the premises.
- d. Heavy vehicles - No more than one (1) heavy vehicle used in connection with the Home Occupations Major may be stored outside. No such vehicles shall be parked in the required front yard (twenty-five (25) feet of the R.O.W.) or side yards (within ten (10) feet of side lot lines) of the property. Additional heavy vehicles may be stored in an enclosed garage.
- e. Signage - One sign, not to exceed four (4) square feet in area per side, shall be permitted to identify the home occupation. No sign shall have more than two printed sides. This sign may not be animated and may be illuminated only during business hours.
- f. Parking - Any need for parking generated by the Home Occupations Major shall be met on-site and not in the required front yard.
- g. Number of clients - The Home Occupations Major shall be conducted in such a manner that at any one time the maximum number of clients~ customers and others at the site of the Home Occupations Major is not greater than four (4) persons.

- h. Hours of operation - The Home Occupations Major shall be conducted in such a manner that the majority of the deliveries, pickups, clients, customers and others coming to do business at the site of the Home Occupations Major, shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m.
 - i. Hazardous Materials - No highly toxic, explosive, flammable, combustible, corrosive, radioactive or similar hazardous materials shall be used, stored, or manufactured on the premises in amounts exceeding those which are typically found in normal residential use.
- 5. Use of Accessory Structures - A home occupation use must be conducted wholly within the residential dwelling on the parcel, except that accessory structure, such as shed, detached garages, and barns, may be used for unheated storage of materials for the business.
 - 6. Floor Area - A home occupation may not use more than thirty percent (30%) of the gross floor area of the dwelling for business purposes. [2004]

Section 1118 Home-Based Businesses

A. Findings; Statement of Policy.

Recognizing the fact that many residents of the Town of Warsaw currently maintain home occupations/businesses, or may choose to do so at some point in the future, the Town has determined to provide a mechanism for permitting such uses, subject to appropriate review and the implementation of mitigation measures where appropriate.

The Town Board recognizes that Town residents historically have operated small businesses from their homes, which provide services to the community and finds that these businesses have not impacted negatively on the appearance and character of these agricultural and residential districts. Conversely, the town recognizes that unrestricted use of residentially zoned properties for nonresidential purposes carries with it the potential for conflicts with and detrimental impacts on the purposes and character of the areas zoned for residential and agricultural uses. In the Board's judgment, it finds that in order to maintain the economic viability of the town, to maintain the rural quality of life and in the interests of the welfare of the residents, home occupations/businesses

should be permitted.

In order to further the benefits of home occupations/businesses while mitigating the potential detrimental off-site impacts of the same, the town has enacted these regulations.

Recognizing that different home occupations/businesses exhibit varying potentials for generating off-site impacts, the Town adopts three (3) tiers of businesses for the purposes of establishing review procedures and approval conditions. The three (3) tiers are: (1) Home Occupations Minor; (2) Home Occupations Major; and (3) Home-Based Businesses.

See Section 1117 of this Article for Home Occupations Major regulations and Section 1007 of Article X for the Supplementary Regulations governing Home Occupations Minor.

B. Home-Based Businesses

1. Permitted District - Home-Based Businesses are permitted in the Agricultural (A) Districts only, with the issuance of a special use permit and provided that the following standards are satisfied.
2. Permitted Structure - Home-Based Businesses are permitted within a single-dwelling unit or in a building or structure accessory to a dwelling unit, with frontage along any State, County or Town Road that is not designated for “seasonal use.” Access may not be provided by a private road. No more than one (1) home-based business shall be permitted on each property.
3. Limitations or Thresholds - Recognizing that the primary purposes of residential and agricultural districts is not the accommodation of business uses, the burden of proof in demonstrating compliance with these regulations in order to develop and maintain a home-based business shall be upon the applicant. The applicant shall bear the burden of satisfactorily demonstrating that the home-based business will conform with the following standards:
 - a. Lot size - The minimum required lot size for a home-based business is five (5) acres.
 - b. Extent of use - The total gross floor area of the home-based

business in an accessory building shall not exceed seventy-five hundred (7,500) square feet in area.

- c. Neighborhood character - The appearance of the property and the occupation within the residence shall not be conducted in a manner that would cause the premises to differ significantly from other properties in the neighborhood either by the use of lighting or by the emission of noises, odors or vibrations. All accessory buildings shall be of a building type that is consistent with the appearance of the principal dwelling and the surrounding area or neighborhood.
- d. Employees on site - No more than eight (8) employees or assistants in addition to the members of the family occupying such dwelling may be engaged on the premises in the home-based business at any given time.
- e. Hours of operation - The home-based business shall be conducted in such a manner that the majority of the clients, customers and others coming to do business at the site of the home-based business, shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m.
- f. Outdoor storage - materials and equipment - Materials and equipment actively used in connection with the home-based business may be stored outdoors, but shall be buffered from public rights-of-way and neighboring properties by intervening land form and/or vegetation or fencing through all seasons of the year and stored in a manner such that they do not pose a nuisance to adjacent property owners. No outdoor storage or materials or equipment shall be permitted in the front yard of the premises nor less than fifty (50) feet from any property boundary.
- g. Construction vehicles and equipment - Not more than four (4) construction vehicles or pieces of construction equipment may be used in connection with the home-based business. No such vehicles or equipment shall be parked in the required front or side yards of the property unless properly buffered.
- h. Deliveries and shipping - No more than ten (10) pickups or deliveries per week, other than regular mail, commercial mail

service and overnight delivery service, shall be permitted. All pickups and deliveries shall occur between the hours of 7:00 a.m. and 9:00 p.m. [2004]

Section 1119 Parking of Recreational Vehicle

- A. The temporary parking of a recreation vehicle, as defined in Article II herein, may be allowed as a special permit use in any zone district upon the approval of a special use permit by the Planning Board.
- B. The special use permit allows for the temporary parking of a recreational vehicle for use by a relative or friend of the applicant.
- C. The special use permit if for short term use, a maximum of five (5) months per year.
- D. The recreational vehicle must have proper electric, water and sewer hookups.
- E. When approved by the Planning Board, the special use permit is valid for a period of three (3) years. The special use permit can be renewed, upon request of the applicant and subsequent approval by the Planning Board.
- F. The requirement to hold a public hearing for the issuance of a special use permit for the parking of a recreational vehicle is at the discretion of the Planning Board. [2004]

Section 1120 Commercial Communications Tower

No Commercial Communications Tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

- A. Shared Use of Existing Towers and/or Structures
 - 1. In all instances, shared use of an existing tower and/or structure (i.e., another Commercial Communications Tower, water tower, building, etc.) shall be preferred to the construction of a new Commercial Communications Tower.
 - 2. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing

facilities as an alternative to a proposed new Commercial Communications Tower.

3. The installation of a Commercial Communications antenna(s) on an existing structure located within the A-Agricultural District shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:
 - a. The existing structure is not increased in height or otherwise modified so as to change its visual appearance.
 - b. The antenna(s) do not extend above such structure more than ten (10) feet.
 - c. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
 - d. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent form an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

1. The Planning Board may, in its sole discretion, consider a new or altered (including towers or structures which are modified, reconstructed or changed) Commercial Communications Tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical.
 - a. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical.
 - b. Written request and responses for shared use shall be provided.
2. The applicant shall be required to submit a site plan in accordance with Section 305 for all Commercial Communication Towers that are proposed to be erected , moved, reconstructed, changed or altered.

- a. Site plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section.
- b. In addition to Section 305, the site shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

1. The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing.
2. The applicant must provide a coverage/interference analysis and capacity analysis showing that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
3. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

1. Where shared usage of all existing towers or other structures is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses.
2. Documentation and conditions shall be in accordance with Subsection B of this Section.
3. Any new Commercial Communication Tower approved for a site with an

existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

- E. New Tower at a New Location - The Planning Board may consider a new Commercial Communication Tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

- F. Future Shared Usage of New Tower
 - 1. The applicant must design a proposed Commercial Communication Tower to accommodate future demand for commercial broadcasting and reception facilities.

 - 2. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:
 - a. The number of Federal Communication Commission (FCC) licenses anticipated for the area.

 - b. The kind of tower site and structure proposed;

 - c. The number of existing and potential licenses without tower spaces;

 - d. Available spaces on existing and approved towers; and

 - e. Potential adverse visual impact by a tower designed for shared usage.

- G. Setbacks for New Towers
 - 1. Appearance, Color, and Finish - The exterior surface of any visible components of a Commercial Communication Tower must be a nonreflective, neutral color, Commercial Communication Towers that are located within view of each other, or within one (1) mile of each other must be of uniform design, including tower type, color, number of blades,

and direction of blade rotation.

2. Visual Impact Assessment - The applicant shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed Commercial Communication Tower or any proposed modifications to existing Commercial Communication Tower prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:
 - a. “Before and after” photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.
 - b. Alternative Commercial Communication Tower designs.
 - c. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the Commercial Communication Tower as determined and directed by the Planning Board.
 - d. A viewshed map of the proposed Commercial Communication Tower with a radius of three (3) miles from any portion of the Commercial Communication Tower.
 - e. An inventory of all aesthetic resources in the viewshed defined in item iv.
 - f. The assessment of the visual impact shall also include, but not limited to, an analysis of the lightning or illumination of the Commercial Communication Tower and assessment of any shadowing or other visual effect of the Commercial Communication Tower relating to the level of natural or artificial illumination.
3. Visual Impacts Mitigation Plan - The applicant may be required to prepare and implement a Visual Impacts Mitigation Plan to mitigate negative

impacts on aesthetics of a proposed Commercial Communication Tower. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

III. New Tower Design

1. Alternate designs shall be considered for new towers, including lattice and single pole structures.
2. Plans should show that the owner of the Commercial Communication Tower has agreed to permit other persons to attach other communication apparatus, which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment.
3. The design of a proposed new tower shall comply with the following:
 - a. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have.
 - b. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.
 - c. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two (2) additional antennae.)
 - d. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
 - e. Accessory facilities shall maximize use of building materials colors and textures designed to blend with the natural surroundings.

- f. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
- g. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed Commercial Communication Tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
- h. Space on communication towers shall be made available for public safety purposes (i.e. Wyoming County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

- 1. Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special use permit.
- 2. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

- 1. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property and from public sites known to include important views or vistas.
- 2. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required:
 - a. For all Commercial Communication Towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least eight (8) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities.
 - b. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival.

c. Plant height in these cases shall include the height of any berm.

L. Access

1. Adequate emergency service access shall be provided.
2. Maximum use of existing roads, public or private, shall be made.
3. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement.
4. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking - Parking shall be provided in accordance with Article X. No parking space shall be located in any required yard.

N. Fencing

1. Sites of proposed new Commercial Communication Towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence-ten (10) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility.
2. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provided for its removal.
2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and

site.

3. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/Unused Facilities

1. Upon the original issuance of a special use permit for a Commercial Communications Tower, the applicant agrees to dismantle and remove the Commercial Communication Tower from the property when the Commercial Communication Tower ceases to be used for its intended purpose for a period is revoked or not renewed.
2. The decision as to whether the project has been abandoned or the permit revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal.
3. To secure the applicant's performance to dismantle and remove the Commercial Communication Tower once the same ceases to be used for the intended purpose, the following will be complied with:
 - a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town, per Commercial Communication Tower, in an amount to be determined by the Town's engineer and to be held in escrow (the "Escrow Fund") by the Town pursuant to the terms of this local law.
 - b. The Planning Board reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Commercial Communication Tower, said deposit shall be returned to the applicant.

4. In the event that the Commercial Communication Tower is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Commercial Communication Tower dismantled and removed and charge the cost thereof against the Escrow Fund.
 5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Commercial Communication Tower, the balance shall be returned to the applicant.
 6. If the cost to dismantle and remove the Commercial Communication Tower is in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
 7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.
- Q. Indemnify and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents, and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from negligence, active or passive, of the applicant.
- R. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
- S. Lighting - A Commercial Communication Tower may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.
- T. State Environmental Quality Review Act- The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft

Environmental Impact Statement (DEIS).

- U. All Commercial Communication Towers will be subject to a bi-annual inspection by the Zoning Officer unless said requirement is waived by the Planning Board.[2006]

Section 1121 Type 2 Solar Energy Systems

Type 2 Solar Energy Systems are permitted only in Agricultural Districts (A) and are subject to the requirements set forth in this Section, including Site Plan review as may be provided for elsewhere in the Zoning Ordinance or as may be established by further action of the Town, and are allowed only after the issuance of a Special Use Permit pursuant to these provisions. Applications for the installation of a Type 2 Solar Energy System shall be reviewed by the Zoning Enforcement Officer and referred, with comments, to the Warsaw Planning Board (for Site Plan.)

- A. Area where Type 2 Solar Energy Systems are not permissible. Notwithstanding the above, Type 2 Solar Energy Systems are not permissible on Prime Farmland Soils.**
- B. Special Use Permit Application Requirements. All applications will be submitted to the Zoning Officer and subsequently forwarded to the Planning Board.**
 - 1. If the property of the proposed project is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.**
 - 2. Plans and drawings for the Type 2 Solar Energy System signed by a Professional Engineer showing the proposed layout of the Solar Energy System along with providing a description of all components, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.**
 - 3. Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or structures and uses on any parcel within 500 feet of the outer perimeter of the Solar Energy System.**
 - 4. Equipment specification sheets shall be provided for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.**
 - 5. A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and property upkeep, such as mowing and trimming.**

6. **Clearing, grading, storm water and erosion control plan.** Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Warsaw Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Type 2 Solar Energy System on the site.
7. **Any such additional information as may be required by the Town's professional engineer or consultant, Warsaw Planning Board, Warsaw Board of Appeals, or County Code Enforcement Officer.**
8. **At its sole discretion, the Warsaw Planning Board and/or the Warsaw Zoning Board of Appeals may refer an application for a Type 2 Solar Energy System to one or more private consultants for review to assist such Board in properly fulfilling its duties. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town (through either Board) for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, either Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval, either Board may require that additional monies be deposited with the Town before further review of the application will continue. A reviewing Board may suspend indefinitely the review of any application as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.**
9. **Decommissioning Plan.** To ensure the proper removal of Type 2 Solar Energy Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Type 2 Solar Energy System is no longer operational or has been abandoned,

it shall be removed by the Applicant or any subsequent owner of the improvements and/or the subsequent owner of the property upon which the improvements are placed. The Decommissioning Plan shall run to the benefit of the Town of Warsaw and be executed by the Applicant as well as the owners of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the plan to be recorded at the Office of the Wyoming County Clerk. Such plan shall, prior to commencement of construction, be recorded at the office of the Wyoming County Clerk as irrevocable deed restrictions indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that all future owners of such properties will be obligated to comply with the Decommissioning Plan requirements if the Applicant or then owner of the Solar Energy System fails to do so.

10. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system.
11. Prior to obtaining a building permit and as a condition to any Special Use Permit being issued, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Warsaw at its discretion) for the removal of the Type 2 Solar Energy System, with the Town of Warsaw as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 110% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Type 2 Solar Energy System has been constructed, and no later than ten (10) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Warsaw with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been

properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.

12. **If a Type 2 Solar Energy System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Agricultural Mitigation for Solar Energy Projects.**

C. Special Use Permit and Site Plan Approval Standards.

1. **Height.** Type 2 Solar Energy Systems shall adhere to the height requirements of the underlying zoning district.
2. **Setbacks.** Type 2 Solar Energy Systems shall be sited to create a front setback of no less than 200 feet from public roadways and setbacks of 100 feet from all side and rear property lines. In addition, no Type 2 Solar Energy System shall be located closer than 300 feet from any residential structure located on another parcel.
3. **Lot/Parcel Size.** Type 2 Solar Energy Systems shall be located on parcels with a minimum lot size of 25 acres.
4. **Lot/Parcel Coverage.** Type 2 Solar Energy Systems are permitted to cover up to 80% of any lot or parcel that does not contain Prime Farmland. If a Type 2 Solar Energy System is to be constructed on a parcel or parcels that contain Prime Farmland, in no instance shall be more than 10% of the Prime Farmland on any given lot be permitted to be used, developed or covered for purposes of Type 2 Solar Energy Systems. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland.
5. **Fencing and Screening.** All Type 2 Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. The fencing and the system may be required to be further screened by landscaping to avoid adverse aesthetic impacts. The Planning Board shall provide for enhanced screening and buffering for Type 2 Solar Energy Systems that are placed adjacent to residentially zoned areas or abut a public road.
6. **Number of Type 2 Solar Energy Systems allowed per lot.** Only one Type 2 Solar Energy System shall be allowed per lot or parcel, regardless of lot size.

7. **Recent Subdivision of Lot/Parcel.** In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions, the Zoning Board of Appeals shall consider the lot or parcel to be the smallest configuration of the physical area where the Type 2 Solar Energy System is being proposed that has existed as a separate lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of Warsaw within the five (5) years immediately preceding the application seeking approval for such Type 2 Solar Energy System. This provision is specifically intended to prevent any owner of land from combining multiple parcels of land in order to permit siting of a larger Type 2 Solar Energy Systems than would have been otherwise allowable pursuant to these regulations.
8. **Vegetation and Habitat.** Type 2 Solar Energy System owners/developers shall develop, implement and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, owners/developers shall use native plant species and seed mixes.
9. **Any Type 2 Solar Energy System shall be accessible for all emergency service vehicles and personnel.**
10. **After completion of a Type 2 Solar Energy System, the Applicant shall provide a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.**
11. **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 powers related to the completion of a Type 2 Solar Energy System.
12. **Any application under this Section shall meet any substantive Site Plan requirements as may be provided for elsewhere in the Zoning Ordinance or as may be established by further action of the Town, or that in the judgment of the Warsaw Planning Board, are applicable to the system being proposed.**

- 13. The Planning Board shall be required to hold a public hearing relating to Site Plan for any Type 2 Solar Energy System.**
- 14. Prior to determination or issuance of any permit, all Type 2 Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (6 NYCRR 617). All applications (Site Plan and Special Use Permit) for approval of a Type 2 Solar Energy System shall be deemed to be a Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act (6 NYCRR 617.4 (a) (1) and (2) specifically allow the Town to classify such actions in addition to the list established by such statute) with the Warsaw Planning Board and the Warsaw Zoning Board of Appeals conducting a coordinated review.**
- 15. The development and operation of a Type 2 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 Warsaw or other federal or state regulatory agencies. The Warsaw Town Planning Board and the Warsaw Zoning Board of Appeals may impose conditions on its approval of any Site Plan or Special Use Permit under this Section to enforce the standards referred to in this Section or to discharge its obligations under the State Environmental Quality Review Act.**
- 16. Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Type 2 Solar Energy System, an Applicant shall obtain a Building Permit within twelve (12) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twelve (12) months of obtaining a Building Permit as provided for above, or the approvals shall automatically terminate and be deemed null and void and be of no force and effect at law.**
- 17. General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or Building Permit. After construction is complete, the permit holder of a Type 2 Solar Energy System shall establish a contact person, including name and**

telephone number for receipt of any complaint concerning any permit, approval, maintenance, or operational requirements.

18. **Inspections.** Upon reasonable notice, the Wyoming County Code Enforcement Officer, or his or her designee, may enter a lot or parcel upon which a Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Section or any approval given or permit issued pursuant to this Section. Twenty-four (24) hours' notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Type 2 Solar Energy System shall be inspected by a New York State licensed Professional Engineer that has been approved by the Town of Warsaw at any time upon a determination by the Town's Code Enforcement Officer that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Town of Warsaw. Any fee or expense associated with this inspection shall be borne entirely by the permit holder, owner or operator and shall be reimbursed to the Town of Warsaw within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of Warsaw reserves the right to levy all such non-compensated expenses onto the real property tax bill associated with the real property upon which the Solar Energy System is located.
19. For Type 2 Solar Energy Systems, a sign not to exceed nine square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number, disconnect and other emergency shutoff information, 24-hour emergency contact information, and it will be clearly displayed on a light reflective surface.
20. All fees shall be approved by the Town Board by resolution. Nothing in this article 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 under SEQRA if an EIS is required.
21. **Community Benefit Agreement.** The owners or developers and landowners of the property upon which a Type 2 Solar Energy Systems is to be developed

shall be required to enter into a community benefit agreement with the Town for payment by the owners, developers or landowners to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Type 2 Solar Energy System.

- a) At its sole discretion, the Warsaw Town Board may refer an application for a Type 2 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required community benefit agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required community benefit agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the community benefit agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the community benefit agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants.
- b) No building permit may be issued for any approved Type 2 Solar Energy System until such time as a community benefit agreement has been executed by all parties.

22. Road Use Agreement. Prior to issuance of any building permit for a Type 2 Solar Energy System and as a condition to any Special Use Permit being issued, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town and in a format acceptable to the Town at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from

any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Warsaw at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.

- a) In the event that any damage is done to any Town road as a result of the development of an Applicant's Type 2 Solar Energy System, said Applicant and/or its General Contractor shall be responsible to perform repairs to such road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.
- b) Such repairs shall be completed within sixty (60) days of when written notice of a demand to repair was personally served or sent via certified mail to Applicant or its General Contractor. Should Applicant or its General Contractor fail to effectuate such repairs within sixty (60) days, or within a different timeline at the discretion of the Highway Superintendent, the Town shall be permitted to execute on the irrevocable financial security bond (or other form of surety) with written notice to Applicant or its General Contractor.
- c) The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
- d) No building permit may be issued for any approved Type 2 Solar Energy System until such time as a Road Use Agreement has been executed by all parties.

Section 1122 Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit within the Agricultural (A) and Industrial (I) zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

- 1. Reviewed by the Zoning Enforcement Officer for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to:**

- a. compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code; and
- b. matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within ten (10) business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

2. Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town of Warsaw shall have a notice printed in a newspaper of general circulation in the Town at least five (5) days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within two hundred (200) feet of the property at least ten (10) days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.

3. Referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.

4. Upon closing of the public hearing, the Planning Board shall take action on the application within sixty-two (62) days of the public hearing, which can include approval, approval with conditions, or denial. The sixty-two (62) day period may be extended upon consent by both the Planning Board and Applicant.

B. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Signage.

1. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.

2. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

E. Vegetation and tree-cutting. Areas within ten (10) feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of sixty (60) dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. Decommissioning.

1. Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:

- a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
- c. The anticipated life of the battery energy storage system;
- d. The estimated decommissioning costs and how said estimate was determined;
- e. The method of ensuring that funds will be available for decommissioning and restoration;
- f. The method by which the decommissioning cost will be kept current;
- g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural

elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and

- h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.**

2. Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town of Warsaw in a form approved by the Town for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

H. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- 1. Property lines and physical features, including roads, for the project site.**
- 2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.**
- 3. A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.**
- 4. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.**
- 5. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.**
- 6. Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.**
- 7. Zoning district designation for the parcel(s) of land comprising the project site.**

8. Commissioning Plan. Prior to the issuance of the building permit, such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town Planning Board prior to final inspection and approval and maintained at an approved on-site location.

9. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

10. System and Property Operation and Maintenance Manual. Prior to the issuance of the building permit, such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.

11. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

12. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.

13. Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:

- a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- b. Procedures for inspection and testing of associated alarms, interlocks, and controls.

- c. **Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.**
- d. **Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.**
- e. **Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.**
- f. **Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.**
- g. **Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.**
- h. **Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.**

I. Special Use Permit Standards.

- 1. **Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.**
- 2. **Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.**
- 3. **Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.**
- 4. **Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports. Additionally, all structures must have**

a visual design standard consistent with neighboring structures within Wyoming County, including agricultural related structures, such as barns, as determined by the Town Planning Board in consultation with the Zoning Enforcement Officer.

5. Security. Buildings must be protected from vehicle impact, including but not limited to protection provided by bollards.

J. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Zoning Enforcement Officer of such change in ownership or operator within thirty (30) days of the ownership change. A new owner or operator must provide such notification to the Zoning Enforcement Officer in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Zoning Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

K. Safety.

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:

a. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),

b. UL 1642 (Standard for Lithium Batteries),

c. UL 1741 or UL 62109 (Inverters and Power Converters),

d. Certified under the applicable electrical, building, and fire prevention codes as required.

e. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

2. Site Access. Battery energy storage systems shall be maintained in good working

order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps. A Knox box must be installed at the site to allow access to all structures.

3. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

L. Permit time frame and abandonment.

1. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of twenty-four (24) months, provided that a building permit is issued for construction [and/or] construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board within twenty-four (24) months after approval, the Town may extend the time to complete construction for [180] days. If the owner and/or operator fails to perform substantial construction after [36] months, the approvals shall expire.

2. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion and upon thirty (30) days written notice to the operator listed on file with the Town, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.