

Local Law Filing

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County
City of **Wayland**
Town
Village

Local Law No. **3** **of the year 1997**

A local law **TOWN OF WAYLAND PROTECTION,**
..... **CONSERVATION, AND DEVELOPMENT LAW**
(Insert Title)

Be it enacted by the **TOWN BOARD** of the
(Name of Legislative Body)

County
City
Town of **Wayland** **as follows:**
Village

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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LOCAL LAW NO. 3 OF 1997

**TOWN OF WAYLAND PROTECTION,
CONSERVATION AND DEVELOPMENT LAW**

A Local Law protecting each individual citizen while promoting health, safety, and general welfare of the Town of Wayland by limiting and restricting specified areas, and enacting regulations in those areas as to land use, buildings construction, other structures, and providing penalties for the violation of such law; replacing and repealing Local Law No. 1 of 1996 (pertaining to the Planning Board); repealing Local Law No. 2 of 1997 (imposing a moratorium); and amending the procedure for variances under Local Law No. 4 of 1995 and Local Law No. 1 of 1991, and permits under Local Law No. 2 of 1995.

Be it enacted by the Town Board of the Town of Wayland as follows.

**SECTION 1
GENERAL PROVISIONS**

1.1 AUTHORITY, ENACTMENT, EFFECTIVE DATE, REPEALER, AND SHORT TITLE

Pursuant to provisions of Article 16 of the Town Law, Section 136 of the General Municipal Law, and Article 2, Section 10 of the Municipal Home Rule Law, of the State of New York:

- (1) Local Law No. 1 of the Year 1996 of the Town of Wayland is hereby repealed in its entirety, and replaced by the Regulations set forth in this Law. Local Law No. 2 of 1997, imposing a moratorium, is repealed.
- (2) Except as set forth in paragraph (3) below, the following Local Laws of the Town of Wayland are not repealed, but rather are ratified and remain in full force and effect:

Year	Local Law No.	Subject
1975	1	Prior Written Notice of Defects and/or Accumulation of Snow and Ice; Prior Written Notice of Defects
1977	1	Short Publication of Ordinances
1980	1	Dog Control

1981	1	Sole Assessor
1984	1	Accepting the Right and Responsibility for Enforcement of New York State Uniform Fire Prevention and Building Code by the Town of Wayland
1985	1	Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code
1985	2	Prohibiting Human Burials in Other than Authorized Cemeteries
1985	3	Providing for the Defense of Town Officers and Employees
1986	1	Permitting Real Property Tax Bill Enclosures
1991	1	Flood Damage Prevention
1991	2	Games of Chance
1993	1	Reimbursement to the Town for Rabies Related Medical Expenses
1993	2	Allow Non-Resident to Serve as Town Constables
1993	3	Increase the Annual Dog License Fee
1995	1	Veterans Exemption in Direct Proportion to Full Value Reassessment
1995	2	Junk Yards and the Storage of Junk and Junk Cars
1995	3	Repair or Removal of Unsafe Buildings and Collapsed Structures
1995	4	Permits for Building and Construction Activity for Placement of Manufactured Homes, For Regulation of Mobile Home Parks and for Land Area Requirements
1995	5	Veterans Exemption as Maximum Allowable
1996	3	Water Conservation and Permitting Program
1997	1	Change of Date for Assessment Review

- (3) The procedure for variances provided for under Section 7 of the Building and Mobile Home Permit Law, Local Law No. 4 of 1995, is repealed and replaced by the procedure for variances set forth in this Law, including Sections 4.5, 5.6 and 6.5, in order to transfer from the Town Board to the Board of Appeals the power to grant variances under such law. Section 6.1 of the Flood Damage Prevention Law, Local Law No. 1 of 1991, is amended by replacing Planning Board with Board of Appeals, in order to transfer to the Board of Appeals the power to hear and decide appeals and requests for variances under such law. The Junk Law, Local Law No. 2 of 1995, is

amended by replacing Town Board with Planning Board in Articles D, F, G, and H of such law, in order to transfer to the Planning Board the power to grant and revoke permits under such law.

- (4) There is hereby established, in accordance with the Comprehensive Plan adopted June 24, 1996, a Protection, Conservation and Development Law for the Town of Wayland, Steuben County, New York, regulating and restricting the location, construction and use of structures, and the use of land, and for such purposes dividing the Town into districts, which Regulations are expressed in the text, maps and schedules that are enacted by this Law.
- (5) This Local Law shall be known and may be cited, as the Town of Wayland Protection, Conservation and Development Law.

1.2 INTERPRETATION

1.2.1 Purpose

The purpose of this Local Law is to protect the rights of each individual citizen to the greatest extent possible while promoting the public health, safety, and general welfare of the Town as a whole, and provide a framework for the future commercial, industrial and residential growth. It is also the purpose of this Law to protect existing property uses while retaining property values, and maintaining the rural character and desirability of each property by encouraging the most appropriate use of the land. It is the further purpose of this Law to preserve and enhance the environment and natural resources, including the natural beauty of the land, the rural character of the Town, and to maintain the integrity of its sources of water including the aquifer, streams, lakes, wetlands, reservoirs, ponds, forests, hills and soils, so that all may be enjoyed to the fullest by present and future residents.

1.2.2 Minimum Requirements Declared

- (1) In their interpretation and application, the provisions of these Regulations are hereby declared to be the minimum requirements necessary and appropriate for the purpose of this Law, and are adopted in order to protect the public health, safety, and general welfare.
- (2) Except as specifically provided in this Law, whenever the requirements of these Regulations are at variance with the requirements of any other lawfully adopted rule, regulation, or standard, the more restrictive or that imposing the higher standard shall govern.

1.2.3 Application of Regulations

- (1) The Regulations established by this Law for each area shall apply uniformly to each class or kind of use or structure or land, except as otherwise provided in this Law, or under state law.
- (2) After the date of original enactment of this Law, no structure shall be erected, and no existing structure shall be moved, structurally altered, rebuilt, added to or enlarged, or used, nor shall land be used, except in conformity with the requirements in this Law for the district in which it is located.
- (3) No part of a yard or off-road parking or loading space required in this Law for any premises shall be included as part of such a yard or space similarly required for any other premises.
- (4) No yard or lot existing on the effective date of these Regulations shall be reduced in dimension or area below the minimum requirements set forth in this Law. Lots and yards created after the effective date of these Regulations shall meet at least the minimum requirements established in this Law.
- (5) A building or other structure, or use of a building, other structure, or land, or characteristic of use, lawfully existing on the effective date of these Regulations (or any applicable amendment), but not in accordance with the requirements for the district in which it is situated, is hereby declared to be nonconforming, and may continue as provided in this Law.

1.2.4 Owner to be Accountable

To duly file an application in accordance with these Regulations is hereby declared to be the duty equally a property owner, developer, and contractor; and by agreement, one may act for all. Nevertheless, when the Plan Administrator or Code Enforcement Officer finds a violation of these Regulations, the owner of record of the premises (as well as any other violator) shall be considered to be accountable for such violation, and may be subject to appropriate enforcement action or proceedings.

1.2.5 Compliance is Strictly Limited

Any Permit or Certificate duly issued pursuant to these Regulations shall be evidence of compliance with the requirements of this Law, but shall not imply or be deemed evidence of compliance with any other regulation, standard, or rule of the Town of Wayland, Steuben County, New York State, the United States, or any agency of those governments, that may be applicable to the premises. The latter shall include the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and the Junk Law. Compliance

with any such other regulation, standard, or rule applicable to a development, shall be a separate duty of the owner of the premises affected, and any other person responsible for the development.

1.3 ENFORCEMENT

1.3.1 Policy

It is hereby declared to be in the interest of the public health, safety, and general welfare, that all reasonable efforts shall be made to prevent or to correct as promptly as possible a condition that violates these Regulations, in preference over action by the Town to seek punishment of the person responsible for such violation.

1.3.2 Administrative Procedures

- (1) **Complaint.** A resident of the Town who perceives a violation of these Regulations may file a written complaint describing the alleged violation. Such complaint shall be filed with the Plan Administrator, who shall record such complaints, immediately investigate, and take action thereon as provided in this Law.
- (2) **Notice of Violation.** When the Plan Administrator or Code Enforcement Officer finds a violation of this Law, he shall promptly send a written Notice to the person responsible, and post the Notice on the property, stating the nature of the violation and appropriate corrective steps. The Notice shall advise that each week the violation continues shall constitute a separate additional violation of these Regulations, and may be punishable accordingly.
- (3) **Permit Violation.** When the Plan Administrator or Code Enforcement Officer finds a violation of a duly issued Building Permit or Special Permit, before a Certificate of Compliance has been issued, his Notice shall advise that such Certificate shall not be issued until the violation has been corrected; and, that to begin use of the premises without a Certificate of Compliance is a violation of these Regulations.
- (4) **Stop Order.** When a violation is maintained, after due notice, the Plan Administrator or Code Enforcement Officer shall transmit a Cease and Desist Order by certified mail to the owner of record of the premises. Such Order shall direct the immediate discontinuance of all construction, occupancy, or use of buildings, other structures, and land in violation of these Regulations, and if appropriate the removal of an illegal building or other structure, illegal addition, or illegal alteration. Such Order shall advise that failure to comply may result in the Town bringing civil and/or criminal action or proceedings. Copies of such Order shall be filed with the Town Clerk and Attorney for the Town.

- (5) **Correction.** When the Plan Administrator or Code Enforcement Officer finds that a cited violation has been duly corrected, he shall enter a statement to that effect in his record of the matter, with a copy to the owner of the premises and if appropriate also to the Town Clerk and Attorney for the Town.
- (6) **Appeal.** A person aggrieved by such a Notice or Order of the Plan Administrator, or the Code Enforcement Officer (to the extent it relates to matters arising under this Law), may appeal for Administrative Review of the matter, as provided by Section 4.4, which shall take preference over any other matter before the Board of Appeals. Until the Board of Appeals issues its decision, the passage of each week shall not be deemed to mark a separate violation of these Regulations.

1.3.3 Civil or Remedial Action

- (1) **Action by Town.** When a building or other structure is erected, constructed, reconstructed, altered, converted or maintained, or a building or other structure or land is used or occupied, in violation of these Regulations, the proper authorities of the Town, in addition to other remedies, shall institute appropriate action or proceedings to prevent, restrain, correct or abate such violation. Such action shall be taken promptly whenever the Town Board finds that continued violation is likely to place in imminent peril the public health, safety, or general welfare. The Town Board, by resolution, may authorize the Plan Administrator to institute such action or proceedings.
- (2) **Action by Taxpayers.** Such action or proceedings, if not initiated by the proper Town authorities within ten (10) days after written request by a resident taxpayer to so proceed, may be initiated by any three taxpayers of the Town, resident in or near the district where such violation exists, and severally or jointly aggrieved by such violation, in the same manner as such Town authorities are authorized to do.
- (3) **Monetary Penalty.** The Town or complainants may seek monetary penalties, not to exceed the fines provided for in Subsection 1.3.4(4), and, upon prevailing, shall be entitled to recover reasonable attorney's fees and other expenses of the action.

1.3.4 Criminal Proceedings

- (1) **Procedure.** When a violation of these Regulations is continued in a willful manner following service of an Order to cease, the Plan Administrator shall serve an appearance ticket on the responsible party, file the Information with the Town Justice, and notify the Town Supervisor of such enforcement action.
- (2) **Jurisdiction.** A violation of these Regulations is hereby declared to be an offense, triable in Town Justice Court.

- (3) **Separate Offenses.** Each week's continued violation, prior to the Plan Administrator's filing of the Information with the Town Justice and following the notice of violation, shall constitute a separate additional offense, except as otherwise provided in Subsection 1.3.2(6).
- (4) **Penalty.**
 - (a) A violation of these Regulations is punishable by a fine not less than fifty dollars (\$50), nor more than three hundred fifty dollars (\$350), or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense.
 - (b) Conviction of a second offense, both of which were committed within a period of five years, shall be punishable by a fine not less than three hundred fifty dollars (\$350), nor more than seven hundred dollars (\$700), or imprisonment for a period not to exceed six (6) months, or both.
 - (c) Conviction for a third or subsequent offense all of which were committed within a period of five (5) years, shall be punishable by a fine not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000), or imprisonment for a period not to exceed six (6) months, or both.

SECTION 2 AREA REGULATIONS

2.1 Areas

2.1.1 Establishment and Purposes

- (1) The Town of Wayland is hereby divided into six areas.
- (2) In addition to the general purpose of these Regulations, each area is intended to accomplish the following particular purposes, which shall guide the regulation of all uses allowed in such Areas:
 - (a) **Agricultural-Residential (AG-R) Area.** To provide for low-density residential and other nonfarm uses; to encourage continued agricultural uses; to preserve open space and natural resources.
 - (b) **Aquatic (AQ) Area.** To provide for higher density residential and water-related recreational uses; and, to encourage the preservation of waterfront natural resources and scenic values.

- (c) **Commercial (C) Area.** To provide appropriate locations for highway-oriented business and traveler service facilities; and, to avoid traffic congestion and hazards.
 - (d) **Industrial (I) Area.** To provide appropriate locations for manufacturing, processing, and warehousing developments not dependent on municipal water supply or sewerage; to allow such uses with outdoor storage and service areas; and to accommodate such uses that may generate heavy traffic.
 - (e) **Critical Environmental Area (CEA) Overlay Area.** To protect, preserve, and promote the safe use of the existing and potential groundwater supply from development or land use practices that may adversely affect the quality or availability of water related to the aquifer located in the Town aquifer; to protect and preserve potential sources of future water supply for the public health, safety and general welfare; to assure an adequate supply of suitable drinking water for the residents of the Town; and to allow very low-density residential and recreational uses. This area shall overlay other areas within the Town. Any uses permitted in the area so overlaid shall be permitted only subject to all of the provisions of this area. In any case where conflicts arise between regulations applicable to the CEA Overlay Area and any other existing regulations, the more restrictive requirements shall apply.
 - (f) **Watershed Protection Overlay Area.** Until January 1, 2000, all land and structures within the Watershed Protection Overlay Area for both the Dansville Reservoir and Loon Lake shall be subject to the same requirements as the CEA Overlay Area, except that manufacturing, fabrication, and assembly shall be prohibited uses. These restrictions may be extended or modified by the Town Board, pending further study.
- (3) The Flood Damage Prevention Law, Local Law No. 1 of 1991, establishes additional restrictions for properties located in special flood hazard areas, as defined by that law and the Flood Insurance Rate Map for the Town (No. 36078413), dated June 8, 1984, in order to provide for safety of life and property from the hazard of flood; to protect water quality; and, to provide for the benefits of flood insurance for property owners through compliance with regulations of the Federal Emergency Management Agency. In any case where conflicts arise between regulations applicable under the Flood Damage Prevention Law and this Law, the more restrictive requirement shall apply.

2.1.2 Area Plan Map

The areas established by this Law are shown and bounded on the official Area Plan Map which, together with all explanatory matter on such Map, is hereby adopted by reference and declared to be a part of this Law. Such Map may comprise a number of map sheets drawn at

various scales in order to depict more clearly the areas shown on the Map. The Map shall show the date of enactment of these Regulations and of each subsequent Map amendment, and shall be duly certified and maintained on file by the Town Clerk.

2.1.3 Interpretation of Area Plan Map

- (1) Where uncertainty exists with respect to the boundaries of any area as shown on the official Area Plan Map, the following rules shall apply:
 - (a) Where boundaries of a district appear approximately to follow the center lines of roads, such center lines shall be construed to be such boundaries.
 - (b) Where boundaries of a district appear approximately to be parallel to the center lines or right-of-way lines of roads, such boundaries shall be construed as being parallel to such lines and at such distance from such lines as stated on the Map. If not stated, such distance shall be determined by using the scale on the Map.
 - (c) Where boundaries of a district appear approximately to follow platted lot lines, such lot lines shall be construed to be such boundaries.
 - (d) Where boundaries of a district appear to follow the bank of a stream or other watercourse, they shall be deemed to follow such bank, and in the event of any change in such bank, stream or other watercourse, shall be construed as moving with the actual bank. Boundaries indicated as approximately following the center line of such waterway shall be deemed to follow such center line.
 - (e) The Aquatic (AQ) Area includes all lands that adjoin (lakefront) or have a right-of-way to Loon Lake.
- (2) In any other case of uncertainty, the Planning Board shall determine the location of the boundary at the request of an applicant or the Plan Administrator; a formal appeal shall not be required. A file of all such determinations shall be maintained by the Planning Board.

2.2 ALLOWABLE USES

2.2.1 General Provisions

- (1) Except as otherwise provided in this Law, no premises or property shall be used for a purpose other than one allowed in the area in which it is situated. Uses are regulated as set forth in the schedules below (Subsections 2.2.2 and 2.2.3) as follows:

P designates a use allowed in the area with a **Building Permit**;

S designates a use allowed in the area with a **Special Permit**;

N designates that a use is not allowed in the area.

- (2) Uses that are not allowed in an area, if legally present on the effective date of these Regulations, shall be deemed to be nonconforming, as provided for in this Law.
- (3) Uses that are not specifically restricted by this Law are allowable uses, provided such uses are in compliance with the other federal, state and county and Town laws, rules and regulations, including, but not limited to the following laws of the Town:

Year	Local Law No.	Subject
1984	1	Accepting the Right and Responsibility for Enforcement of New York State Uniform Fire Prevention and Building Code by the Town of Wayland
1985	1	Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code
1985	2	Prohibiting Human Burials in Other than Authorized Cemeteries
1991	1	Flood Damage Prevention
1995	2	Junk Yards and the Storage of Junk and Junk Cars
1995	3	Repair or Removal of Unsafe Buildings and Collapsed Structures
1995	4	Permits for Building and Construction Activity for Placement of Manufactured Homes, For Regulation of Mobile Home Parks and for Land Area Requirements
1996	3	Water Conservation and Permitting Program

- (4) When an accessory use is identified in an application for a principal use, it shall be reviewed as part of such application, and no separate application need be submitted for such accessory use.

2.2.2 General Uses

PRINCIPAL USE	AG-R	AQ	C	I	CEA
Adult Book Store	N	N	S	N	N

Adult Entertainment Establishment	N	N	S	N	N
Commercial Storage	P	N	P	P	S
Communication Towers	S	N	S	S	S
Construction and Demolition Debris Landfill	S	N	N	S	S
Essential Services	S	S	S	S	S
Hazardous Waste or Radioactive Material Treatment, Storage or Disposal Facility	N	N	N	N	N
Municipal Park, Playground	S	S	S	S	S
Public Water Supplies, including Public Wells and Surface Water Intakes	S	S	S	S	S
Solid Waste Landfill, Transfer Station or Disposal Facility, or other Solid Waste Management Facility	N	N	N	S	N
Treatment Works	N	N	N	S	S
Utility Distribution Lines	S	S	S	S	S
Utility Facilities	S	S	S	S	S

2.2.3 Industrial Uses

PRINCIPAL USE	AG-R	AQ	C	I	CEA
Excavating and Mining Operations	S	N	S	S	S
Manufacturing, Fabrication, Assembly	S	N	S	S	S
Salvage Operations and Junk Yards	S	N	S	S	S
Oil and Gas Wells	S	N	S	S	S
Warehouse Storage	S	N	S	S	S

2.2.4 Special Restrictions in the Critical Environmental Area (CEA) Overlay District

- (1) **Additional Prohibited Uses and Activities.** The following uses and activities shall also not be allowed in the Critical Environmental Area (CEA) Overlay District:
 - (a) Open storage or on-ground storage of all fertilizers and chemicals. A cement pad is required when stored under cover.
 - (b) Excavations or cut-ins which expose groundwater permanently or during maximum elevation of the water table, or which significantly reduce the thickness of the soil cover and thus ease the entrance of contaminants into the groundwater.
 - (c) Storage of sludge, toxic substances, or radioactive materials.
 - (d) Any land use development otherwise allowed by Special Permit, but which development, after environmental review as required by SEQRA, has been determined to present such adverse environmental impacts upon the quality and availability of groundwater as to prohibit the development of the use under any circumstances.
- (2) **Monitoring Wells.** Any use permitted under this Law which commences on or after the effective date of this Law shall install, at the direction of the Town Board, if deemed appropriate to protect the aquifer, a minimum of one groundwater monitoring well in a direction upgradient from on-site activities and one groundwater monitoring well in a direction downgradient from on-site activities. The specific location of these groundwater monitoring wells shall be determined by a professional geologist, hydrogeologist, engineer or other qualified expert trained and experienced in hydrogeology and approved by the Planning Board. These wells shall monitor water quantity and quality on a continuous basis. The frequency of required water quality sampling from monitoring wells shall be determined on a site-specific basis by the Planning Board. Access to monitoring wells shall be provided to the employees of the Town and the New York State Health Department for purposes of any additional water quality sampling deemed appropriate.

2.2.5 Special Restrictions in the Commercial (C) and Industrial (I) Areas and For Industrial Uses.

At least one acre (1) shall be required for each use in the Commercial (C) and Industrial (I) areas, and each Industrial Use listed in Subsection 2.2.3 (to the extent allowed), and a site plan for each such use must be approved by the Planning Board.

**SECTION 3
SUPPLEMENTAL REGULATIONS**

3.1 GENERAL PROVISION

The provisions of this Section supplement those of Section 2. When there is a difference between the two, the more restrictive shall control, unless the context clearly requires otherwise.

3.2 PROTECTION OF NATURAL RESOURCES

3.2.1 Policy

Recognizing that environmental quality can affect land values in the Town, especially for residential, recreational, agricultural, and tourism uses, it is Town policy to protect and conserve productive farmlands, soil resources, woodlands and other wildlife habitat, scenic areas, and water quality. Regulations adopted for that purpose are hereby declared to promote the public health, safety, and general welfare.

3.2.2 General Provisions

A Building Permit is conditioned upon giving due consideration for the natural features of the site and its environment, including topography and soils; trees and other cover; streams, shorelines, and wetlands; and, scenic views.

3.2.3 Grading and Erosion Control

The Plan Administrator, Planning Board, or Board of Appeals may require changes in a proposed development plan, so that site preparation shall not cause unnecessary damage to adjacent property and is in compliance with New York State Freshwater Wetlands Act (Environmental Conservation Law Article 24), or federal law, including Section 404 of the Clean Water Act (33 U.S.C. Section 1344), or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).

- (1) **Requirements.** When the Plan Administrator or the Code Enforcement Officer inspect a site and if they find that the development plan may cause damage to adjacent property, an application for a building permit shall be supplemented with an erosion control plan which shall be approved by the Planning Board.

3.3 YARDS

In addition to requirements established by other law, rules and regulations, including the Building and Mobile Home Permit Law, all yards shall comply with the requirements set forth in this Section 3.

3.3.1 Visibility

On a corner lot, nothing shall be erected, placed, planted or grown in such a manner as to obstruct materially the line of sight from one road to the other, between two and one-half (2½) and ten (10) feet above the centerline grades of such roads, within the triangular area bounded by the right-of-way lines and a line connecting points thereon located fifty (50) feet from their point of intersection.

3.3.2 Corner Lots and Through Lots

On a corner lot or a through lot, a front yard shall be provided along each frontage.

3.3.3 Architectural Projections

- (1) An open structure such as a deck, porch, stair, balcony, car-port, or similar architectural feature shall be considered part of a building to which it is attached, and shall not project into a yard.
- (2) A chimney, eave, window or bay window, may project not more than three (3) feet in depth into a yard. An uncovered patio or terrace, essentially at ground level, may extend into a yard.

3.4 MISCELLANEOUS REGULATIONS

3.4.1 Utility Distribution Lines, Utility Facilities, Communication Towers, and Water Supplies

The location, design and operation of utility distribution lines, utility facilities, communication towers, and water supplies shall not adversely affect the character of nearby residential areas. For that purpose, the Special Permit for such use may require that appropriate fences, buffer areas, camouflage, or landscaping be provided.

3.4.2 Public and Private Wells

In addition to requirements imposed by other laws, rules and regulations, including Local Law No. 3 of 1996, which established a Water Conservation and Permitting Program, all public and private wells shall comply with the requirements set forth in this Subsection 3.4.2.

- (1) **Well Log.** In order to better plan for the future, a well log is to be kept on all new wells dug or driven in the Town. One copy of this log shall be given to the property owner, and a copy shall be given to the Town Clerk.

The following information shall be included in the log:

- (a) Depth of well in feet.
- (b) Depth of water in well in feet.
- (c) Gallons of water pumped per minute.
- (d) Number of minutes pumping sustained.
- (e) Length of recovery time.

- (2) **Additional Requirements For Monitoring Public Wells**

- (a) Meters shall be double-locked, so that no one person can reset.
- (b) For readings a representative from the operator must be present, and a representative from the Town. Each shall keep his or her own separate well log.
- (c) The Town log shall be presented to the Town Board at the next monthly meeting, and a copy retained by the Town Clerk.

3.4.3 Excavation and Mining Operations

- (1) **Operation.** In any district where allowed, a Special Permit shall be required for the excavation or mining of earth material or minerals for commercial purposes, such as top soil, fill, sand, gravel, or salt, including the separation and grading of sand or gravel. Such an operation shall be subject to the following regulations:
 - (a) The Planning Board may limit use of Town highways by truck traffic to and from the excavation or mine, in order to mitigate noise, vibration, dust and other impacts on other properties.
 - (b) A Special Permit, after Site Plan review, shall be required for expansion of present operations, including expansion of active operations on the same lot.
- (2) **Other Restrictions.** An excavation or mine must meet the following standards,

which shall be conditions on any Special Permit, except to the extent the excavation or mine must be permitted by the New York State Department of Environmental Conservation, pursuant to the Mined Land Reclamation Law, Title

27 of Environmental Conservation Law Article 23. If the excavation or mine must be permitted by the New York State Department of Environmental Conservation, the Town Supervisor shall request, during the permitting process conducted by the New York State Department of Environmental Conservation, that the excavation or mine satisfy the following standards, and such standards shall be imposed as conditions on the Special Permit to the extent imposed by the Department of Environmental Conservation permit and allowed by Environmental Conservation Law Sections 23-2703(2)(b) and 23-2711(3).

- (a) **Setbacks.** All structures and excavations shall be not less than fifty (50) feet from any street right-of-way or other property line.
 - (b) **Fencing.** Fencing or similar effective barriers not less than six (6) feet in height may be required where an excavation is to exceed four (4) feet in depth.
 - (c) **Removal of Structures and Machinery.** All buildings, structures, and machinery used in such operations shall be removed within six (6) months following termination of operations.
 - (d) **Equipment.** All equipment used for the excavation and processing shall be equipped, maintained and operated in such a manner as to eliminate, as far as practical, noise, vibration and dust, to prevent annoying and injurious conditions on adjoining properties.
 - (e) **Size.** Only five (5) acres of any one facility may be open at one time for mining. An additional five (5) acres may be used for stockpiling.
- (3) **Restoration.** The excavated or mined area must be rehabilitated in accordance with the following standards, within one (1) year after termination of operations. The Planning Board may require the posting of a bond or equivalent security sufficient to cover such rehabilitation.
- (a) Excavated topsoil shall be set aside on-site for future restoration.
 - (b) Side slopes of excavated areas shall not be steeper than one (1) foot vertical distance for each one and one-half (1½) feet of horizontal distance.

- (c) All excavations must either be:
 - (i) made into a pond by excavating to a level not less than four (4) feet below water producing depth; or
 - (ii) be filled if necessary to a level above the seasonal high water table, and graded and drained.
- (d) Excavated areas, after grading and sloping, shall be mulched and seeded or planted with trees, shrubs, grasses or legumes so as to minimize erosion and assure revegetation of the area.
- (e) Grading and backfilling shall leave the site in substantial conformity with the topography of adjoining lands.

(4) **Hours of Operation.**

May 1 to September 30 - 7:00 AM to 9:00 PM
October 1 to April 30 - 7:00 AM to 9:00 PM

- (5) **Nonconforming Excavation and Mining Operations.** In order to qualify as a nonconforming use exempt from the requirement to obtain a Special Permit, an excavation or mining operation must have been actively operated during the one-year period ending on the effective date of this Law. Otherwise, a preexisting facility must obtain a Special Permit.

3.4.4 Rental Units

- (1) All rental units shall have adequate smoke detectors for the size of unit, as recommended by the manufacturer and local fire department.
 - (a) Smoke detectors shall be supplied and maintained by the landlord, according to manufacturers' recommendations.
- (2) All rental units shall be inspected by the Code Enforcement Officer, and the Fire Chief if the Fire Chief so desires, annually.

3.4.5 Residential Cluster Development

- (1) **Authorization.** In accordance with Town Law Section 278, the Planning Board is authorized to grant Special Permits to modify the density requirements set forth in the Building and Mobile Home Permit Law, in the case of Residential Cluster Development in any Residential District.

- (2) **Purpose.** The purpose of such modifications shall be to allow and encourage flexibility of design and development in a manner to promote the most appropriate use of land, and to facilitate economical provision of streets and utilities and to preserve open space.
- (3) **Conditions.**
 - (a) **Residential Land.** This procedure shall be applicable only to lands intended for residential purposes.
 - (b) **Density.** The permitted number of dwellings shall in no case exceed the number of units which could be permitted if the land were subdivided into lots conforming to the minimum lot size and density requirements specified in the Building and Mobile Home Permit Law.
 - (c) **Open Space.** In the event that this procedure results in lands available for open space or recreation uses, such lands shall either be deeded to the Town, or held in corporate ownership by the owners of the lots within the development, and the deeds of all property within the development shall carry a clause giving the lot owners an interest in such open space uses only. Adequate agreements shall be made to provided for the continuing maintenance of such open space and recreation areas.
 - (d) **Site Plan Review.** The proposed site plan, including areas within which structures may be located, the height and spacing of buildings, open spaces, landscaping, parking areas, streets and other physical features as shown or otherwise described in the accompanying statement, shall be reviewed by the Planning Board.

SECTION 4 APPLICATION PROCEDURE

4.1 BUILDING PERMIT

4.1.1 Requirement

- (1) No site preparation or development shall be commenced or occur unless in accordance with a Building Permit.
- (2) No Building Permit shall be issued for premises where there exists a violation of these Regulations, except that one may be issued for the purpose of correcting such violation, provided that any applicable fines or penalties are paid.

4.1.2 Pre-application

An applicant may obtain an application for a Building Permit from the Town Clerk. An applicant may schedule a meeting with the Plan Administrator or the Code Enforcement Officer to discuss the proposed development to clarify procedures or other requirements and to identify possible problems to be overcome. No fee shall be charged for such consultation.

4.1.3 Application Submittal

An application for a Building Permit shall be submitted to the Plan Administrator, together with any required supplemental information. The application shall be deemed complete upon acceptance by both the Plan Administrator and the Code Enforcement Officer as a complete Building Permit application. All materials accepted shall become part of the permanent records of the Plan Administrator.

4.1.4 Review Procedure

- (1) **Review By Plan Administrator.** A completed application shall be reviewed by the Plan Administrator, who shall also inspect the site of the proposed development. The Plan Administrator shall determine whether the proposal would be in full compliance with all relevant provisions of this Law.
- (2) **Review By Code Enforcement Officer.** A completed application shall also be reviewed by the Code Enforcement Officer, who shall determine whether the proposal would be in full compliance with the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and the other laws of the Town.
- (3) **Decision.** Within five (5) days after an application is submitted, the Plan Administrator and the Code Enforcement Officer shall issue or deny a Building Permit, as follows:
 - (a) A Building Permit shall be denied when the proposal is for a use not allowed in the district where the property is located, would otherwise not comply with provisions of this Law, requires a Variance or a Special Permit and such a Variance or Special Permit has not been obtained, or does not comply with the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and/or other laws of the Town. In that case, the Plan Administrator shall mail the applicant a written statement of the reason for rejection, and shall retain one copy in his file.
 - (b) A Building Permit shall be issued when the proposal is for a use allowed in the district in which the property is located and would comply with all relevant requirements in this Law, and, to the extent applicable, the Uniform Code,

the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and the other laws of the Town.

4.1.5 Permit

- (1) **Authorization.** A Building Permit and payment of the applicable fee to the Plan Administrator is authorization for the applicant to start site preparation for the intended development. During the course of the work, the Plan Administrator and the Code Enforcement Officer shall inspect the site to ensure compliance with the Permit.
- (2) **Lapse.** When site preparation has not been begun within ninety (90) days, or has not been completed within one (1) year, of the date of a Building Permit, the Permit shall lapse, and the Plan Administrator shall so notify the applicant. However, the applicant may request an extension for good cause, which the Code Enforcement Officer may allow. The Plan Administrator shall maintain a file of such extensions requested, and his disposition thereof. Failure to complete site preparation and development within one (1) year shall be a violation of this Law.
- (3) **Effect.** The issuance of a Building Permit shall in no case be construed as waiving any provision of this Law, the Uniform Code, or any other law, rule or regulation. Further, issuance of a Building Permit does not constitute any representation, guarantee, or certification of the Town that the applicant's proposal complies with applicable federal, state or local laws, ordinances, rules or regulations, or is functional or safe to use or enter. The issuance of a Building Permit pursuant to the provision of these Regulations shall not be deemed to waive compliance by the Permit holder, the property owner, or by any occupant, with any laws or regulations of the State of New York, or law of the Town of Wayland.

4.2 CERTIFICATE OF OCCUPANCY OR COMPLIANCE

4.2.1 Requirement

Except as specifically otherwise provided by this Law, no building, other structure or land that is erected or altered in its use, or building, other structure, or land shall be used or occupied, until the Code Enforcement Officer shall have issued a Certificate of Occupancy or Certificate of Compliance, in which he states that such land, building, or structure, and the proposed occupancy or use, are found to be in conformity with the provisions of this Law, and that any construction or other work has been completed in conformity with, if applicable, the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and the other laws of the Town.

4.2.2 Issuance

Within three (3) business days after receipt of written notification that a building, other structure or land is ready for occupancy or use, it shall be the duty of the Code Enforcement Officer, or his deputies or agents, to make a final inspection of such building, other structure or land, and issue a Certificate of Occupancy or Certificate of Compliance if the building, structure or land is found to conform with the provisions of this Law, and if applicable, the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and the other laws of the Town.

4.2.3 Refusal

If the Code Enforcement Officer, after such final inspection refuses to issue a Certificate of Occupancy or Certificate of Compliance, such refusal, with the cause, specifying whether refusal is based upon this Law, the Uniform Code, the Flood Damage Prevention Law, the Building and Mobile Home Permit Law, and/or other laws of the Town, shall be stated in writing, and notice of such refusal immediately mailed to the applicant, by certified mail, return receipt requested, at the address indicated on the notification.

4.2.4 Effect

The issuance of a Certificate of Occupancy or Certificate of Compliance shall in no case be construed as waiving any provision of this Law, the Uniform Code, or any other law, rule or regulation. Further, issuance of such a Certificate does not constitute any representation, guarantee, or certification of the Town that the applicant's use, land, building or structure complies with applicable federal, state or local laws, ordinances, rules or regulations, or is functional or safe to use or occupy. The issuance of a Building Permit pursuant to the provision of these Regulations shall not be deemed to waive compliance by the Permit holder, the property owner, or by any occupant, with any laws or regulations of the State of New York, or law of the Town of Wayland.

4.3 SPECIAL PERMIT

4.3.1 Purpose

Special Permit uses designated in this Law are hereby declared to be generally appropriate in the areas in which they are allowed. Nevertheless, their location, design, and site preparation require particular attention in order to prevent or minimize undesirable effects on nearby properties or on the general welfare of the Town. For that reason, such uses shall be allowed only in accordance with a Special Permit.

4.3.2 Requirement

- (1) No site preparation or development shall be commenced or occur for a purpose only allowable by a Special Permit, except in accordance with a Special Permit.
- (2) No Special Permit shall be issued for premises where there exists a violation of these Regulations, except that one may be issued for the purpose of correcting such violation.
- (3) No person shall establish or maintain a junkyard or store junk on any premises within the Town unless a permit has first been issued for such junkyard or junk storage pursuant to this Law, and the premises comply with the Junk Law.

4.3.3 Pre-application. An applicant may obtain an application for a Special Permit from the Plan Administrator, and may seek advice on the proposal, as provided for in Subsection 4.1.2.

4.3.4 Submittal. The application for a Special Permit (including a Site Plan) shall be submitted to the Plan Administrator, together with any required supplemental information. The Plan Administrator shall determine when the information supplied constitutes a complete Special Permit application, and shall promptly transmit a copy of the application to the Planning Board.

4.3.5 Review Process

- (1) **SEQRA.** Promptly after receiving an application for a Special Permit, the Planning Board shall undertake SEQRA review, in accordance with Section 4.8. After completing SEQRA review, the Board shall complete action on the application.
- (2) **Referral to Steuben County Planning Board.** As required by General Municipal Law Section 239-m and Section 4.9 of this Law, a referral shall be made to the Steuben County Planning Board, and a supermajority vote may be required.
- (3) **Hearing.** The Planning Board shall fix a reasonable time for the hearing of any application for a Special Permit, which shall be within thirty-five (35) days from the day the application is received. At the hearing, any party may appear in person or by agent or by attorney.
- (4) **Notice.** The Planning Board shall give public notice of the hearing on an application for a Special Permit, by the publication of a notice of such hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the date of the hearing. Notice of such a hearing shall also be given by personal delivery or mailing, at least ten (10) days prior to the date of the hearing, to all persons, firms or corporations

owning or residing on property adjacent to the property which is the subject of the hearing. "Adjacent property" shall include properties abutting at the centerline of a street or right-of-way. All costs of sending or publishing any notices relating to an application shall be paid by the applicant, and shall be paid to the Board prior to the hearing on the application.

4.3.6 Standards and Findings

A development allowable by Special Permit must be generally compatible with other properties in the vicinity, in terms of overall appearance and external evidence of normal operations. Fences, planting screens, or buffer areas may be used to help meet this standard. Further, such a development must be consistent with protection of public health, safety, and welfare, and the environment, including any nearby aquifer or surface water body. To guide its decision, the Planning Board shall prepare written findings from the record, stating how a proposed development would or would not meet these standards.

4.3.7 Decision and Permit

- (1) **Decision.** The Planning Board shall decide the application for a Special Permit within thirty-five (35) days after the hearing. The concurring vote of a majority of the members of the Planning Board shall be necessary to grant a Special Permit. A Special Permit may only be granted if the Planning Board determines that the development as proposed meets applicable standards stated in Subsection 4.3.6, and other relevant requirements stated in this Law. In its decision, the Planning Board may:
 - (a) decline to grant a Special Permit for the development, stating the reasons for such decision; or
 - (b) grant a Special Permit for the development, stating any modifications or other conditions found by the Board to be reasonable and necessary for the purpose of these Regulations; or
 - (c) grant a Special Permit for the development as proposed in the application.
- (2) **Filing of Decision and Notice.** The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy of such mailed to the applicant. A copy of the appropriate minutes may suffice for this notice. Further, if reference to the Steuben County Planning Board was made, the Planning Board shall file a report as required by Section 239-m(6) of the General Municipal Law and Subsection 4.9.4 of this Law.

- (3) **Building Permit.** Following a decision granting a Special Permit, the Plan Administrator and Code Enforcement Officer shall promptly act upon the applicant's application for a Building Permit, as provided by Section 4.1. Any Building Permit issued shall be subject to any modifications or other conditions imposed by the Planning Board.
- (4) **Recourse.** Any person or persons, jointly or severally aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the Town arising under this Law, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such a proceeding must be instituted within thirty (30) days after the filing of a decision of the Planning Board in the office of the Town Clerk.
- (5) **Repeat Applications.** Whenever the Planning Board, after hearing all the evidence presented upon an application, under provision of this Law, denies or rejects the same, the Board shall refuse to hold further hearings on the same or substantially similar application by the same applicant, their successors or assignees, for a period of one (1) year, unless required by the Town Board.

4.3.8 A Change in Use

- (1) Where a Special Permit has been previously issued, a change in use requires application for a new Special Permit.
- (2) If there is a change in ownership, the new owner must apply to the Plan Administrator for a Special Permit even if there is no change in use. The permit shall be granted automatically by the Plan Administrator, subject to the agreement by the new owner to adhere to the conditions of the Special Permit.

4.4 ADMINISTRATIVE REVIEW

4.4.1 Purpose. An appeal for an Administrative Review may be filed by any aggrieved person in order to obtain:

- (1) An interpretation of a particular provision of these Regulations, or
- (2) Correction of an alleged error in an order, requirement, decision, or determination by the Plan Administrator, or another administrative officer made pursuant to this Law.

4.4.2 Procedure

The procedure for obtaining an administrative review by the Board of Appeals is set forth in Subsection 6.5.4.

4.4.3 Decision

The Board of Appeals shall affirm the determination of the Plan Administrator or other administrative officer unless it shall find the error alleged, or other ground for reversal or modification. In that case, the Board may make such order, requirement, decision or determination as it shall find to be correct, so that the spirit of these Regulations shall be observed, public safety and welfare secured, and substantial justice done. Where an interpretation of a provision of the Regulations was requested, the Board's decision shall provide that interpretation and the reasons for such interpretation. A file of such decisions shall be maintained for reference.

4.5 APPEAL FOR A VARIANCE

4.5.1 Purpose

The Board of Appeals shall have the power, in granting an appellant relief, to vary or modify provisions of this Law, and the Building and Mobile Home Permit Law, relating to the use, construction, or alteration of buildings or other structures, or the use of land, so that the spirit of these Regulations shall be observed, the public safety and welfare secured, and substantial justice done.

4.5.2 Procedure

The procedure for obtaining Variance from the Board of Appeals is set forth in Subsection 6.5.4.

4.5.3 Use Variance *(Added Variance fee charge of *25.00 set by Board Resolution see minutes 11/17/97 pg. 36)*

- (1) **Proof Required.** No such Use Variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that (1) under applicable regulations the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested Use Variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.
- (2) **Minimum Necessary Variance.** The Board of Appeals, in the granting of Use Variances, shall grant the minimum Variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same

time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4.5.4 Area Variance

- (1) **Considerations.** In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the Variance is granted, as weighed against the detriment of the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance; (2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an Area Variance; (3) whether the requested Area Variance is substantial; (4) whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the Area Variance.
- (2) **Minimum Necessary Variance.** The Board of Appeals, in granting an Area Variance, shall grant the minimum Variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4.5.5 Imposition of Conditions

The Board of Appeals shall, in the granting of Use Variances and Area Variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such Variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such Variance may have on the neighborhood or community.

4.5.6 Decision

The Board of Appeals may only grant a Variance if the appellant satisfies the applicable standards set forth in either Subsection 4.5.3 or 4.5.4. The decision of the Board of Appeals shall include written findings from the record, stating how the appropriate standards are or are not met.

4.5.7 Building Permit

Following a decision granting a Variance, the Plan Administrator and Code Enforcement Officer shall promptly act upon the applicant's application for a Building Permit, as provided by Section 4.1. Any Building Permit issued shall be subject to any modifications or other conditions imposed by the Board of Appeals.

4.5.8 Lapse

A Variance authorized by the Board of Appeals that is not exercised within one year from the date of issuance shall expire without further action by the Board.

4.6 AMENDMENTS

4.6.1 Advisory Report by Planning Board

A proposed amendment to this Law, unless initiated by the Planning Board, shall be referred by the Town Board to the Planning Board. It shall report its recommendation to the Town Board, and the reasons for such recommendation, within thirty (30) days or such longer time as may have been agreed upon by it and the Town Board, or the Town Board may act without such report.

4.6.2 SEQRA

Promptly after receiving a proposal for an amendment, the Town Board shall undertake SEQRA review, in accordance with Section 4.8. After completing SEQRA review, the Board shall complete action on the amendment.

4.6.3 Referral to Steuben County Planning Board

As required by General Municipal Law Section 239-m and Section 4.9 of this Law, a referral shall be made to the Steuben County Planning Board, and a supermajority vote may be required.

4.6.4 Municipal Home Rule Law

The procedures governing the adoption of local laws under the Municipal Home Rule Law shall also be applicable to amendments to this Law.

4.6.5 Hearing

The Town Board shall fix a reasonable time for a public hearing on any proposed Amendment to this Law. The hearing shall be duly held and any person may present relevant information

or views pertaining to the proposal, in person or by agent or by attorney. A representative of bodies required to be given notice pursuant to Subsection 4.6.6 may also appear and be heard at the hearing. The minutes of the hearing shall summarize the information received.

4.6.6 Notice

- (1) **Public Notice.** The Town Board shall give public notice of the hearing on the proposed amendment by the publication of a notice of such hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the date of the hearing.
- (2) **Governmental Units.** At least ten (10) days prior to the date of the public hearing, written notice of any proposed amendment affecting property within five hundred (500) feet of the following shall be served personally or by mail upon each person or persons listed below:
 - (a) The property of the housing authority erecting or owning a housing project authorized under the Public Housing Law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance to such agency.
 - (b) The boundary of a village (including the Village of Wayland) or town; upon the clerk of such municipality.
 - (c) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties.
 - (d) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.
- (3) **Costs.** If an amendment is requested by application of the owner, developer, or contractor of the affected property, all costs of sending or publishing any notices relating to an application shall be paid by the applicant, and shall be paid to the Town Board prior to the hearing on the application.

4.6.7 Decision

The Town Board shall make its decision on a proposed amendment within thirty (30) days after the close of the public hearing. Amendments (excluding any map) shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with such change, amendment or supplement. A copy, summary or abstract of such amendment (exclusive of any map) shall be published once in a newspaper of general circulation in the Town, and an affidavit of the publication of such notice shall be filed with

the Town Clerk. Such amendment shall take effect upon filing in the offices of the Town Clerk and the Secretary of State. The Town Clerk shall maintain every map adopted in connection with an amendment to the Area Plan Map. Further, if reference to the Steuben County Planning Board was made, the Town Board shall file a report as required by Section 239-m(6) of the General Municipal Law and Subsection 4.9.4 of this Law.

4.6.8 Protest by Owners

When a protest against a proposed amendment is presented to the Town Board by the owners of twenty percent (20%) or more of the area of either

- (1) the property affected by the amendment; or
- (2) properties immediately adjacent to and extending one hundred (100) feet from such affected property; or
- (3) properties directly opposite such affected property, and extending one hundred (100) feet from the frontage of such directly opposite properties;

then such amendment shall not be enacted except by the affirmative vote of four of the members of the Town Board.

4.6.9 Periodic Review

At least once every five (5) years following their enactment, the Planning Board with the advice of the Board of Appeals and the Plan Administrator shall review these Regulations in their entirety. The Planning Board shall report to the Town Board any amendments it considers desirable. The failure to make such review or report shall not affect the validity of this Law.

4.7 FEES

A fee, as set by resolution of the Town Board, shall be paid to the Plan Administrator with the filing of an application or appeal. No action shall be taken on the matter until the applicable fee has been paid.

4.8 STATE ENVIRONMENTAL QUALITY REVIEW ACT

4.8.1 Policy

In accordance with SEQRA, it is hereby declared to be a policy of the Town that protection and enhancement of the environment be given appropriate weight with social and economic

considerations, and that those factors be considered together in reaching decisions on proposed developments under these Regulations.

4.8.2 Completion of SEQRA Review

Applications for Special Permits, Appeals for Variances, and proposals to amend these Regulations shall be reviewed as provided in SEQRA, to determine whether the proposed action might have a significant effect on the environment, and, if so, how possible adverse effects could be mitigated or prevented. No action shall be taken upon any such proposal until either:

- (1) The proposal is determined to be a Type II action under SEQRA or otherwise exempt from SEQRA review; or
- (2) A negative declaration is filed, as provided by SEQRA; or
- (3) For proposed actions that might have a significant effect on the environment, a final environmental impact statement and SEQRA findings are filed.

4.8.3 Exempt Actions

The following actions under these Regulations are not subject to environmental review under SEQRA:

- (1) Enforcement actions, including issuance of a Notice of Violation, Cease and Desist Order, and Appearance Ticket.
- (2) Ministerial actions, including issuance of a Building Permit or Certificate of Occupancy or Compliance.
- (3) Area Variance from the required minimum size of required yards.
- (4) Agricultural farm management practices, including the construction, maintenance and repair of farm buildings and structures, and land uses consistent with generally accepted practices of farming.
- (5) Special Permits for construction of a non-residential structure or facility involving less than 4,000 square feet of gross floor area, not including communication towers.
- (6) Determination of an appeal for Administrative Review, or a request for clarification of a district boundary.

4.9 REFERRAL TO STEUBEN COUNTY PLANNING BOARD

4.9.1 Requirement

In accordance with the policy and procedures provided for by Section 239-m of the General Municipal Law, and except as may be provided by an agreement approved by the Town Board and the Steuben County Planning Board with respect to matters of local rather than inter-community or county-wide concerns, a full statement shall be referred to the Steuben County Planning Board of any proposed Variance, Special Permit, or Amendment to this Law affecting real property within five hundred (500) feet of:

- (1) The boundary of the Town of Wayland with any adjoining town.
- (2) The boundary of any village, including the Village of Wayland.
- (3) The boundary of any existing or proposed county or state park or other recreational area.
- (4) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
- (5) The existing or proposed right-of-way of any stream, or drainage channel owned by the County for which the County has established channel lines.
- (6) The existing or proposed boundary of any County or State owned land on which a public building or institution is situated.
- (7) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

4.9.2 Failure of County Planning Board to Report

If the Steuben County Planning Board fails to report within thirty (30) days after receipt of a full statement of such referred matter, the board considering such Variance, Special Permit or Amendment may act without such report.

4.9.3 Supermajority Requirement

If a report from the Steuben County Planning Board which recommends modification or disapproval of the proposed action is received by the board considering such Variance, Special Permit or Amendment, either within thirty (30) days of receipt of a full statement of such referred matter by the Steuben County Planning Board, or at least two (2) days prior to

final action by the board, such board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members of the board.

4.9.4 Report to the Steuben County Planning Board

Within thirty (30) days after the board makes a decision on such Variance, Special Permit or Amendment, such board shall file a report of the final action it has taken with the Steuben County Planning Board. If such board acts contrary to a recommendation of modification or disapproval by the Steuben County Planning Board, it shall set forth the reasons for such contrary action in such report.

SECTION 5 CONTENT OF APPLICATION

5.1 GENERAL PROVISIONS

5.1.1 Forms

An applicant or appellant may obtain the proper forms from the Plan Administrator or Code Enforcement Officer. Such forms and supplemental information, identified in this Section 5.1 or specified by such officers, are hereby declared to provide the minimum information necessary for the purposes of these Regulations.

5.1.2 Additional Information Requested

An applicant or appellant shall provide appropriate information, such as a plot plan, scaled drawings, and/or sketches and descriptions of the property, showing existing and proposed conditions. The Plan Administrator and Code Enforcement Officer in each case shall specify the types of information and level of detail for a complete application. Such determination shall be subject to Administrative Review.

5.1.3 Additional Information From Applicant

An applicant or appellant who contends that the specified information would present an inaccurate picture of the matter may provide any desired additional documentation, which shall be part of the record.

5.2 BUILDING PERMIT

5.2.1 Form

The application form shall provide spaces for an application number and the date accepted, and shall present the following information:

- (1) Name, postal address, and telephone number of the owner of record of the property; and of the applicant, if different; the applicant's legal relationship to the owner;
- (2) If the owner or applicant is a partnership, limited liability partnership, limited liability company, corporation, or joint venture, the name and address of each partner, member, officer, director, and/or director, to the extent applicable;
- (3) Tax map identification (map sheet, block and parcel numbers), fire number, and street or road number of the property;
- (4) Present use or uses of the property;
- (5) Proposed Allowable Use if listed in Section 2.2, or other proposed use or uses if not listed in Section 2.2;
- (6) Brief description of work or change proposed to be undertaken; and
- (7) Layout or plot plan showing actual dimensions of any building or structure (including any mobile home) to be erected or placed on the lot.

5.2.2 Supplemental Information

An application also shall include enough information describing the proposal so as to allow the Plan Administrator to determine its compliance with these Regulations, including one or more clear drawings at a scale that shall show all necessary details, including any applicable items listed in Subsection 5.3.

5.3 SPECIAL PERMIT

5.3.1 Form

The application form shall provide spaces for an application number and the date accepted, and shall present the information specified in Subsection 5.2.1.

5.3.2 Supplemental Information

An application for a Special Permit shall also include:

- (1) **Drawings and Appropriate Information.** Drawings and other appropriate information describing the proposal in sufficient detail so that the Planning Board can prepare the findings required by Subsection 4.3.6.
- (2) **Site Plan.** Applications for a Special Permit must include a Site Plan. The Site Plan shall be drawn to scale, indicating all dimensions, and display the following:
 - (a) **Existing Conditions.** The following existing features shall be included:
 - (i) property lines, rights-of-way, easements; roads, and road names;
 - (ii) lot area and dimensions;
 - (iii) name of owners of adjoining properties; location and dimensions of required front, rear, and side yards;
 - (iv) identification, location and dimensions of all existing buildings and other structures, including fences;
 - (v) location, dimensions, and surfacing of all existing drives and parking areas;
 - (vi) height above or below road level;
 - (vii) location and description of existing wells, abandoned open wells, other water supplies, and sewerage facilities on the property, or within 150 feet on other properties;
 - (viii) identification of all utility lines on or adjacent to the property;
 - (ix) lakes, ponds, streams, ditches, culverts, wetlands, floodplains, and other water bodies on or adjacent to the property and direction of flow;
 - (x) all junk storage areas for commercial, agricultural or industrial use;
 - (xi) all existing and proposed accessways, and parking and loading areas; and
 - (xii) topographic contours (lay of the land).

- (b) **Proposal.** The Site Plan shall detail changes to any of the above features; identification, location and dimensions of all proposed buildings and other structures, including fences, drives and parking/loading areas, signs, exterior lighting fixtures, drainage, utilities; and, landscaping, grading and erosion control plans wherever required pursuant to Section 3.3; and a storm drainage and grading plan regarding proposed handling of surface water runoff and erosion control.
- (3) **Additional Information.** Such other information as the applicant may consider relevant, or as may be required by the Planning Board.
- (4) **EAF.** Unless the application is exempt from SEQRA, an appropriate EAF shall be submitted, with Part I duly completed (unless a draft environmental impact statement is filed).

5.3.3 Grounds for Special Permit

The application shall also set forth the grounds for a Special Permit, with reference to the applicable standards under Subsection 4.3.6.

5.4 CERTIFICATE OF OCCUPANCY OR COMPLIANCE

An application submitted for a Building Permit shall serve also as the application for a Certificate of Occupancy or Certificate of Compliance, and the information provided on such application shall enable the Code Enforcement Officer to determine whether all site preparation has been completed properly.

5.5 ADMINISTRATIVE REVIEW

5.5.1 Form

The form for a notice of appeal shall provide spaces for an application number and the date accepted, and shall present the following information:

- (1) Name, postal address, and telephone number of the owner of record of the property; and of the applicant, if different; the applicant's legal relationship to the owner; and
- (2) Tax map identification (map sheet, block and parcel numbers), fire number, and street or road number of the property.

5.5.2 Grounds for Appeal

The notice of appeal shall also identify the order, requirement, decision or determination of the Plan Administrator or other administrative officer from which the appeal is taken, and the error alleged; or, the specific provision of the Regulations for which the appellant seeks an interpretation.

5.6 VARIANCE

5.6.1 Form

The form for an application for a Variance shall provide spaces for an application number and the date accepted, and shall present the information specified in Subsection 5.2.1.

5.6.2 Supplemental Information

An application for a Variance shall also include:

- (1) Whether a Use or Area Variance is sought;
- (2) Identification of the restriction or regulation from which a Variance is sought, including the section of this Law that imposes such restriction; and
- (3) Extent or nature of the Variance sought.

5.6.3 Grounds for Variance

The application shall set forth the grounds for a Variance, with reference to the applicable standards under either Subsection 4.5.3 or 4.5.4, as applicable.

5.6.4 Site Plan

The Plan Administrator or the Board of Appeals may also require a Site Plan, and may require that it satisfy the requirements of Subsection 5.3.2(2).

5.6.5 EAF

Unless the application is exempt from SEQRA, an appropriate EAF shall be submitted, with Part I duly completed (unless a draft environmental impact statement is filed).

SECTION 6
DUTIES AND POWERS OF TOWN OFFICERS

6.1 TOWN BOARD

The Town Board has the responsibility of appointing the Plan Administrator, Code Enforcement Officer, Planning Board, and Board of Appeals, and reviewing monthly reports of the Plan Administrator and Code Enforcement Officer. The Town Board shall also have the power to amend and review this Law, as provided by Section 4.6.

6.2 PLAN ADMINISTRATOR

6.2.1 Appointment

The Town Board shall appoint a Plan Administrator, who may be a member of the Planning Board, but not a member of the Board of Appeals, to administer and enforce these Regulations. He shall serve at the pleasure of the Town Board.

6.2.2 General Duties

The Plan Administrator shall administer these Regulations, and shall have such powers as are set by the Town Board, and as may be reasonably implied.

6.2.3 Specific Duties

The Plan Administrator shall have the following particular powers and duties:

- (1) Explain the Regulations set forth in this Law to the public.
- (2) Review all applications or appeals before permits are issued, as provided for in this Law.
- (3) Review Site Plans before being presented to the Planning Board.
- (4) Record decisions and submit a monthly report to the Town Board.

6.3 CODE ENFORCEMENT OFFICER

6.3.1 Appointment

Pursuant to the Uniform Code Enforcement Law (Local Law No. 1 of 1985), the Town Board shall appoint a Code Enforcement Officer to inspect the construction and repair of

buildings and structures, and enforce the provisions of the New York State Uniform Fire Prevention and Building Code, and other applicable laws, and, where applicable, these Regulations. He shall serve at the pleasure of the Town Board. The Plan Administrator and the Code Enforcement Officer may be the same person, if qualified.

6.3.2 Duties

The Code Enforcement Officer shall have such powers as are conferred upon him by the Town Board, including the powers set forth in the Uniform Code Enforcement Law, and as may reasonably be implied. For the purpose of these Regulations, the Code Enforcement Officer shall have the following duties:

- (1) To issue Building Permits after approval of Plan Administrator and/or Planning Board in compliance with the provisions of these Regulations;
- (2) Upon finding that any provision of these Regulations is being violated, to notify in writing the person responsible for such violation and the action necessary to correct said violation;
- (3) To order discontinuance of illegal uses of land, buildings, or structures;
- (4) To order removal of illegal buildings or structures, or illegal additions or structural alterations;
- (5) To order discontinuance of any illegal work being done;
- (6) To take any other action authorized by the Plan Administrator, Planning Board, or Board of Appeals to assure compliance with or prevent violations of these Regulations;
- (7) To issue permits which do not interfere with this Law or other laws;
- (8) To submit a written monthly report to the Plan Administrator describing and enumerating actions taken and permits issued under these Regulations so it can be incorporated into the plan Administrator's monthly report to the Town Board.

6.4 THE PLANNING BOARD

6.4.1 Continuation

The Planning Board created by Local Law No. 1 of 1996 shall continue in existence, with the terms of office already established.

6.4.2 Appointment

The members of the Planning Board shall be appointed by the Town Board, subject to the provisions of this Subsection 6.4.2.

- (1) **Terms.** The Planning Board shall consist of five (5) persons appointed by resolution of the Town Board. The terms of members of the Planning Board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. No person shall be disqualified from serving as a member of the Planning Board by reason of serving as a member of the Steuben County Planning Board or the Village of Wayland Planning Board. Members may be appointed to successive terms.
- (2) **Agricultural Members.** At least two of the members of the Planning Board shall be an agricultural member, as provided by Town Law Section 271(11). Each such agricultural member must derive ten thousand dollars or more annual gross income from agricultural pursuits in the Town of Wayland.
- (3) **Chairperson.** The Town Board shall, by resolution, designate the Chairperson of the Planning Board. In the absence of a Chairperson the Planning Board may designate a member to serve as Chairperson.
- (4) **Removal.** The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training.
- (5) **Vacancies.** If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

6.4.3 Powers

The Planning Board shall have the following powers:

- (1) **Permits.** The Planning Board shall consider and act upon applications for Special Permits, as provided in Section 4.3, and permits under the Junk Law.
- (2) **Comprehensive Plan.** The Town Board may, by resolution, direct the Planning Board to revise the Comprehensive Plan, or prepare an amendment to such plan. In such event, the Planning Board shall hold one or more public hearings and such other meetings as it deems necessary to assure full opportunity for citizen participation in the preparation of such plan or amendment, and after such hearings and meetings shall, by resolution, recommend a proposed plan or amendment to the Town Board

for action, pursuant to Town Law Section 272-a. Notice of such a public hearing shall be published in a newspaper of general circulation in the Town at least ten (10) days in advance of the hearing. The proposed comprehensive plan or amendment shall be made available for public review during such period in the office of the Town Clerk and may be made available at any other place, including a public library.

- (3) **Recommendations to Establish Regulations.** The Planning Board may recommend regulations to the Town Board relating to any subject matter over which it has jurisdiction under Article 16 of the Town Law or any other statute, or under any local law or ordinance of the Town of Wayland. Adoption of any such recommendations by the Town Board shall be by local law or ordinance.
- (4) **Amendments.** The Planning Board shall submit its recommendation to the Town Board regarding each proposed amendment of these Regulations.
- (5) **Periodic Review.** The Planning Board shall, at least every five years, review these Regulations in their entirety in order to identify any desirable changes, and shall recommend the same to the Town Board.
- (6) **Referrals From the Town Board.** The Town Board may by resolution provide for the reference of any other matter or class of matters, to the Planning Board before final action is taken on such matters by the Town Board or such other office or officer of the Town of Wayland having final authority over such matter. The Town Board may further stipulate that final action shall not be taken until the Planning Board has submitted its report on such matters, or has had a reasonable time, to be fixed by the Town Board in such resolution, to submit the report.
- (7) **Other Matters.** The Planning Board may make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the Town of Wayland as to the Planning Board seems desirable, providing the total expenditures of the board shall not exceed the appropriation provided for by the Town Board.
- (8) **Rules and Regulations.** The Planning Board may establish rules and procedures governing its operations, provided they are consistent with this Law and the Town Law.
- (9) **Expenditures.** The Planning Board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made for such items for the Planning Board by the Town Board.

6.4.4 General Procedures

- (1) **Meetings.** All meetings of the Planning Board shall be held at the call of the Chairperson and at such other times as such board may determine. The concurring vote of a majority of the members of the board shall be necessary for the Planning Board to act. Meetings of the Planning Board shall be open to the public to the extent provided in Article Seven of the Public Officers Law.
- (2) **Oaths.** The Chairperson, or in absence of the Chairperson, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
- (3) **Minutes and Records.** The Planning Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- (4) **Filing.** Every rule, regulation, every amendment or repeal of rules or regulations, and every order, requirement, decision or determination of the Board shall be filed immediately in the office of the Town Clerk, and shall be a public record.
- (5) **Attendance and Training.** Any Planning Board member who is absent, without excuse, for more than two consecutive meetings of the board shall be subject to removal for failure to attain minimum attendance requirements. All Planning Board members shall complete such training requirements, including seminars, conferences, videotapes, audiotapes, or reading, as may be prescribed by the Town Board.
- (6) **SEQRA.** The Planning Board shall comply with the provisions of SEQRA.

6.5 BOARD OF APPEALS

6.5.1 Appointment

The members of the Board of Appeals shall be appointed by the Town Board, subject to the provisions of this Subsection 6.5.1.

- (1) **Appointment.** The Town Board shall appoint five (5) persons to be members of a Board of Appeals. The original term of appointment of each member shall be specified, and such appointments shall be as follows: one for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years. Thereafter, each appointment shall be for a term of five (5) years, except that an appointment to fill a vacancy shall be for the balance of that term. Members may be appointed to successive terms.

- (2) **Chairperson.** The Town Board shall, by resolution, designate the Chairperson of the Board of Appeals. In the absence of a Chairperson the Planning Board may designate a member to serve as Chairperson.
- (3) **Removal.** The Town Board shall have the power to remove, after public hearing, any member of the Board of Appeals for cause. Any Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training.
- (4) **Vacancies.** If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

6.5.2 Powers

The Board of Appeals shall have the following powers:

- (1) **Jurisdiction.** The jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Plan Administrator, or the Code Enforcement Officer under this Law. In exercising its appellate powers, such Board of Appeals may, in conformity with the provisions of this Law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the matter by the Plan Administrator or other administrative officer, and to that end shall have the powers of the officer from whom the appeal is taken. The Board of Appeals shall have no jurisdiction over any order, requirement, decision or determination made by Code Enforcement Officer or other administrative officer relating to the Uniform Code, which shall only be reviewable as provided by the Uniform Code Enforcement Law and the Uniform Code.
- (2) **Administrative Review.** The Board of Appeals shall have the power to hear and decide appeals from and review any order, requirement, decision or determination made by the Plan Administrator, the Code Enforcement Officer, or other administrative officer carrying out or enforcing any provision of this Law, the Flood Damage Prevention Law, and the Building and Mobile Home Permit Law.
- (3) **Use Variances.** The Board of Appeals, on appeal from the decision or determination of the Plan Administrator, shall have the power to grant Use Variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this Law, the Flood Damage Prevention Law, and the Building and Mobile Home Permit Law.

- (4) **Area Variances.** The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Plan Administrator, to grant Area Variances from the area or dimensional requirements of this Law, the Flood Damage Prevention Law, and the Building and Mobile Home Permit Law.
- (5) **Rules and Procedures.** The Board may establish its own rules and procedures, provided they are consistent with this Law and the Town Law of the State of New York.
- (6) **Assistance.** The Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance.

6.5.3 General Procedures

- (1) **Meetings.** All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. All meetings of such Board shall be open to the public to the extent provided in Article Seven of the Public Officers Law.
- (2) **Oaths.** The Chairperson, or in absence of the Chairperson, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
- (3) **Minutes and Records.** The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- (4) **Filing.** Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board shall be filed immediately in the office of the Town Clerk and shall be a public record.
- (5) **Attendance and Training.** Any Board of Appeals member who is absent, without excuse, for more than two consecutive meetings of the board shall be subject to removal for failure to attain minimum attendance requirements. All Board of Appeals members shall complete such training requirements, including seminars, conferences, videotapes, audiotapes, or reading, as may be prescribed by the Town Board.
- (6) **SEQRA.** The Board of Appeals shall comply with the provisions of SEQRA, in accordance with Section 4.8.

6.5.4 Procedures for Appeals

- (1) **Notice of Appeal.** An appeal to the Board of Appeals, including an application for a Variance, or an application for Administrative Review, may be taken by any person, firm or corporation aggrieved, or by any government officer, department, board or bureau of the Town affected by any decision of the Plan Administrator based in whole or in part upon the provisions of this Law. Such appeal shall be taken by filing with the Board of Appeals a notice of appeal specifying the grounds thereof, and furnishing a copy of the notice of appeal to the Planning Board. The Plan Administrator shall forthwith transmit all papers constituting the record upon which the action appealed from was taken to the Board of Appeals.
- (2) **Time of Appeal.** Any appeal, including an application for a Variance or for an administrative review, shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Plan Administrator by filing with such administrative officer and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought.
- (3) **Stay of Proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Plan Administrator or other administrative officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Plan Administrator and on due cause shown.
- (4) **SEQRA.** Promptly after receiving an application for a Variance, the Board of Appeals shall undertake SEQRA review, in accordance with Section 4.8. After completing SEQRA review, the Board shall complete action on the application or appeal.
- (5) **Referral to Steuben County Planning Board.** As required by General Municipal Law Section 239-m and Section 4.9, a referral shall be made to the Steuben County Planning Board, and a supermajority vote may be required.
- (6) **Hearing.** The Board of Appeals shall fix a reasonable time for the hearing of any appeal, including an application for a Variance or administrative review, which shall be within sixty (60) days from the day the application or appeal is received. At the hearing, any party may appear in person or by agent or by attorney.
- (7) **Notice.** The Board of Appeals shall give public notice of the hearing on an appeal or other matter referred to it, including a hearing upon an application for a Variance or

administrative review, by the publication of a notice of such hearing in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. Further, the Board of Appeals shall, at least five (5) days before such hearing, mail notice thereof to the applicant or appellant. Notice of such a hearing shall also be given by personal delivery or mailing, at least five (5) days prior to the date of the hearing, to all persons, firms or corporations owning or residing on the property which is the subject of the hearing, or the any adjacent property. "Adjacent property" shall include properties abutting at the centerline of a street or right-of-way. All costs of sending or publishing any notices relating to an appeal shall be paid by the applicant, and shall be paid to the Board prior to the hearing of such appeal.

- (8) **Decision.** Upon the hearing, any party may appear in person or by agent or by attorney, and the Board of Appeals shall decide the application for a Variance or administrative review within sixty-two (62) days after the hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant or appellant and the Board. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Plan Administrator, to grant a Use Variance or Area Variance, or to decide in favor of an applicant or appellant.
- (9) **Filing of Decision and Notice.** The decision of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy of such mailed to the applicant. A copy of the appropriate minutes may suffice for this notice. Further, if reference to the Steuben County Planning Board was made, the Board of Appeals shall file a report as required by Section 239-m(6) of the General Municipal Law and Subsection 4.9.4.
- (10) **Recourse.** Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the Town arising under this Law, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such a proceeding must be instituted within thirty (30) days after the filing of a decision of the Board of Appeals in the office of the Town Clerk.
- (11) **Repeat Applications.** Whenever the Board of Appeals, after hearing all the evidence presented upon an application for appeal, under provision of this Law, denies or rejects the same, the Board shall refuse to hold further hearings on the same or substantially similar application or appeal by the same applicant, their successors or assignees, for a period of one (1) year, unless required by the Town Board.

SECTION 7 MEANING OF TERMS

7.1 CUSTOMARY USAGE

Terms used in these Regulations shall have their customarily recognized meanings, except as otherwise stated in this Law.

7.2 INTERPRETING CERTAIN TERMS

The following terms shall be interpreted as stated, unless the context clearly indicates otherwise:

- (1) The word "shall" designates a mandatory and not optional action or condition, while "may" is permissive.
- (2) The word "person" includes an individual, a firm, group of individuals, association, organization, partnership, trust, company, corporation, local government, public authority, or government agency .
- (3) The present tense shall include the future, the singular number shall include the plural and the plural the singular, and the use of one gender all other genders.
- (4) The words "used" or "occupied" include the words "intended," "designed," "constructed," "altered," "converted," "rented," "leased," or "arranged to be used or occupied."

7.3 DEFINITIONS

The following terms are defined as stated.

ACCESSORY USE. Use of land, building, or other structure on the same lot as, and of a nature customarily and clearly incidental and subordinate to, the principal use. (See also **PRINCIPAL USE.**)

AGRICULTURAL PURSUIT or USE. Operation of a farm.

ALTERATIONS. As applied to a building or structure, the change or rearrangement in the supporting members of a building or structure such as bearing walls, columns, beams or girders or in the exit facilities, an enlargement of a building or structure, whether by extending on a side or by increasing in height, the moving from one location or position to another, any alteration by which a structure is adapted to another or different use.

APPELLANT. Owner of property appealing a decision made by the Plan Administrator, Code Enforcement Officer or Planning Board before the Board of Appeals.

APPLICANT. A property owner, or his duly authorize representative, who intends to undertake a development subject to these Regulations.

AREA. One of the areas or districts into which the Town is divided for the purposes of these Regulations.

AQUIFER. The water-saturated subsurface geologic formations which can yield amounts of water to wells or springs and which now or subsequently may be developed for use as a public water supply source.

AUTOMOBILE JUNKYARD. As defined in Local Law No 2 of 1995.

BOARD OF APPEALS. The Board of Appeals of the Town of Wayland, created by this Law, pursuant to Town Law Section 267.

BUFFER AREA. Strips of land covered with grass, vegetation, trees, embankments or berm (excluding any habitable area and intended to provide a neutral land use between other land uses).

BUILDING. Any structure having a roof, used to shelter or enclose persons, animals, or chattel.

BUILDING AND MOBILE HOME PERMIT LAW. Town of Wayland Local Law No. 2 of 1995, providing for regulation of buildings, lots, manufactured homes, mobile homes, and mobile home parks.

CEASE AND DESIST ORDER. An order to stop an illegal action or activity issued by the Plan Administrator or Code Enforcement Officer.

CERTIFICATE OF OCCUPANCY OR COMPLIANCE. A certificate issued by the Code Enforcement Officer stating premises are ready for occupancy or have met applicable requirements under the New York State Building and Fire Prevention Code and this Law.

CLUSTER DEVELOPMENT. A development of residential lots, each containing less than the minimum lot required for the area within which such development occurs, but maintaining the density limitations imposed by the minimum lot area requirement through the provision of open space as part of the subdivision plan.

CODE ENFORCEMENT OFFICER. A person appointed by the Town Board to enforce the Uniform Code, the Building and Mobile Home Permit Law, and any other duties designated.

COMMUNICATIONS TRANSMITTER. A device for transmission of television, radio, cellular telephone, or telephone signals, or other forms of electromagnetic communication, including all associated towers and other structures.

COMPREHENSIVE PLAN. The Comprehensive Plan prepared by the Town of Wayland Planning Board, and adopted by the Wayland Town Board on June 6, 1996.

CONSTRUCTION AND DEMOLITION DEBRIS LANDFILL (COMMERCIAL & INDUSTRIAL). A site used for the deposit of wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, paving material and tree and brush stumps.

COUNTY. The County of Steuben.

CRITICAL ENVIRONMENTAL AREA (CEA). A specific geographical area designated by a local or state agency, pursuant to SEQRA, which having exceptional or unique environmental characteristics.

DEVELOPMENT. Making use of previously unused or vacant premises or land, or converting premises or land from one use to another, including but not limited to the construction, reconstruction or alteration of buildings and/or structures, excavation, dredging, filling, and/or grading of land. (See also **SITE PREPARATION.**)

DWELLING. A building containing one or more dwelling units.

EAF. An "Environmental Assessment Form," as specified by SEQRA, at 6 N.Y.C.R.R. Section 617.20.

ENVIRONMENTAL IMPACT STATEMENT. A written evaluation prepared by a permit applicant which provides a description of a proposed project or development and a detailed analysis of its environmental effects, as defined in SEQRA.

EXCAVATION. A parcel of land used for the purpose of extracting or mining stone, sand, gravel, top soil, oil, gas or other natural or energy resources for sale as an industrial or commercial commodity by a commercial or industrial enterprise.

FARM. A farm operation, as defined in Section 301 of the Agriculture and Markets Law.

FENCE. A structure of wood, masonry, wire mesh or other material which prohibits or inhibits unrestricted travel or view between properties or portions of properties or between the street or public right-of-way and a property, artificially erected for the purpose of assuring privacy or protection.

FERTILIZER. Any commercially produced mixture generally containing phosphorus, nitrogen, and potassium, which is applied to the ground to increase nutrients to plants.

FLOOD DAMAGE PREVENTION LAW. Town of Wayland Local Law No. 1 of 1991, providing for Flood Damage Prevention.

GARAGE, PRIVATE. An accessory building for the storage of one or more motor vehicles.

GROUNDWATER. Any water beneath the land surface in the saturated zone that is under atmospheric or artisan pressure, and that enters wells and springs.

HAZARDOUS WASTE. Any hazardous waste, as defined by 6 N.Y.C.R.R. Parts 370 through 375.

HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITY. Any hazardous waste treatment, storage or disposal facility, as defined by 6 N.Y.C.R.R. Parts 370 through 375.

JUNK. Defined in the Junk Law, Local Law No. 2 of 1995.

JUNK LAW. Town of Wayland Local Law No. 2 of 1995, providing for regulation of Junk and Junkyards.

JUNKYARD. Defined in the Junk Law, Local Law No.2 of 1995.

LANDFILL. Any area used for dumping other than for personal use by the property owner.

LANDLORD. Person who collects money for use of a Rental Unit.

LOCAL LAW. A local law enacted by the Town of Wayland, pursuant to the Municipal Home Rule Local Law, or any such law that may be enacted in the future.

LOT. Defined in the Building and Mobile Home Permit Law, Local Law No. 2 of 1995.

MOBILE HOME. Defined in the Building and Mobile Home Permit Law, Local Law No. 2 of 1995.

MOBILE HOME PARK. Defined in the Building and Mobile Home Permit Law, Local Law No. 2 of 1995.

NON-CONFORMING BUILDING, STRUCTURE, LOT or USE. A building, other structure, lot, use, or characteristic of a use, lawfully existing on the effective date of this Law (or any applicable amendment), but not in conformity with one or more of the requirements in this Law.

PLAN ADMINISTRATOR. Person appointed by the Town Board to enforce this Law, and any other duties designated.

PLANNING BOARD. The Planning Board of the Town of Wayland, originally created by Town of Wayland Local Law No. 1 of 1996, pursuant to Town Law Section 271.

PRINCIPAL USE. The primary or dominant use of premises. (See also **ACCESSORY USE.**)

PUBLIC WATER SUPPLY. A source of drinking water for five (5) or more lots, and/or any water supply regulated by the New York State Department of Health as a public water supply, pursuant to 10 N.Y.C.R.R. Subpart 5-1.1.

RENTAL UNIT. A house, apartment, mobile home, motel room, or any other dwelling let out for monetary compensation.

ROAD. A way for vehicular use by the general public that is the principal means of access to abutting lots; may be designated as a road, highway, street, or lane, or by another name.

The following are related terms:

PRIVATE ROAD. A road owned and maintained by the owners of the abutting lots individually, or an association of such owners, or a single lot owner.

PUBLIC ROAD. A road maintained by the Town, County, State, or other government body, including a town highway, county road, or state highway.

ROAD RIGHT-OF-WAY LINE. Line marking the legal limit of the road rights of the general public, marking an existing or proposed right-of-way. (See also **LOT FRONTAGE.**)

SEQRA. The State Environmental Quality Review Act, as set forth in New York State Environmental Conservation Law Article 8, and its implementing regulations, set forth at 6 N.Y.C.R.R. Part 617.

SEWAGE. Any liquid or solid waste matter from a domestic, commercial, private or industrial establishment which is normally carried off in sewers or waste pipes, as regulated by New York State Health Department.

SEWAGE DISPOSAL SYSTEM. Any system used for disposing of sewage, including treatment works as regulated by New York State Health Department.

SITE PREPARATION. Altering premises or land so as to accommodate development; includes cutting and planting trees and other plants; grubbing, grading, filling, excavating, paving; and

constructing, altering and demolishing buildings and other structures. Also includes septic system and development of water supply, if included in the Site Plan. (See also **DEVELOPMENT**.)

SLUDGE. Any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. Sludge does not include the treatment effluent from a waste water treatment plant.

SOLID WASTE. Any solid waste, as defined by 6 N.Y.C.R.R. Part 360.

SOLID WASTE LANDFILL, TRANSFER STATION OR MANAGEMENT FACILITY. Any solid waste landfill, transfer station or management facility, as defined by 6 N.Y.C.R.R. Part 360.

SPECIAL PERMIT. The temporary, final and new operation permits issued by the Town of Wayland, or its officers or duly appointed representatives pursuant to compliance with these Regulations.

SPECIAL USE MOTOR VEHICLE. Defined in the Junk Law, Local Law No. 2 of 1995.

SPECIFIED ANATOMICAL AREAS. Genitals, the breast below the top of the areola, pubic areas, or buttocks.

SPECIFIED SEXUAL ACTIVITIES. Any of the following: (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (b) sex acts, actual or simulated, including sexual intercourse and oral copulation; (c) masturbation, actual or simulated; and (d) excretory functions as part of or in connection with any of the activities specified in (a), (b) or (c).

STATE. The State of New York.

STORAGE OF TOXIC SUBSTANCES. The storage of virgin or waste chemicals substances, including petroleum products above or below the surface of the ground.

STORMWATER RUNOFF. The natural and existing flow of overland runoff and excess water.

STRUCTURE. Anything constructed or erected and designed to be used at a fixed location on the ground, or attached to something having a fixed location on the ground; including buildings, commercial gas or liquid storage tanks, towers, mobile homes, skid-mounted accessory buildings, storage buildings, anything permanently placed on a foundation, walls, fences, billboards and poster panels.

TENANT. Person who pays for the use of a Rental Unit.

TOWN. The Town of Wayland.

TOWN BOARD. The governing body of the Town of Wayland.

TOXIC SUBSTANCE. Any toxic substance, as defined by Subdivision 2 of Section 4801 of the New York State Public Health Law.

TREATMENT WORKS. Any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, construction drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other works not specifically mentioned in this paragraph, installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage.

UNIFORM CODE. The New York State Uniform Fire Prevention and Building Code.

UNIFORM CODE ENFORCEMENT LAW. Town of Wayland Local Law No. 1 of 1985, providing for Administration and Enforcement of the Uniform Code.

UTILITY, PUBLIC. An industry regulated by the New York State Public Service Commission, the Federal Communications Commission, or other government organization, as a public service, including gas, electric, telephone, cellular telephone, cable television, water, and sewer companies and authorities.

UTILITY FACILITIES. Facilities, including electric substations, gas area governor stations, telephone exchanges or other installations, storage facilities, repair shops, power or gas generation stations or plants, communications transmitters, public water supplies, treatment works, and utility transmission lines, for services which are operated by a public utility for purposes of supplying utility services, but not including business offices.

UTILITY DISTRIBUTION LINES. Facilities for the distribution of services by public utilities, including telephone, electric and cable television transmission lines, and water and sewer pipes, necessary for providing service to structures within the Town.

VARIANCE, USE. The authorization by the Board of Appeals for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by this Law.

VARIANCE, AREA. The authorization by the Board of Appeals for the use of land in a manner which is not allowed by the dimensional or topographical requirements of this Law.

VIOLATION. The failure to comply with or conform to the provisions of these Regulations.

WELL. An underground structure used to supply groundwater.

WELL LOG. A diary of well drilling and testing.

YARD. Defined in Local Law No. 4 of 1995, the Building and Mobile Home Permit Law..

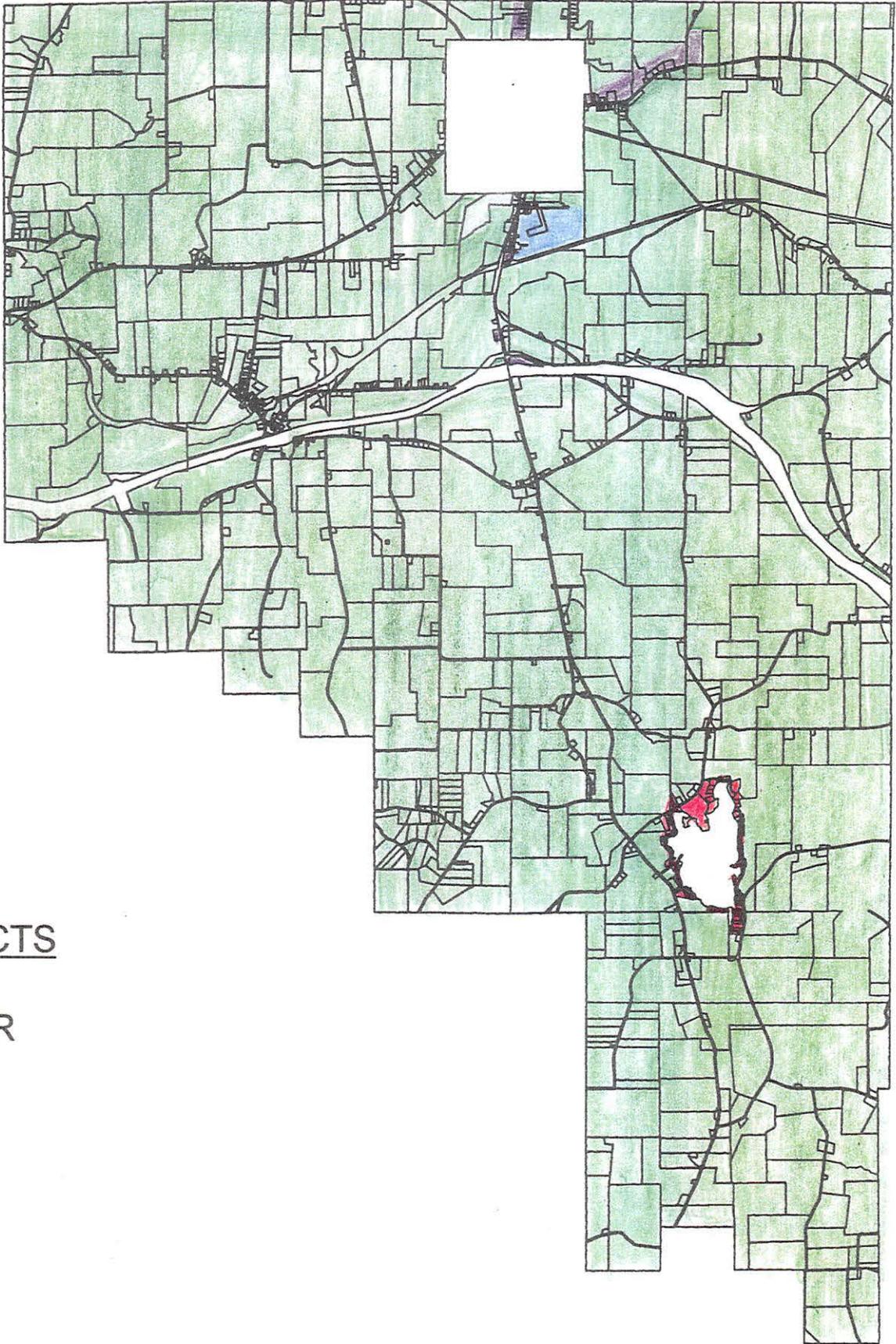
**SECTION 8
SEVERABILITY**

If any clause, sentence, paragraph, section or article of this Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Law, but shall be confined in its operation to the clause, sentence, paragraph, section or article directly involved in the controversy in which such judgment shall have been rendered.

**SECTION 9
EFFECTIVE DATE**

This Law shall be effective upon filing with the Secretary of State and the Town Clerk:

TOWN OF WAYLAND



DISTRICTS

 AG-R

 AQ

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(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 1997 of the ~~(County)~~ ~~(City)~~ ~~(Town)~~ ~~(Village)~~ of Wayland was duly passed by the TOWN BOARD on August 18 1997, in accordance with applicable provisions of law.

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____ on _____ 19____, and was (approved) (not disapproved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19____ in accordance with applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the ~~(County)~~ ~~(City)~~ ~~(Town)~~ ~~(Village)~~ of _____ was duly passed by the _____ on _____ 19____ and was (approved) (not disapproved) (repassed after disapproval) by the _____ on _____ 19____. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 19____ in accordance with applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the ~~(County)~~ ~~(City)~~ ~~(Town)~~ ~~(Village)~~ of _____ was duly passed by the _____ on _____ 19____, and was (approved) (not disapproved) (repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to a permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____ in accordance with applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws and ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____ 19____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the County of _____; State of New York, having been submitted to the electors at the General Election of November _____ 19____ pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ 1____, above.

Beverly J. Robinson
Beverly Robinson
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: 9-8-1997

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF _____ STEUBEN _____

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

James H. Burns
Signature JAMES H. BURNS

ATTORNEY FOR THE TOWN
Title

County
City
Town of Wayland
Village

Date: September 3, 1997