REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF NEW HARTFORD, NEW YORK
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN
ON WEDNESDAY, JUNE 12, 2013 AT 7:00 P.M.

Town Supervisor Patrick Tyksinski called the meeting to order at 7:00 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting.

TOWN BOARD MEMBERS PRESENT:

Councilman Donald C. Backman
Councilman Paul A. Miscione
Councilman David M. Reynolds
Councilman Richard B. Woodland, Jr.
Supervisor Patrick M. Tyksinski

OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:

Codes Enforcement Officer Joseph A. Booth
Deputy Supervisor Matthew Bohn III
Finance Director Daniel Dreimiller
Highway/Sewer Superintendent Richard C. Sherman
Parks & Recreation Director Michael W. Jeffery
Police Chief Michael Inserra
Town Attorney Herbert J. Cully
Town Clerk Gail Wolanin Young

Thereafter, a quorum was declared present for the transaction of business.

MINUTES

Town Board Meetings – May 8 and May 22, 2013

Councilman Reynolds introduced the following Resolution for adoption, seconded by Councilman Backman:

(RESOLUTION NO. 116 OF 2013)

RESOLVED that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the Regular Town Board meetings held May 8, 2013 and May 22, 2013 and does further waive the reading of the same.

Upon roll call, the Board members voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye

Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

PUBLIC PRESENTATIONS (Resident Comments)

Acknowledgement
The Town Supervisor acknowledged the presence of Oneida County Legislator David Gordon.

Constituent concerns
Patricia Savicki stated that she had called the Highway Department in May about **weeds that were obstructing motorists' view** at the exit/entranceways from the Tony's Pizza complex on Oneida Street, Washington Mills. She then asked to be placed on tonight's agenda and the matter has now been resolved. She extended her thanks to the Highway Department.

She then explained a **dog problem in Chadwicks** in the area of Oneida Street, between Red Hill Road and Oxford Road. She asked that the Animal Control Officer and Police keep their ears open for barking dogs, at all different hours of the day. Ms. Savicki said that neighbors are reluctant to complain to authorities because the dog owners are really good people but who refuse to bring their dogs indoors when barking. The Town Attorney noted that the Town's Code regulating dogs and pets stipulates that dogs who continually bark for five (5) minutes or longer is an actionable matter. Police Chief Inserra said the officers can check the area but without written complaint(s), the Judge would dismiss the case. Ms. Savicki will speak with her neighbors to see if they are willing to sign a petition to be presented to the Town.

Rainstorm - drainage
Mary Ann Krasinski thanked the Highway Department for their quick response to a stormwater situation affecting their property this week.

Insurance Proposals
The Town Supervisor stated that Gates-Cole Insurance just presented their insurance proposals tonight for the policies expiring June 30, 2013. Bailey, Haskell & LaLonde, the Town's current agent, and Haylor, Freyer & Coon, Inc. had submitted their proposals by the Town Supervisor's deadline, June 7, 2013. The full Town Board had received copies of those proposals and had time to review them but not so with the Gates-Cole proposal that had just been handed in.

Having reviewed the Bailey, Haskell & LaLonde and Haylor, Freyer & Coon, Inc. proposals, the Town Supervisor commented on comparisons between the two proposals.

Gates-Cole quoted with NYMER and the Town Supervisor asked if the Town accepted the NYMER proposal for five (5) years and the Town decided to leave the program, and a big claim came in, could the Town be liable financially. "Yes", said Susan who represented NYMER, "..members could be assessed charges" if they were members when a big claim was made. There is a capitalization fee of $4,000 for 5 years she said.

The requests for proposals were:

- Haylor, Freyer & Coon, Inc. - $165,943.00
- Bailey, Haskell & LaLonde - $194,476.78 (Robin Lowitz explained the increase premium based upon *losses)
- Gates - Cole - $242,409.74.

Discussion ensued among all parties about the risk factors associated with the Town. *Loss runs show payments for attorney fees, defense costs, etc. but not actual claims; expenses related to frivolous lawsuits brought against the Town.

With regard to the "consent to settle" clause, Haylor, Freyer & Coon, Inc. stated that often the insurance company has that decision because it's their dollars being expended. Bailey, Haskell & LaLonde confirmed their proposed includes the "consent to settle" clause and Gates - Cole verified that the "consent to settle" clause is included in the NYMER/Public Officials and the Law Enforcement policies.

Supervisor Tyksinski noted that Bailey, Haskell, LaLonde's quote was a 24% increase over the policies that will expire June 30, 2013, while the Haylor, Freyer & Coon proposal would be a five percent (5%) increase basically for the same coverage. The proposal from Gates-Cole far exceeds the Town's insurance line item of $170,000.

Award of Requests for Proposal - Insurance
Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 117 OF 2013)

WHEREAS, the Town of New Hartford had received three (3) Requests for Proposal for renewal of the Town's various insurance policies;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby accept the low proposal submitted by Haylor, Freyer & Coon, Inc. in the

aggregate amount of $165,943.00, with the stipulation that said Haylor, Freyer & Coon provide the Town with a quote for a higher premium to raise the law enforcement coverage to $250,000 for life insurance.

The higher premium request was the result of the 2006 death of a Town Police Officer in the line of duty. The Supervisor polled the Board members who voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Washington Mills Athletic Park – Kids Fishing Derby
David Corr, representing "Trout Unlimited", asked the Town Board to adopt legislation to protect stocked fish for the Kids Fishing Derby, which is held the first Saturday in June every year from 9:00 A.M. until 2:00 P.M. at the Washington Mills Athletic Park. If adopted, the proposal would prohibit fishing at the Athletic Park from the Friday immediately preceding the first Saturday in June beginning at noon on that Friday until 2:00 P.M. on the first Saturday in June. The only fishing allowed would be during the fishing derby by those participating with kids under the age of 16 from 9:00 A.M. until 2:00 P.M. on the first Saturday in June.

Mr. Corr explained that it's an ever-increasing problem that different groups fish after the NYS Department of Environmental Conservation stocks the creek and do not adhere to the 5-fish limit thereby decreasing availability of fish for the kids derby. Police Chief Inserra will contact the NYS DEC about legalities and report to the Town Board. The next derby will be in June 2014.

REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON

Town Clerk Committee – Councilman Woodland:

Uniform Notice of Claims Certificate
Councilman Woodland introduced the following Resolution for adoption; seconded by Councilman Miscione:

(RESOLUTION NO. 118 OF 2013)

WHEREAS, General Municipal Law, Section 53 requires towns to file a certificate with the Secretary of State designating the Secretary of State as an agent for service of a notice of claim; and

WHEREAS, General Municipal Law, Section 53 requires the certificate to include the applicable time limit for filing the notice of claim and the name, post office address and electronic mail address, if available, of an officer, person, for the transmittal of notices of claim served upon the Secretary as the town's agent; and

WHEREAS, pursuant to General Municipal Law, Section 50-e(1)(a), the applicable time limit for the filing of a notice of claim upon a town is 90 days after the claim arises, or in the case of a wrongful death action, 90 days from the appointment of a representative of the decedent's estate;

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of New Hartford, County of Oneida, designates Gail Wolanin Young, in her capacity as Town Clerk, to receive notices of claims served upon the Secretary of State by mail at 48 Genesee Street, New Hartford, New York 13413 and email at gyoung@town.new-hartford.ny.us.

BE IT FURTHER RESOLVED that the Town Board hereby directs the Town Clerk to file the required certificate with the Secretary of State informing him or her of the town's designation and applicable time limitation for filing a notice of claim with the town on or before July 14, 2013.

The foregoing Resolution was voted upon by roll call, as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Raffle Consent – Kids Oneida, Inc.
Upon presentation of the Town Clerk, Councilman Woodland introduced the following Resolution for adoption, seconded by Councilman Miscione:

(RESOLUTION NO. 119 OF 2013)

RESOLVED that the New Hartford Town Board does hereby grant permission to Kids Oneida, Inc., 310 Main Street, Utica, NY 13501, an organization duly granted a Games of Chance Identification Number by the New York State Racing and Wagering Board, to sell raffle tickets (purse) in the Town of New Hartford, New York, in accordance with all rules and regulations of said Racing and Wagering Board; and be it

FURTHER RESOLVED that the Town Clerk be, and she hereby is, authorized and directed to execute Form GC-RCF, Raffle Consent Form.

Upon roll call, the Town Board voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Employee status change
Councilman Woodland introduced the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 120 OF 2013)

RESOLVED that, in accordance with rules and regulations of the Oneida County Personnel Department, the New Hartford Town Board does hereby approve the temporary title change for Shelby Bohling, a Part-time Clerk in the Town Clerk's Office, to that of full-time Temporary Laborer effective June 3, 2013 and which temporary title change would allow Ms. Bohling to work up to 35 hours per week through August 26, 2013 to cover for current workload, employee vacations, and a staff member who will have surgery, after which Ms. Bohling's title will revert to Part-time Clerk. No benefits will be offered during this temporary full-time Laborer designation.

The Town Board then voted upon roll call:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Public Works & Sewer Committee – Councilman Miscione

Salt brine system

The Town Board and Supt. Of Highways discussed the possibility of using a brine system for snow and ice control on roads during the winter season. Superintendent Sherman stated that the salt-and-water liquid combination would be significantly cheaper for the Town, which spends about $44 per ton on salt and uses about 5,000 ton in a winter season. Discussion included how to finance this system, with some Board members feeling there was not enough information tonight to act. The Highway Superintendent, Councilman Miscione and Town Supervisor will meet and discuss the matter with a report to be rendered at the July 2013 Town Board meeting.

Stormwater Issues

- *Taber Road* – The Supt. Of Highways and Town Supervisor made on-site inspections after receiving 6 or 7 complaints; Chris from Barton & Loguidice will look into developing a plan for that area. The Town Supervisor stated that the Town might look into reinstituting already-established drainage districts as a way of pay for stormwater remediation expenses.

- Councilman Backman asked the Director of Finance to send him a report on the *stormwater bond monies* – how much has been spent, how much is left and what projects have been funded

- *Mallory Road* – Councilman Backman noted drainage problems on Mallory Road and requested funds for this area.

Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Miscione:

(RESOLUTION NO. 121 OF 2013)

RESOLVED that, upon completion of the Beechwood Road Stormwater Project, Phase 2, the Town Board of the Town of New Hartford does hereby allocate up to Two Thousand Dollars ($2,000) for stormwater remediation on Mallory Road.

The Resolution was voted upon by roll call, as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye

Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Declaration of Surplus Vehicles – Authorization to Sell
Upon request of the Highway Superintendent, the following Resolution was offered for adoption by Councilman Miscione and duly seconded by Councilman Backman:

(RESOLUTION NO. 122 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby declare as surplus the following vehicle/equipment:

Year	***Make/Model***	***VIN***
2000	Dodge Van	2B7HB11X9YK117388
(25 yrs old)	Dixie Cement Mixer	Town I.D. #000026

And be it

FURTHER RESOLVED that the aforesaid vehicle/equipment shall be placed for sale on e-Bay and once sold, the Town Clerk's office shall be notified and shall arrange to terminate insurance coverage on said vehicles.

The foregoing Resolution was voted upon by roll call as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Quotations – Lighting/Sanger Public Works Garage
It was Town Board consensus that Supt. Of Highways Richard Sherman solicit quotations for lighting at the Sanger Public Works Garage, 111 New Hartford Street.

Assessor Committee – Councilman Woodland

Assessor – Term Expiration
The NYS Department of Taxation and Finance, Office of Real Property Tax Services, had notified the Town Clerk and Town Supervisor that the term of office of Assessor Paul E. Smith will expire September 30, 2013. This matter will be discussed in Executive Session.

Parks & Recreation Committee – Councilman Reynolds

Appointments – Seasonal Employees:
Upon recommendation of Parks & Recreation Director Michael Jeffery, Councilman Reynolds offered the following Resolution for adoption; seconded by Councilman Backman:

(RESOLUTION NO. 123 OF 2013)

RESOLVED that the New Hartford Town Board does hereby appoint the following individuals to the various part-time seasonal positions and for the hourly wages set opposite their several names, for the Parks and Recreation Department, commencing June 26, 2013 and ending August 9, 2013; all wages to be paid bi-weekly:

Swim A7230.1

Name	Position	Rate of Pay
Anna Wanner	Pool Director	$13.00/hour
Scott Wanner	Assistant Director	$11.64/hour

Playground A7140.11

Name	Position	Rate of Pay
Kristi Denison	Director	$12.32/hour
Valerie Kane	Assistant Director	$ 9.65/hour
Dylan Smith	Recreation Attendant I	$ 7.95/hour
Elizabeth Baldwin	Recreation Attendant I	$ 7.95/hour
Amanda Tucciarone	Recreation Attendant I	$ 7.95/hour
Rebecca Hughes	Recreation Attendant I	$ 7.95/hour
Marisa Mauro	Recreation Attendant I	$ 7.95/hour
Ronald German	Recreation Attendant I	$ 7.95/hour
Nathan Donaldson	Basketball Attendant	$ 8.45/hour.

Whereupon, the Town Board voted upon roll call:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye

Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Library Committee – Councilman Reynolds

Notice of Appointment to fill vacant Trustee position
Councilman Reynolds announced that on June 6, 2013 the Town received notification from New Hartford Public Library, President Linda Romano, that Trustee Connie Stephens had resigned. The Library Board has appointed Heather Mowat to fill the unexpired term of office of Ms. Stephens, effective May 21, 2013 and ending December 31, 2013.

MATTERS SUBMITTED BY COUNCILMEN / TOWN ATTORNEY

Town Attorney Cully

- Leggs Diamond codes violation – found guilty by Town Justice and ordered to pay $500 fine

- Salatino stormwater claim vs the Town was dismissed

- Windmill/Turbine legislation – Councilman Miscione wants to add a chart for kilowatt-hours to the Local Law Introductory. The Town Attorney will provide the language to the Town Clerk for including the chart in the legislation and the Town Attorney asked that Councilman Miscione provide the subject chart to the Town Clerk for inclusion.

Local Law Introductory "B" of 2013 – Wind Energy Facilities
Thereafter, Councilman Reynolds introduced the following legislation for the Town Board's consideration at a future Public Hearing; co-sponsored by Councilman Backman:

Town of New Hartford, New York
Local Law Introductory "B" of 2013

A Local Law to amend the Code of the Town of New Hartford by creating a new Chapter 117A. entitled as Wind Energy Facilities

Be it enacted by the Town Board of the Town of New Hartford as follows:

ARTICLE INTRODUCTION

§1. TITLE

This Local Law may be cited as the "Wind Energy Facilities Local Law" of the Town of New Hartford, New York.

§2. PURPOSE

The Town Board of the Town of New Hartford adopts this Wind Energy Facilities Local Law to promote the effective and efficient use of the town's wind energy resource through wind energy conversion systems (WECS), without harming public health and safety, and to avoid jeopardizing the welfare of the residents.

§3. AUTHORITY

The Town Board of the Town of New Hartford enacts this Wind Energy Facilities Local Law under the authority granted by:

i. Article IX of the New York State Constitution, § 2 (c)(6) and (10)

ii. New York Statute of Local Governments, § 10 (1) and (7).

iii. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and § 10 (1)(a)(6), (11), (12), and (14),
§ 10(2) (d) (3).

iv. New York Town Law §130(1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of Streets and Highways), (7-a) (Location of Driveways), (11) (Peace, Good Order and Safety), (15) (Promotion of Public Welfare), (15-a) (Excavated Lands), (16) (Unsafe Buildings), (19) (Trespass), and (25) (Building Lines).

v. New York Town Law §64(17-a) (Protection of Aesthetic Interests), (23) (General Powers).

vi. New York Real Property Tax Law § 487.

§4. FINDINGS

The Town Board of the Town of New Hartford finds and declares that:

1. While wind energy is a renewable energy resource, there are significant impacts including noise, shadow flicker, aesthetic and physical hazards such that the potential benefits must be balanced against potential impacts.

2. The generation of electricity from properly sited small wind turbines can be a mechanism for reducing on-site electric costs, with a minimum of environmental impacts.

3. Regulation of the siting and installation of wind energy facilities is necessary for protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Utility-scale wind energy facilities represent significant potential aesthetic impacts and because of their large size, noise, lighting, and shadow flicker effects.

5. One of the key aspects of the Town of New Hartford, and one that set it apart from many communities in the state, are the unique view sheds created by the Town of New Hartford's location. In the Town of New Hartford the view shed is a significant part of the residential property value of many communities within the Town. There are numerous areas in the Town of New Hartford which would be significantly impaired if the view shed included utility-scale wind energy facilities.

6. Installation of utility-scale wind energy facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands and residential growth through improper construction methods.

7. The Town of New Hartford does not have the low density of residences typically found in wind farm host communities where wind energy facilities have found their greatest acceptance and the wind resource is strongest, such as in North Texas, Iowa or Wyoming. Residential density is spread out evenly along a few key roads. The pattern of residentially used land creates a pattern with residential properties intermingled with agricultural properties.

8. There are significant historic and recreational resources in the Town of New Hartford and in adjoining towns that would be harmed by the construction of utility-scale wind energy facilities in the town, including parks, golf courses, trails, hunting grounds and historic properties. There would be a negative impact on these resources by the inclusion of one or more utility-scale wind energy facilities across the landscape of the town.

9. Utility-scale wind energy facilities may present risks to the property values of adjoining property owners.

10. Utility-scale wind energy facilities may be significant sources of noise, which, if not properly and adequately regulated, can negatively impact adjoining properties, particularly in areas of low background noise levels.

11. Numerous residents of other Towns have complained about high sound levels from operation of large industrial wind energy facilities installed near homes. These complaints have occurred despite the fact that pre-construction analytical predictions concluded that sound levels would be within acceptable limits. This may be due to facts such as atmospheric conditions, temperature inversions, wind layers, geography and low frequency nose which travels further with greater intensity than higher frequency noise. In addition, at night when air stabilizes near ground level, elevated wind turbine noise can travel further than expected and can be 5-15 dB(A) louder than predicted with conventional models. (See Kamperman and James 2008; Acoustic Ecology Institute Special Report: Wind Farm Noise, Science and Policy 2011). This leads to the conclusion that pre-construction analytical predictions of sound must comply with appropriate standards and be independently verified. Minimum setbacks from residencies are necessary to mitigate noise impacts due to the uncertainty of these models.

12. While mechanical sounds of wind turbines have been reduced by modern designs, aerodynamic sounds by air turbulence around the turbine blades have increased with increasing turbine size.

13. The closer people live to wind energy facilities the more likely they will experience noise annoyance or develop adverse health effects from noise. However, it is common for those located very close to a wind energy facility or facilities to hear less noise than those farther away, due to the formation of a "shadow zone" upwind of the turbine. This has been demonstrated by the on-going problems reported by residents in the Town of Fairfield in which industrial wind energy facilities have become operational recently. This has also been demonstrated by continuing reports of problems related to noise at other recent wind energy projects throughout the United States. Further, the degree of difficulties resulting from the sound of wind energy facilities seems clearly related to the distance from the turbines, though the literature has studied a variety of turbine sizes in a variety of locations. A setback of 2,460 feet from residences would eliminate most noise complaints. Research conducted by Bajdek (2007) showed that at approximately 0.8 km (1/2 mile) from wind turbines, 44% of the population would be highly annoyed by wind turbine noise. At a distance of approximately 1.62 km (1 mile) from wind turbines, the percent of highly annoyed people is expected to drop to 4%. Kamperman and James reviewed several studies to determine the impact of wind turbine noise on nearby residents. Their review showed that some residents living as far as two miles from wind turbines complained of sleep disturbance from turbine noise and many residents living 1,000 feet from wind turbines experienced major sleep disruption and other health problems from nighttime turbine noise. Van den Berg (2006) studied a wind farm in northwestern Germany and discovered that residents living 500 meters (1,640 feet) from the wind turbines reacted strongly to wind turbine noise and residents up to 1,900 meters (1.18 miles) from the wind turbines expressed annoyance. A survey conducted by Pedersen and Waye (2008) found that less than 10% of the respondents

experienced sleep disturbance at distances of 1,984 feet to 3,325 feet and found that the sound from wind turbines was of greater concern in rural environments because of the lower ambient noise. The Town of New Hartford notes with approval that wind project developer NorthWind and Power LLC (November 23, 2009) has stated in its marketing literature that the "Minimum Distance from residences owned by non-participating landowners: 2,500 ft".

14. Several studies recommend wind turbines be located between ½ mile to over 1 mile from residences. To avoid adverse noise impacts, the Western Australia Planning Commission Bulletin recommends that wind energy systems include sufficient buffers or setbacks to residences of 1 km (0.62 mile). The National Wind Collaborating Committee states that an appropriate setback distance may be up to ½ mile. The National Research Council states that noise produced by wind turbines generally is not a major concern for humans beyond one mile or so. The Wisconsin Towns of Woodville, Clay Banks, Magnolia, Wilton and Ridgeville recently adopted large wind turbine ordinances with setbacks ½ mile from residences. The French National Academy of Medicine and the UK Noise Association suggest a 1.5 km (approximately 1 mile) distance between large wind turbines and residences. See Gueniot (2006), Dr. Amanda Harry (2007), Dr. Nina Pierpont (2006), and Frey and Hadden (2007) recommend a setback greater than 1 mile.

15. It is noted that the Wind Turbine Handbook (Burton, 2001, January 2008 Printing) notes that a ten-rotor diameter setback is likely necessary to protect from the impact of noise, shadow flicker and visual domination. The Department of the Environment, Northern Ireland (2009), establishes a best practice guideline of a separation distance between a WECS and occupied property of 10 times the rotor diameter.

16. It is noted that The New York State Department of Environmental Conservation document *Assessing and Mitigating Noise Impacts* (2001) teaches that sound levels that are 0-5dB above ambient are "unnoticed to tolerable" whereas noise increases over 5dB are considered "intrusive". This document further states: "Appropriate receptor locations may be either at the property line of the parcel on which the facility is located or at the location of use or inhabitance on adjacent property". And "The most conservative approach uses the property line".

17. Background sound levels in rural residential areas in New York are commonly in the range of 20 dBA to 30 dBA at night. See Kamperman and James (2008), pg. 2.

18. A C-weighted sound determination dB(C) is needed to minimize adverse health effects from low frequency noise. A dB(C) requirement will likely result in setbacks between large wind turbines and nearby residences of 1km, (0.62 miles) or greater for 1.5 to 3 MW wind turbines if wind turbines are located in rural areas where L90A

background levels are close to 30 dB(A). (See Kamperman & James: WHO 1999; Bajdek Noise-Con 2007; Pedersen and Waye 2008).

19. Wind turbines may present a risk to bird and bat populations if not properly sited.

20. Utility-scale wind energy facilities have a life of approximately 20 years and can potentially operate 24 hours a day. It is expected that over 20 years land use patterns will change with the long-term trend being increased in residential use as compared to agricultural use. Thus, prediction of sound impact should consider property lines at locations authorized for residential purposes rather than pre-existing residences.

21. Construction of utility-scale wind energy facilities can create traffic problems and damage local roads.

22. Many seasonal and year-round residents rely on wireless telephone service for both routine and emergency communications. Similarly, many residents rely on broadcast data and television. If improperly sited, utility-scale wind energy facilities can interfere with these or other types of communications. It is difficult to analytically predict the impact on radio communications from utility-scale wind energy facilities yet the potential impairment of access to emergency services is an unacceptable risk.

23. Sufficient areas exist in the County of Oneida and region for the placement of any needed utility-scale wind energy facilities. Wind energy facilities are being constructed in other communities in the region. Hundreds of megawatts of wind energy generating facilities are being constructed throughout the region in areas where the facilities do not present the same intrusion on the landscape, and therefore have less impact.

24. According to a National Agricultural Aviation Association article on meteorological ("Met") Towers, "Met testing Towers are used for gathering wind data during the development and siting of wind energy conversion facilities. The Met Towers consist of galvanized tubing that are assembled at the site, and raised and supported using guy wires. Agricultural pilots, emergency medical services (EMS) operations, Fish and Wildlife, animal damage control, aerial fire suppression, and any other low-level flying operation may be affected. The fact that these Towers are narrow, unmarked, and grey in color makes for a structure that is nearly invisible under some atmospheric conditions." This has lead to at least one fatality, described in National Transportation Safety Board, Preliminary Report Aviation NTSB ID: WPR11LA094. Wind Measurement Towers are typically sized to avoid regulatory review by the FAA.

25. The Town of New Hartford is unique from other area towns that are hosting or considering the hosting of utility-scale wind energy facilities inasmuch as it is an affluent

suburban town and regional economic center. These factors make the Town of New Hartford an attractive area for future residential and commercial development.

26. The Town of New Hartford is situated at a significantly higher elevation than adjacent population centers. This results in more moderate summers and colder winters, often with more snowfall than surrounding areas. The enjoyment of the outdoors in the summer and snow sports in winter combined with the peaceful character are factors which are frequently cited by local residents as attractive aspects of the town despite the more severe winter conditions.

27. A utility-scale wind energy facility is typically hundreds of feet tall. Decommissioning of such a structure is complex, dangerous work. Material scrap values vary greatly on daily to yearly time scales. Thus, it is inappropriate to accept scrap values as security for decommissioning.

28. Adverse health effects from wind turbine noise can be exacerbated by the rotating blades and shadows from the wind turbines. As wind turbine blades rotate in front of a rising or setting sun, they cast a strobe-like flicker that cannot be avoided by occupants. Shadow flicker can cause some people to become dizzy, nauseated or lose their balance when they see the movement of the shadow. Shadow flicker from wind turbines at greater than 3 Hz poses a potential risk of inducing photosensitive seizures. While turbines are generally designed to avoid shadow flicker of this frequency, higher frequencies can be generated if the shadow from two of more turbines are combined. Recent research has indicated that the risk of seizures does not decrease appreciably until the viewing distance exceeds 100 times the height of the hub, a distance typically more than 4 km. (See Harding, et. al. (2008)). Smedley, et al. (2010) however concluded that the risk of seizures diminished when the observer was greater than 1.2 times the turbine height and looking directly into the sun *but noted that eye closure is a natural immediate protective action when exposed to flicker,* and so has the unfortunate consequence of exacerbating its adverse effect in this context. Considering that an observer might close the eyes, Smedley et al. found that "For the scenarios considered, we find the risk is negligible at a distance more than about nine times the maximum height reached by the turbine blade, a distance similar to that in guidance from the United Kingdom planning authorities." Further, the National Wind coordinating Committee (1998) recommends a setback of 10 rotor diameters to avoid shadow flicker on occupied structures. (See also: Cummings (2008); Burton et al. (2001); UK Noise Association (2006); and Pierpont (2006a and 2006b)). The Town of New Hartford concludes that wind turbines should be sited such that shadows from wind turbine blades do not fall upon the windows of nearby residences or within 100 feet of residences for any considerable period.

29. Low frequency vibrations or infrasound may cause health impacts even if inaudible. Recent field testing in Falmouth, MA indicated that in a home located 1,300

feet from one turbine and 1,700 feet from another, excessive infrasound was present inside the home while not measurable outside the home (See Ambrose and Rand 2011)). Previous studies of infrasound from wind turbines have shown levels to be low in outdoor testing, while others have effectively measured infrasound outdoors near turbines when the atmosphere is stable, for example at night (See Van den Berg (2006)). In the Ambrose and Rand study, testing indicated that infrasound was magnified (10dB gain) by a whole0house cavity response and was likened to "living in a drum". The investigators were surprised to experience the same adverse health symptoms described by residents of the house and those near other large industrial wind turbine sites. The onset of adverse health effects was swift, within twenty minutes, and persisted for some time after leaving the study area. Ambrose and Rand correlated their symptoms to turbine operation and infrasound measurements and found that infrasound pulsations at levels sufficient to stimulate the ear's outer hair cells (OHC) and thus cause vestibular dysfunction (see Dr. Salt 2011) were present when the turbines were operating. Dysfunctions in the vestibular system can cause disequilibrium, nausea, vertigo, anxiety, and panic attacks, which have been reported near a number of industrial wind turbine facilities. Similar adverse health symptoms have been associated with noise complaints such as "sick building syndrome", correlated by field study to low-frequency pulsations emanating from ventilation systems. (See Burt, (1996); Shwartz (2008)) That is, adverse health effects from low frequency noise exposure in buildings have been studied and confirmed by the acoustics profession. Ambrose and Rand conclude that their study underscores the need for more effective and precautionary setback distances for industrial wind turbines.

30. If placed too close to a road, the movement of the wind turbine blades and resulting shadow flicker can distract drivers and lead to accidents. (See National Research Council (2007), pg. 161).

31. The Town of New Hartford does not have as abundant energy resources as many other areas of the State of New York. The Town Board of the Town of New Hartford notes that according to the National Renewable Energy Lab, wind energy densities at 50 meters height in and around the Town of New Hartford are generally rated as "poor" or "marginal" whereas utility scale wind energy facilities located in Lewis County are located in areas rated as "fair" or "good" at the same height. By comparison, offshore areas in the Great Lakes, Long Island Sound or the Atlantic Ocean are rated as "good", "excellent" or "outstanding"; see NREL (2009). The wind resource is often not available in the Town of New Hartford when needed to meet peak load. The Town Board of the Town of New Hartford notes that GE Energy (2005, p. 2.5) reports that "The results show that the effective capacities, UCAP, of the inland wind sites in New York are about 10% of their rated capacities, even though their energy capacity factors are on the order of 30%. This is due to both the seasonal and daily patterns of the wind generation being largely "out-of-phase" with NYISO load patterns. The offshore wind generation site near Long Island exhibits both annual and peak period effective capacities on the order of

40%-nearly equal to their energy capacity factors. The higher effective capacity is due to the daily wind patterns peaking several hours earlier in the day than the rest of the inland wind sites and therefore being much more in line with the load demand." According to NYSERDA's "Small Wind Explorer" program, several areas of the Town are predicted to have an adequate wind resource for construction of Small WECSs at heights of 80 to 120 feet above ground level.

32. Wind turbines present risks of physical hazards of collapse, blade fragmentation and blade throw which must be considered in establishing setback distances. The California Department of Energy funded a study of the risk of blade throw and fragmentation as an aid in determining setback distances (See Larwood and van Dam, 2006). The researchers used a physics based model, which predicted blade fragmentation distances based on the rotor speed but excluded aerodynamic effects such as a blade or fragment being carried by the wind. Since the model did not include the effect of debris being carried by the wind, it may understate throw distances. For example, one catastrophic failure of a wind turbine in Denmark was featured on the Discovery Channel television show *Destroyed in Seconds.* In that event, blade fragments were thrown a distance equivalent to 11.6 rotor diameters. In the Larwood and van Dam study, the researchers concluded that the risk of a blade throw or fragmentation even ranged from 2% to 0.1% per turbine per year. The Town Board makes note of two blade fragmentation events and one tower collapse event at the wind energy facility in the Town of Fenner through 2009, resulting in a catastrophic failure rate of 1.9% per turbine per year through 2009.

33. Since the State of New York has enacted Article X, which could potentially allow for construction of utility-scale energy facilities, it is necessary to provide for reasonable substantive development standards.

§5. DEFINITIONS

As used in his Wind Energy Facilities local law, the following terms shall have the meanings indicated:

ACCESSORY USE- A use customarily incidental and subordinate to the principal use or building, located on the same lot or premises as the principal use or building.

AGRICULTURAL OR FARM OPERATIONS- Agricultural or Farm Operations are the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation and "timber processing". Such farm operation may consist of

one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

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

ANSI-THE AMERICAN NATIONAL STANDARDS INSTITUTE

APPLICANT-An applicant is the individual or business entity that seeks to secure a license under this section of the Town municipal code.

BACKGROUND SOUND- Background Sound is the "residual sound" heard during lulls in the Ambient Sound environment as defined by ANSI Standard 12.9, Part 2, and represents the quietest 10% of the time, during any given hour.

BUILDABLE LOT- A property which meets the requirements for issuance of a building permit as set forth in the local building code. However, for a property which is used for Agricultural and Farm Operations and which is not subdivided into lots for purposes of residential construction; only that portion of the property abutting a public highway and extending not more than 500 feet there from which meets the minimum road frontage requirements for issuance of a building permit shall be considered a Buildable Lot for purposes of this Local Law.

CODE ENFORCEMENT OFFICER or CEO- The Code Enforcement Officer appointed by the Town Board of the Town of New Hartford.

dBA-A-Weighted Sound Pressure Level in Decibels. A measure of over-all Sound Pressure Level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of low frequencies and emphasizes frequencies centered around 1000Hz. The resultant sound level is said to be "Weighted" and the units are "dBA". Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997 for Type 1 instruments. In this law dBA means LAeq unless specified otherwise.

dBC-C-Weighted Sound Pressure Level in Decibels. Similar in concept to the A-Weighted sound Level (dBA) but C-weighting emphasizes sound frequencies between 20 and 200 Hz does not de-emphasize the frequencies below 200 Hz as A-weighting does. dBC is used for measurements that must include the contribution of low frequencies in a single number representing the entire Frequency spectrum. Sound level meters have a C-weighting network for measuring c-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI SI.43-1997 Specifications for weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI SI.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 Instruments. In this law dBC Means Leq unless specified otherwise.

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

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

FREQUENCY- The number of oscillations or cycles per unit of time. Acoustical Frequency is usually expressed in units of Hertz (Hz) where one Hz is equal to one cycle per second.

HEIGHT- The total distance measured from the grade of the property as existed prior to the construction of the wind energy system, facility, Tower, turbine, or related facility at the base to its highest point. Height shall include the blade extended in a fully vertical position.

HERTZ (Hz) – Frequency of sound expressed by cycles per second.

HISTORICALLY SIGNIFICANT STRUCTURE- A structure is presumed to be historically significant to the Town of New Hartford if it is located within the Town limits and was built prior to 1900 or if located outside of the Town of New Hartford and was built prior to the Town's founding in 1788. Structures that are associated with important historical figures or events may also be historically significant regardless of when constructed. All structures listed on the New York State or Federal Registers of Historic Places are considered significant.

INFRA-SOUND- Sound with energy in the Frequency range of 0-20 Hz is considered to be infra-sound. It is normally considered to not be audible for most people unless in relatively high amplitude. However, there is a wide range between the most sensitive and least sensitive people to perception of sound and perception is not limited to stimulus of

the auditory senses. The most significant exterior Noise induced vibration in Residences occurs in the Frequency range between 5 Hz and 50 Hz. Levels below the threshold of audibility can cause measurable vibrations within Residence interiors. Conditions that support of magnify such vibrations may also exist in human body cavities and organs under certain conditions. See Low-Frequency Noise (LFN) for more information.

ISO- International Standards Organization

LARGE WIND ENERGY CONVERSION SYSTEM or Large WECS- A Wind Energy Conversion System larger than 50kW. A Wind Energy Conversion System larger than 50kW. A Wind Energy Facility consisting of a wind turbine, a Tower, and associated control or conversion electronics, which has a Name Plate Rating of more than 50kW (Fifty Thousand Watts).

LEQ- The equivalent steady-state sound level which contains the same acoustic energy as the time varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow a valid extrapolation to a one-hour time interval. [taken verbatim from NYSDEC landfill regulations, 6 NYCRR §260.1.14(p)] LEQ must be reported as an A-weighed or C-weighted sound level, as appropriate, i.e., LAeq or Lceq. For more information, see “Sound Pressure Level,” below. Leq is also considered the average sound level during an hour.

LOCAL LAW- The Wind Energy Facilities Local Law of the Town of New Hartford.

LOW FREQUENCY NOISE (LFN)- Sounds with energy in the lower Frequency range of 20 to 200 Hz. LFN Is deemed to be excessive when the difference between a C-weighted sound level and an A-weighted sound level is greater than 20 Decibels at any Measurement Point outside a Residence or other occupied structure.

MEASUREMENT POINT (MP)- The location where sound measurements are taken such that no significant obstruction blocks sound from the Site. The Measurement Point should be located so as to not be near large objects such as buildings and in the line-of-sight to the nearest turbines. Proximity to large buildings or other structures should be twice the largest dimension of the structure, if possible. Measurement Points should be at quiet locations remote from street lights, transformers, street traffic, flowing water and other intermittent Noise sources.

MEASUREMENT WIND SPEED- For measurements conducted to establish the background Noise levels (LA90 10 min, LC90 10 min, etc.) the maximum wind speed, sampled within 5 meters (m) of the microphone and at its height, shall be less than 2 meters per second (m/s) (4.5 mph) for valid background measurements. The wind speed

at the WECS blade height shall be at or above the nominal rated wind speed and operating in its highest sound output mode. For purposes of enforcement, the wind speed and direction at the WECS blade height shall be selected to reproduce the conditions leading to the enforcement action while also restricting maximum wind speeds at the microphone to less than 4 m/s (9 mph). For purposes of models used to predict the sound levels and Sound Pressure Levels of the WECS to be submitted with the Application, the wind speed shall be the speed that will result in the worst-case LAeq and LCeq sound levels at the nearest non-participating properties to the WECS. IF there may be more than one set of nearby Sensitive Receptors, models for each such condition shall be evaluated and the results shall be included in the Application.

NAME PLATE RATING-The maximum rated electrical output of a WECS.

NOISE-means any unwanted sound. Not all Noise needs to be excessively loud to represent an annoyance or intrusion, thereby becoming unwanted.

PROJECT BOUNDARY- The external property boundaries of parcels owned by or leased by the WECS developers. It is represented on a plot plan view by a continuous line encompassing all WECS(s) and related equipment associated with the WECS project.

PROPERTY LINE- The recognized and mapped property parcel boundary line.

PROPERTY OWNER- The owner of a parcel within the Project Boundary.

PROJECTED HISTORIC STRUCTURE- A Historical Structure is protected under this local law if it is listed on the New York State or Federal Registers of Historical Places or it if predates the Town's founding in 1788, whether or not located in the Town of New Hartford.

RESIDENCE- Any Residence for habitation, either seasonally or permanently by one or more persons. A Residence may be part of a multi-Residence or multipurpose building, and shall include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions. In addition to existing Residences, properties with a validly issued building permit for a residential structure shall also be deemed to be Residences for purposes of this Local Law.

ROTOR DIAMETER- The swept diameter of the rotating blades of a WECS.

SENSITIVE RECEPTOR- A place or property intended for human habitation, whether inhabited or not, including but not limited to public parks, state and federal wildlife areas, the manicured areas of recreational establishments designed for public use, including but

not limited to golf courses, camp grounds and other nonagricultural state or federal licensed businesses, hunting grounds, whether private or public, schools, daycare centers, elder care facilities, hospitals, places of seated assemblage, non-agricultural businesses and Residences. These areas are more likely to be sensitive to the exposure of the Noise, shadow or flicker, etc. generated by a Wind Energy Facility.

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

SITE- The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered into an agreement for said Facility or a setback agreement shall be considered a Site.

SMALL WIND ENERGY CONVERSION SYSTEM or Small WECS- A wind energy facility consisting of a wind turbine, a Tower, and associated control or conversion electronics, which has A Name Plate Rating of not more than 50kW (Fifty Thousand Watts) or height greater than 120ft.

STRATEGIC VANTAGE POINT-A vantage point is a location from which to assess the visual impact of a Wind Energy Facility. A vantage point is considered strategic if the public can be expected to congregate there for educational or civic purposes; religious observance; enjoyment of historic or cultural resources; or for recreation whereby the enjoyment of the natural environment is a key aspect of the recreational activity. Strategic Vantage Points include both public and private venues. Some examples include: Schools, Golf Courses, Churches, Public buildings, Historically Significant Structures, Parks, Museums and Cemeteries. Additionally, roads and highways are considered Strategic Vantage Points.

SOUND PRESSURE LEVEL- The level, expressed in Decibels, which is equaled or exceeded a stated percentage of time. Sound Pressure Level is spectrally weighted to correspond to a Frequency spectrum of Interest. For example, the A-weighted Decibel scale (dBA) represents those frequencies most readily audible to the human ear. The C-weighted Decibel scale (dBC) approximates response of the human ear to low-Frequency sounds. The G-weighted Decibel scale (dBG) is designed to measure infrasound.

TOWER-The structural mast on which a turbine is mounted.

TOWN-The Town of New Hartford

TOWN BOARD- The Town Board of the Town of New Hartford

TURBINE HEIGHT- The height of the WECS to its furthest vertical extension above ground level.

WIND ENERGY CONVERSION SYSTEM or WECS- A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill"), but excluding Wind Measurement Towers.

WIND ENERGY FACILITY- Any Wind Energy Conversion System or Wind Measurement Tower including all related infrastructure, electrical lines and equipment, access roads and accessory structures and facilities.

WIND ENERGY PERMIT- A permit issued for a Wind Energy Facility other than a Wind Measurement Tower pursuant to this Local Law.

WIND MEASUREMENT TOWER or WMT- A Tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND MEASUREMENT TOWER PERMIT- A permit issued for a Wind Measurement Tower pursuant to this Local Law.

§6. PERMITS REQUIRED

A**.** No Large WECS shall be constructed, reconstructed, modified, or operated anywhere in the Town of New Hartford.

B. No Small WECS (under 50kW height under 120ft) or Wind Energy Facility comprising a small WECS shall be constructed, reconstructed, modified, or operated in the Town of New Hartford except pursuant to and in compliance with a Wind Energy Permit issued pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of New Hartford except in connection with an application for a Small WECS, and pursuant to and in compliance with a Wind Measurement Tower Permit issued pursuant to this Local Law.

D. This Local Law shall apply to all areas of the Town of New Hartford.

E. Should any Wind Energy Facility be proposed for siting pursuant to Public Service Law Article X, no Town road may be crossed or licensed for use to permit said facility.

F. Transfer. No transfer of any WECS, Wind Energy Facility or Wind Measurement Tower, or Permit there for, nor sale of the entity owning such facility or holding such permit, including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town Board, which approval shall be granted upon (1) receipt of proof of the ability of the successor to meet all requirements of this Local Law and (2) written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an Applicant or any other party under this Local Law.

G. Notwithstanding the requirements of this Section, replacement in kind or modification of a permitted WECS may occur without Town Board approval when there will be (1) no increase in Turbine Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in Noise produced by the WECS.

§7. APPLICABILITY

A. The requirements of this Wind Energy Facilities Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed in the Town of New Hartford after the effective date of this Wind Energy Facilities Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of Local Law prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed except as allowed under §6(H) without full compliance with this Local Law.

3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is obtained.

C. Wind Energy Facilities are allowed as an Accessory Use. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions, extensions or enlargements of a nonconforming use or structure.

ARTICLE II SMALL WECS

§8. PURPOSE AND INTENT

The purpose of this Article is to provide standards for Small WECS. The intent of this Article is to encourage the development of Small WECS and to protect the public health, safety, and community welfare.

§9. PERMITTED AREAS

A Small WECS meeting the requirements of this Article may be installed on any parcel or groupings of parcels which either singly or in combination is of sufficient size.

§10. APPLICATIONS

A. Small WECS applications shall be deemed Type I actions requiring coordinated review under SEQRA.

B. Application Contents. Applications for a Wind Energy Permit shall include:

i. Name, address, telephone number of the Applicant. If the Applicant will be represented by an agent, the name, address and telephone number of the agent, as well as an original signature of the Applicant authorizing the agent to represent the Applicant is required.

ii. Name, address, telephone number of the Property Owner. If the Property Owner is not the Applicant, the application shall include a letter or other written permission signed by the Property Owner (i) confirming that the Property Owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

iii. Address of each proposed WECS Site, including Tax Map section, block and lot number.

iv. Evidence that the proposed Turbine Height does not exceed the height recommended by the manufacturer or distributor of the WECS.

v. A line drawing of the electrical components of the WECS in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

vi. Sufficient Information demonstrating compliance with the Standards for Small WECS.

vii. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the Applicant's intent to install an interconnected customer-owned electricity generator, unless the Applicant does not plan, and so states so in the application, to connect the system to the electricity grid.

viii. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts form nearby Strategic Vantage Points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

ix. Cost estimate to decommission together with method to secure decommissioning cost (i.e. Bond or Letter of Credit subject to sole discretion of the Town of New Hartford)

x. A completed EAF.

xi. General Municipal Law Section 809 disclosure form.

xii. Such other information as the Town Board may reasonably require.

§11. APPLICATION REVIEW PROCESS

A. Pre-application meeting. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review at a regularly scheduled meeting.

B. Escrow agreement. The Town shall require the Applicant to fund an escrow agreement to cover the amount by which the Town's cost to review the applicant's application(s) exceeds the application fees paid by the applicant.

C. Application submittal. Six copies of the application shall be submitted to the CEO.

D. Application sufficiency review. CEO or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant,

determine if all information required by 6 NYCRR 617.3 and all financial agreements required under this Article are included in the application.

i. Unless the Town Board waives any application requirement, no application shall be considered until deemed sufficiently complete.
ii. If the application is deemed insufficient, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information, unless the number of Small WECS proposed is increased.

E. Board Receipt of Applications. Upon submission of a sufficient application, which may include a request for waiver by the Town Board, the CEO shall transmit the application to the Town Board.

F. Public Hearing. When the application is determined to be complete the Town Board shall hold at least one public hearing on the application.

i. The applicant shall provide notice of the public hearing by registered mail, return receipt to property owners parcels located wholly or partially within ½ mile radius of the proposed Small WECS Site, and shall publish a notice in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare, publish and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

ii. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

G. County Planning Board Notice. A full statement of the proposed action for the project shall also be given to the Oneida County Planning Board if applicable per General Municipal Law §§249-1 and 239-m.

H. SEQRA Review. Small WECS applications shall be deemed Type I actions projects requiring coordinated review under SEQRA.

I. No Segmentation. The applicant shall disclose the full scope of planned numbers of Wind Energy Conversion Systems and shall not segment the application for purposes of reducing the apparent significance of proposed plans. Where the lead

agency has reason to believe that the ultimate scope of the project might exceed that which is actually proposed by an applicant at one time, it shall conduct its review and base its findings on the larger potential scope.

J. Application Decision. Upon receipt of the recommendation of the Oneida County Planning Board, if required, the holding of the public hearing, and the completion of the SEQRA process, the Town Board may, within 30 days approve, approve with conditions, or deny the application.

§12. DEVELOPMENT STANDARDS

All Small WECS shall comply with the following standards.

A. A Small WECS shall be located on a lot a minimum of two acres in size.

B. Only one Small WECS (plus, where authorized, a temporary Wind Measurement Tower) per legal lot shall be allowed. Where there are multiple Applicants, their joint lots shall be treated as one lot for purposes of this limitation. No such towers shall be permitted in residential zoned districts.

C. Small WECS shall be used primarily to reduce the on-site consumption of utility-provided electricity.

D. Turbine Heights shall be limited as follows:

a. 85 feet or less on parcels between two and five acres.

b. 120 feet or less on parcels of five or more acres.

E. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations.

F. The maximum allowable Name Plate Rating is 50kW.

G. The WECS shall be painted a non-reflective, unobtrusive color that blends the WECS and its components into surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.

H. The WECS shall be designed and located in such a manner to minimize adverse visual impacts from Strategic Vantage Points.

I. Exterior lighting on any structure associated with the WECS shall not be allowed except that which is specifically required by the Federal Aviation Administration.

J. All on-Site electrical wires associated with the Small WECS shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, Towers and lines. This standard may be modified by the Town Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

K. A detailed decommissioning plan shall be provided at the time of initial application subject to the approval of the Town Board.

L. The WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a Small WECS is causing harmful interference, the Small WECS operator shall promptly mitigate the harmful interference or cease operation of the Small WECS.

M. At least one sign shall be posted on the Small WECS at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted anywhere on the Small WECS except that a manufacturer's logo may be in an unobtrusive manner.

N. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

i. Tower-climbing apparatus located no closer than 12 feet from the ground.

ii. A locked anti-climb device installed on the Tower.

iii. A locked, protective fence at least six feet in height that encloses the Tower.

O. Anchor points for any guy wires for a Tower shall be located within the Site that the Small WECS is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

P. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

Q. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the Applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

R. All WECS shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Protection and Building Code and National Electric Code.

S. All Small WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

T. No Small WECS shall be placed so as to:

i. Restrict solar access on an adjoining property
ii. To not be in harmony with the orderly development of the Town
iii. Imperil the public health and safety
iv. Induce vibrations or Infra-sound
v. Discourage the development and use of adjacent land and buildings or impair their value.

§13. SOUND and SETBACKS

A Small WECS shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a Property Line than one and a half times the Turbine Height of the WECS or ten times the Rotor Diameter, whichever is greater.

2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that the Sound Pressure Level (Leq) GENERATED BY A Small WECS shall not exceed 45 dBA in daytime hours nor 35 dBA at night as measured at the nearest off-Site Residence existing at the time of approval (including structure under construction at said time), nor more than 6 dBA greater than either the nighttime or daytime pre-application Background Sound level measured in leaf-off conditions for a period of no less than 24 hours. Measurement of Background Sound may also be performed with the turbine turned off and with its blades trimmed to minimize Noise from aerodynamic effects.

§14. PERMIT RENEWALS

A Wind Energy Permit may be renewed for additional periods of not more than five (5) years each upon satisfaction of the following conditions:

i. The Applicant submits an application for renewal of a Wind Energy Permit to the CEO prior to the expiration of any previous permit. Such application stays the expiration of the previous permit until the Town Board decision.

ii. Payment of a fee

iii. Decommissioning cost estimates are updated to reflect changes in the Producer Price Index and the financial security vehicle is adjusted accordingly.

iv. The Applicant shall provide written notice of intent to renew the Wind Energy Permit via Registered Mail, Return Receipt to the owners of all parcels located wholly or partially within a radius of 1,000 feet of any Small WECS and shall publish notice of intent in the Town's Official Newspaper.

v. Following receipt of a sufficient application for Wind Energy Permit renewal, the Town Board shall schedule a public hearing. The Applicant shall provide notice of the public hearing by registered mail, return receipt to property owners within ½ mile of the Small WECS Site, and shall publish a notice in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare, publish and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

vi. A public hearing is held.

vii. The Town Board Decision. If after careful consideration of the application and the compliance or non-compliance of the Applicant with the terms of the Wind Energy Permit, the Town Board may elect to renew, not renew or renew with conditions the Wind Energy Permit for a period of not more than 5 years. Should the applicant disagree with the decision of the Town Board, the Applicant may petition the Town Board within 30 days of its decision, and upon request shall be entitled to a Hearing before the Town Board to be heard and present any evidence or witnesses as the Applicant may desire. Following the Hearing, the Town Board may reconsider the application within 30 days and if the Permit is now renewed or renewed with conditions, shall provide a written rationale for its decision. Should the Wind Energy Permit not be

renewed, the Wind Energy Facility shall be decommissioned following the requirements of this Local Law.

§15. ABANDONMENT OF USE

A. Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property within 12 additional months at the expense of the Property Owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town of New Hartford.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

§16. ABATEMENT

A. Operation. All State WECS shall be maintained in good condition and in accordance with all requirements of this section.

B. Removal. A Small WECS which is not used for a continuous period of one (1) year shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the Property Owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit.

ARTICLE III WIND MEASUREMENT TOWERS

§17. WIND SITE ASSESSMENT

The Town Board acknowledges that prior to construction of a Small WECS, a wind Site assessment may be conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, shall be permitted upon issuance of a Wind Measurement Tower Permit.

§18. APPLICATIONS FOR WIND MEASUREMENT TOWN PERMITS

Applications. An application for a Wind Measurement Tower Permit shall include the following:

i. Applicant Information. Name, address, telephone number of the Applicant. If the Applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the Applicant authorizing the representation.

ii. Property Owner Information and Authorization. Name, address, telephone number of the Property Owner. If the Property Owner is not the Applicant, the application shall include a letter or other written permission signed by the Property Owner (i) confirming that the Property Owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

iii. Site Information. Address of each proposed WMT location, including tax map section, block and lot number.

iv. Map. A map showing proposed location of the WMT and any roads, parcel boundaries or structures within one times the height of the WMT.

v. Drawings or specifications for the proposed Wind Measurement Tower.

vi. A completed EAF

vii. General Municipal Law Section 809 disclosure form

viii. Such other information as the Town Board may reasonably require.

C. Application submittal. Six copies of the application shall be submitted to the CEO.

D. Application sufficiency review. CEO shall, within 30 days of receipt, or such longer time if agreed to by the Applicant, determine if all information are included in the application.

i. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
ii. If the application is deemed insufficient, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information, unless the number of WMT proposed is increased.

E. Board Receipt of Applications. Upon submission of a sufficient application, which may include a request for waiver by the Town Board, the CEO shall transmit the application to the Town Board.

F. Public Hearing. When the application is determined to be sufficient, the Town Board shall hold at least one public hearing on the application.

i. The applicant shall provide notice of the public hearing by registered mail, return receipt to property owners of parcels located wholly or partially within a radius of 500 feet of the proposed WMT Site, and shall publish a notice in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare, publish and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

ii. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

G. Application Decision. Upon the holding of the public hearing, the Town Board may, within 30 days approve, approve with conditions, or deny the application.

§19. STANDARDS FOR WIND MEASUREMENT TOWERS

A. Setback. The distance between a Wind Measurement Tower and the nearest Property Line shall be at least 1.5 times the height of the Wind Measurement Tower. Sites for a Wind Measurement Tower can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those Property Owners.

B. Height. The maximum height of a Wind Measurement Tower shall be 50 feet.

C. Permit Duration. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board using the procedures set forth in Section §14 of this Wind Energy Facilities Local Law.

§20. ABATEMENT

A. Operation. All WMT shall be maintained in good condition and in accordance with all requirements of this section.

B. Removal. WMT which is not used for a continuous period of one (1) year shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the Property Owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit.

§21. REQUIRED SAFETY MEASURES

A. Controls. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

B. Minimum blade height. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.

C. Signs. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the Tower warning of electrical shock or high voltage. The Town Board may require additional signs based on safety needs.

D. Climbing Pegs. No climbing pegs or Tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the Tower.

E. Access Control. WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§22. ROADS AND TRAFFIC

A. Traffic Routes. Construction and delivery vehicles for WECS and Wind Energy Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (i) minimizing traffic impacts from construction and delivery vehicles; (ii) minimizing WECS related traffic during times of school bus activity; (iii) minimizing wear and tear on local roads (if use of such roads is permitted under this Local Law); and (iv) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

B. Road Remediation. If any load exceeds the limits of Section 385 of the New York State Vehicle and Traffic Law, the Applicant shall be responsible for remediation of damaged roads upon completion of the installation of the WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for and damage to local roads, if such use is authorized under this Local Law, that is not corrected by the

Applicant. An Applicant shall submit an estimate of costs for restoration to the preconstruction quality and character of local roads for the Town's approval prior to construction, and this estimate shall be the basis for the bond.

§23. SOUND LEVELS

A. The equivalent level (LEQ) generated by a WECS shall not exceed the limits listed in Table 1 when measured at the nearest off-Site Residence or Buildable Lot. If the A-weighted Background Sound pressure level, without the WECS, is within 5dB of some or all of the limits in Table 1 or exceeds some or all of the limits in Table 1, then the A-weighted criterion to be applied to the WECS application for those affected limits shall be the A-weighted background level+ 5dB. The remaining limits that are more than 5 dB above the A-weighted background shall remain as given in Table 1.

Note: For example, during daytime, if the background is less than or equal to 40 dB, then the limit is 45 dB. However, if the background is greater than 40 dB, say 44 dB, then the applicable WECS limit is the background level plus 5 dB which calculates to 49 dB for this example.

B. In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table 1 or based on the A-weighted background, as appropriate) plus 18 dB. The application shall include certification by an independent acoustical engineer as to the predicted A- and C- weighted WECS sound levels as potentially impacted residential Sites. The engineer, or the firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental Noise, and shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The background shall be measured and predicted in accordance with clause C below.

Table I WECS Noise limits at residential receivers

	Daytime 7 AM to 7 PM	Evening 7 PM to 10 PM	Nighttime 10 PM to 7 AM
A-weighted level (dB)	45	40	35
C-weighted level (dB)	63	58	53

C. A-weighted background sound levels shall be based on measured hourly L90 levels gathered over a sufficient time to characterize each of the following three time periods, respectively. The day shall be divided into three time periods: (1) daytime, the hours from 7 AM to 7 PM, (2) evening, the hours from 7 PM to 10 PM, and (3)

nighttime, the hours from 10 PM to 7 AM. If insect Noise possibly can dominate some of the hourly L90 measurements, then Ai weighted (see Schomer, Paul D. et al., "Proposed 'Ai'-Weighting: a weighting to remove insect Noise from A-weighted field measurements," InterNoise 2010, Lisbon Portugal, 13-16 June 2010) shall be used in lieu of the Standard A-weighting, or measurements shall not be made when insect Noise possibly can dominate some of the hourly L90 measurements. The background shall be reported by the time period, and computed as follows. The minimum hourly L90 shall be tabulated by time period and by day, and the arithmetic average of these measurements by time period over all the days of measurement shall be computed. These three averages of daily minima shall be reported as that Site's daytime, evening, and night time A-weighted background levels, respectively.

> Note: In relatively quiet areas insect Noise, especially during summer months, can easily dominate the A-weighted Ambient Sound level. This occurs partly because the primary frequencies or tones of many, if not most, insect Noises are in the range of frequencies where the A-weighting is a maximum, whereas, most mechanical and WECS Noises primarily occur at the lower frequencies where the A-weighting significantly attenuates the sound. Also, insect Noises and bird songs do not mask WECS Noise at all because of the large differences in frequencies or tones between them.

1. Parcels 3 acres or smaller

The A-weighted background measurements shall be made along the line from the nearest proposed WECS to the Residence in question. If the parcel of land has no Residence, then the line shall terminate within 25 ft. of the center of the parcel. The actual position of the microphone shall be within the property in question and should be within 25 feet to either side of the line, no closer than 50 feet from the property boundary, and no closer than 25 feet from the house or any other structures. If positioning within this "measurement box" is not possible because of unique Site conditions such as the position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified.

2. Parcels larger than 3 acres

The A-weighted background measurements shall be made along the line from the nearest proposed WECS to the Residence in question. If the parcel of land has no Residence then the line shall terminate within 50 feet of the center of the parcel. The actual position of the microphone shall be within the property in question, shall be within 50 to 500 feet of the Residence or within 0-500 feet of the parcel center, as applicable, should be within 50 feet to either side of the line, shall be no closer than 50 feet from the house or any other

structure, and shall be no closer than 50 feet from the property boundary. If positioning within this "measurement box" is not possible because of unique Site conditions such as the position being underwater or the property being too small, then the conditions shall be fully documented and an alternate position selected and justified. The microphone shall be no closer than 50 feet from the house or any other structures.

3. Measurement requirements

The microphone shall be situated between 4 and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The meter Noise floor shall be 20 dB(A) or lower. The report shall include each hourly measured A-weighted L90 level, the tabulated daily minima by time period, and the three time period averages. The report also shall include a sketch of the Site showing distances to the structure(s), to the Property Line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted Noise floor and the one third octave band Noise floors, if utilized, for each meter used.

4. Background measurements shall be conducted throughout the area using sufficient Sites to generally characterize the background sound levels. It is anticipated that Background Sound measurements will be performed at 9 to 12 locations. The Town shall contract for the background measurements and determination of background levels for general areas of the Town such that every parcel is assigned a background level for daytime, evening, and nighttime. The contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental Noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The WECS Applicant shall pay for the contract to measure and determine background levels. This payment shall include the cost of the contract, the cost of letting the contract and the cost of supervising the contractor. The number of measurement Sites and study plan shall be developed jointly between the Town and the contractor with input from the public and from the Applicant.

D. The starting point for predicting WECS A- and C-weighted levels at potentially impacted residential parcels shall be the manufacturer-supplied octave band sound power levels as measured by the manufacturer in accordance with International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11). At a minimum, the octave band data shall include the 10 octave bands with nominal center frequencies ranging from 16 Hz to 8000 Hz (see ANSI 51.6-1984), and the sound power levels for these bands shall be tabulated in the report. Any data not available from the manufacturer shall be estimated from field measurements on like wind turbines ready in

use. Any such field measurements shall be described fully and documented in the report. In order to model the worst case condition, the Noise level corresponding to the maximum power setting shall be used assuming stable atmospheric conditions. Modeling shall not assume or otherwise take into account wind-induced sound at near-ground elevations.

For Sites at which A-weighted background measurements were performed, the A-and C-weighted WECS sound level predictions shall be made at the same point and for the nearest WECS (if more than one). For all other Sites, a prediction point shall be selected that is as close as possible to the nearest WECS while being within the "measurement box" delineated above. The octave band Sound Pressure Levels shall be predicted at the prediction point for at least each of the four nearest proposed WECS (if more than four are proposed) using sound propagation algorithms given by ISO 9613-2, with G and Gm in Table 3 of ISO 9613-2 set to 0.0. That is, the coefficients for delineating between an acoustically hard and an acoustically soft surface are each set to 0.0 for the source, middle, and receiver regions (see Kaliski, Kenneth and Duncan, Eddie, "Propagation Modeling Parameters for Wind Power Projects," Sound & Vibration, pp. 12-15, December 2008). Calculations for the 16 and 31.5 octave bands shall use the 63 Hz octave band algorithms contained in ISO 9613-2 with no factor for air absorption. No sound barrier shall be included in the calculations. For each such prediction, the A- and C-weighted level shall be calculated by applying the A- and C-weighting values from ANSI S1.4, then adding by adding the weighted mean square pressures, and finally by converting back to Decibels. The overall predicted A- and C-weighted levels shall be the sum of the individual levels added on the basis of the mean square pressures.

E. Any Noise level falling between two whole Decibels shall be rounded to the nearest whole Decibel.

F. The Applicant shall provide all calculations, data and assumptions in electronic format to verify compliance with this section; if computer modeling is utilized to predict project sound levels, the raw input data to the model shall be provided and sufficient additional data to allow the model runs on which the Applicant relies to be reproduced.

§24. NOISE STANDARDS ENFORCEMENT FOR LARGE WECS

Enforcement shall be by measurement. The Town shall be responsible for and shall contract for any enforcement measurements. The contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental Noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA.

The duration of any WECS measurement shall be 30 minutes. During the 30-minute period, the equivalent level (LEQ) generated by the WECS shall be measured. The measurement location shall be at any residential property as given in §25 (a), and at any point on this residential property at which the background sound level may be measured per §25 (c). Measurements shall be entirely within the appropriate time period, e.g. during nighttime for nighttime enforcement, and the WECS shall operate continuously during the 30-minute measurement.
The microphone shall be situated between 4 and 4.5 feet above the ground.
Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument Noise shall be at least 10 dB below the lowest level measured.

A calibrator shall be used as recommended by the manufacturer of the sound level meter.

The fundamental level of the calibrator and the sensitivity of the sound level meter shall be verified annual by a laboratory using procedures traceable to the National Institute of Standards and Technology.

A wind screen shall be used as recommended by the sound level meter manufacturer.

An anemometer shall be used and shall have a range of at least 5 to 15 miles per hour (2.2 to 6.7 meters per second) and an accuracy of at least ±2 miles per hour (±0.9 meters per second).

A compass shall be used to measure wind direction to at least an 8-point resolution: N, NE, E, SE, S, SW, W, NW.

Measurements shall be A-weighted, or, alternatively, in one-third-octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be 1 dB for a type 1 meter and 2 dB for a type 2 meter. For one-third-octave-band measurements, the meter shall meet the type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), the uncertainty of measurements shall be 5 dB in each and every one-third-octave band.
For all measurements, the surface wind speed, measured at a 1.5 meter height, shall be less than 5 meters per second.

All measurements shall be corrected for the background on the basis of mean square pressures. For one-third-octave-band measurements, each one-third-octave band shall be individually corrected for the background in that band. That is, both the sound level of the WECS (which always includes the background) and the Background Sound level alone shall be measured in each one-third-octave band. For either A-weighted data or one-third-octave-band data, the background shall be measured during a *like period* when the WECS is not operating, and Table II shall be used to correct for the background, by

band in the case of one-third-octave-band data. A *like period* means the same or like location, like surface wind speed and direction, like time of day and day-of-the-week (e.g., Monday-Thursday night, Friday or Saturday night, or Sunday night etc.

After correction, when using data measured in one-third-octave bands, all remaining bands, excluding bands set equal to zero, shall be converted to A-weighted bands and then shall be summed on a mean square pressure basis to establish the WECS background-corrected A-weighted sound level.

Table II Correction in dB that shall be subtracted from the WECS sound level measurement (which always includes the Background Sound level) because of the Background Sound so that the result is just the sound level of the WECS alone (see Note 1 below)

Δ, difference	<3	3-4	5-6	7-10	>10
K, correction (dB)	Notes 2, 3	3	2	1	0

Notes:

1. This table provides a simple correction to measurements of WECS sound and in the presence of the background. For example, the sound of a WECS (along with the Background Sound which is always present) is measured as 40 dB(A), and the Background Sound level alone (without the WECS) is measured as 34 dB(A). Then Δ, the difference in Decibels is 6 dB (first row, third column), and the corresponding correction shall be 2 dB (second row, third column). That is, 2 dB shall be subtracted from the measured 40 dB(A) level, and it is adjusted to and reported as 38 dB(A). The same procedure is followed in each band for one-third-octave-band data.

2. When using directly measured A-weighted levels, if the difference between the WECS sound level (plus Background Sound level) and the Background Sound level alone is less than 3 dB, then it shall not constitute a violation of this chapter.

3. When using measured one-third-octave-band data, if the difference between the WECS Sound Pressure Level (plus Background Sound pressure level) and the Background Sound pressure level alone, each in the same one-third-octave band, is less than 3 dB, then the WECS level for that one-third-octave band shall be set to zero.

The report shall include a sketch of the Site showing distance to the structure(s), to the Property Line, etc., and several photographs showing the structure(s), property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model,

and serial number. This instrumentation listing shall include the A-weighted Noise floor and the one third octave band Noise floors, if utilized, for each sound level meter used.

§25. SETBACKS

Setbacks. Each WECS shall be located with the following minimum setbacks, as measured from the center of the WECS:

i. Ten (10) Rotor Diameters from the property line of off-Site Residences or Buildable Lots.

ii. Four (4) Turbine Heights from the nearest on-Site Residence.

iii. 100 feet or the rotor radius, whichever is more from state-identified wetlands, except where permits for other setbacks have been received from the New York State Department of Environmental Conservation, or federal wetland permits issued by the US Army Corps of Engineers.

iv. 1.5 times the sum of the hub height plus Rotor Diameter from a public highway.

§26. GENERAL REQUIREMENTS

A. Operation. A WECS shall be maintained in operational condition at all time, subject to reasonable maintenance and repair outage. Operational condition includes meeting all Noise requirement and other permit conditions.

B. Violations of Permit Conditions. A WECS is non-compliant and must be shut down immediately if it exceeds any of the limits in Section 25 of this Wind Energy Facilities Local Law.

C. Inoperative WECS. If any WECS remains non-functional or inoperative for the continuous period one (1) year, WECS shall be decommissioned.

D. WECS Removal and Remediation. WECS removal shall include removal of all aboveground equipment, removal of foundations to a depth of three (3.0) feet below grade, restoration of soil conditions, and restoration of vegetation to be consistent and compatible with surrounding vegetation.

E. Decommissioning Fund. The Permitee, or successors, shall continuously maintain a financial assurance mechanism for the costs of decommissioning and removal of all WECSs on Site and the remediation of all disturbed areas of land sufficient to assure no discharge of sediments or other pollutants following decommissioning

(decommissioning, removal and remediation) in a form approved by the Town, for the period of the life of the facility. The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed and shall not include the future value, if any, of scrap. If a bond is posted to meet this requirement, the bond issuing company must have a current A.M. Best rating of A- or higher. All decommissioning, removal and remediation fund requirements shall be fully funded before a building permit is issued. The Town Board shall have sole discretion with regard to the determination of the mode of financial assurance.

ARTICLE V. MISCELLANEOUS

§27. FEES

Permit fees, host community payments, and escrow payments are in addition to application fees.

A. Wind Energy Permits. Non-refundable application fees shall be as follows:

i. Wind Energy Permit: $5 per kW of Name Plate Rating
ii. Wind Energy Permit renewals: $300 per WECS
iii. Wind Measurement Towers Permit: $500 per Tower
iv. Wind Measurement Tower Permit renewals: $300 Tower.

B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be $500 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. The Town and the Applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans.

C. Host Community Agreements. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into host community agreements with any Applicant to compensate the Town for expenses or impacts on the community. Unless otherwise agreed upon between the Town and the Applicant, the Wind Energy Permit Annual Fee shall be $8 per kilo-Watt of Name Plate Rating and shall be adjusted annually for inflation based on changes in the Consumer Price Index as published by the U.S. Bureau of Labor Statistics.

D. Escrow Agreement. The agreement required under Subsection 29 (B) of this Article must be executed and funded before any application is deemed complete.

§28. ENFORCEMENT, PENALTIES AND REMEDIES FOR VIOLATIONS

A. Staff. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.

B. Any person owning, controlling or managing any building, structure or land who shall construct or operate a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the Code Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than $350 or to imprisonment for a period of not more than six months. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of $250 per day for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this Local Law, including the terms and conditions imposed by any permit issued pursuant to this Local Law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

§29. TAX EXEMPTION

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law Section 487, pursuant to the authority granted by paragraph 8 of that law.

§30. SEVERABILITY

Should any other section of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than that specific part so decided to be unconstitutional or invalid.

§31. EFFECTIVE DATE

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

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Jim Cummings, AEI Special Report: Wind Farm Noise 2011: Science and Policy overview, Acoustic Ecology Institute (Santa Fe, NM) 2011

Christopher J. Bajdek, Communicating the Noise Effects of Wind Farms to Stakeholders, Proceedings of NOISE-CON 2007 (Reno, Nevada)

SEQR – Lead Agency Status:
The following Resolution was introduced for adoption by Councilman Reynolds and duly seconded by Councilman Woodland:

(RESOLUTION NO. 124 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby declare itself as Lead Agency in the matter of Local Law Introductory "B" of 2013, a Local Law to amend the Code of the Town of New Hartford by creating a new Chapter 117A. entitled Wind Energy Facilities; and be it

FURTHER RESOLVED that the Town Board does hereby authorize and direct the Town Clerk to forward copies of said legislation to all interested and/or involved agencies for SEQR review, and to forward same to the Town Planning Board and Oneida County Planning Department for review under General Municipal Law.

Upon roll call, the Town Board voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly adopted.

Public Hearing Scheduled – Local Law Introductory "B" of 2013 (Wind Energy Facilities)

Councilman Reynolds introduced the following Resolution for adoption; seconded by Councilman Backman:

(RESOLUTION NO. 125 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, August 14, 2013 at 7:00 P.M**.,** or as soon thereafter as reached in the regular course of business, in Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory "B" of 2013** which, if adopted, would amend the Code by creating a new Chapter 117A. entitled as Wind Energy Facilities; and be it

FURTHER RESOLVED that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

A roll call vote ensued:

Councilman Miscione	-	Aye
Councilman Backman	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***.

Local Law Introductory "C" of 2013 – Flood Damage Prevention (Insurance)

The Town Supervisor had received a letter from the NYS Department of Environmental Conservation (DEC), dated April 2, 2013, apprising the Town that the "new Flood Insurance Study and Flood Insurance Rate Maps establishing 100 year base flood elevations for the Town have recently been completed by FEMA"; "to maintain eligibility in the National Flood Insurance Program (NFIP) it is necessary that the Town of New Hartford adopt the new Flood Insurance Study and Flood Insurance Rate Maps into the community's floodplain management regulations to meet the standards of Section 60.3(d) of the program regulations by September 27, 2013."

"Failure to enact required regulations and have them reviewed and approved by FEMA by this date will result in program suspension thereby prohibiting residents from purchasing or renewing flood insurance policies. In order to meet this deadline, the final local law must be passed and submitted to the NYS DEC for review by August 26, 2013 along with the NYS Department of State filing forms. A copy of NYS Department of

State's local law filing acknowledgement letter must also be forwarded at a later date when it is received.

If FEMA does not have an approved local law one month prior to the map's effective date, the Town will receive a letter from FEMA indicating that the Town is eligible for suspension from the NFIP, which will occur on the map's effective date.

All local laws must be reviewed by the NYS DEC prior to approval by FEMA and DEC requested that a draft local law be sent to them by June 20, 2013 for their review of possible deficiencies and to ensure the Town's local law meets all necessary NFIP requirements. **[NOTE:** *At the May 22, 2013 Town Board meeting it was the Board's consensus to direct the Town Attorney to send to the NYS DEC the proposed flood prevention legislation, with the expectation that DEC's comments or approval would be received by the June 12, 2013 Town Board meeting.***]**

The Town Attorney then presented a proposed local law for flood damage prevention, which was offered for adoption by Councilman Miscione and duly seconded by Councilman Reynolds:

Town of New Hartford, NY
Local Law Introductory "C" of 2013

A local law for Flood Damage Prevention as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36 replacing Chapter 67 of The Town Code of the Town of New Hartford.

SECTION 1.0
STATUTORY AUTHORIZATION AND PURPOSE

1.1 FINDINGS

The Town Board of the Town of New Hartford finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of New Hartford and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

1.2 STATEMENT OF PURPOSE

It is the purpose of this local law to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(4) control filling, grading, dredging and other development which may increase erosion or flood damages;

(5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;

(6) qualify and maintain for participation in the National Flood Insurance Program.

1.3 OBJECTIVES

The objectives of this local law are:

(1) to protect human life and health;

(2) to minimize expenditure of public money for costly flood control projects;

(3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) to minimize prolonged business interruptions;

(5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;

(6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) to provide that developers are notified that property is in an area of special flood hazard; and,

(8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

SECTION 2.0
DEFINITIONS

Unless specifically defined below, words or phrases used in this local law shall be interpreted so as to give them the meaning they have in common usage and to give this local law its most reasonable application.

"Appeal" means a request for a review of the Local Administrator's interpretation of any provision of this Local Law or a request for a variance.

"Area of shallow flooding" means a designated AO, AH, or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain. For purposes of this Local Law, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means that the portion of a building having its floor subgrade (below ground level) on all sides.

"Building" see "Structure"

"Cellar" has the same meaning as "Basement".

"Crawl Space" means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

"Development" means any man-made change to improved on unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

"Elevated building" means a non-basement building (i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

"Federal Emergency Management Agency" means the Federal agency that administers the National Flood Insurance Program.

"Flood" or **"Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters;

(2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Boundary and Floodway Map (FBFM)" means an official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along water courses studies in detail in the Flood Insurance Study.

"Flood Elevation Study" means an examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

"Flood Insurance Study" see "flood elevation study".

"Floodplain" or **"Flood-prone area"** means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Floodproofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and other contents.

"Floodway" – has the same meaning as "Regulatory Floodway".

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

"Historic structure" means any structure that is:

(1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a

district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(i) by an approved state program as determined by the Secretary of the Interior or

(ii) directly by the Secretary of the Interior in states without approved programs.

"Local Administrator" is the person appointed by the community to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

"Lowest floor" means lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Local Law.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle"

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"Mobile home"- has the same meaning as "Manufactured home".

"New construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the community and includes and subsequent improvements to such structure.

"**One hundred year flood"** or **"100-year flood"** has the same meaning as "Base Flood".

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, excluding land value, is above ground.

"Recreational vehicle" means a vehicle which is:

(1) built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projections;

(3) designed to be self-propelled or permanently towable by a light duty truck; and

(4) not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 4.4-2 of this Law.

"Start of construction" means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part

of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

"Variance" means a grant of relief from the requirements of this local law which permits construction or use in a manner that would otherwise be prohibited by this local law.

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations.

SECTION 3.0

GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES

This local law shall apply to all areas of special flood hazard within the jurisdiction of the Town of New Hartford, Oneida County.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard for the Town of New Hartford, Community Number 360535, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) Flood Insurance Rate Map Panel Numbers:

36065C0726F, 36065C0727F, 36065C0728F, 36065C0729F, 36065C0731F, 36065C0732F, 36065C0733F, 36065C0734F, 36065C0737F, 36065C0741F, 36065C0742F, 36065C0743F, 36065C0744F, 36065C0753F, 36065C0754F, 36065C0765F

whose effective date is, September 27, 2013, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

(2) A scientific and engineering report entitled "Flood Insurance Study, Oneida County, New York, All Jurisdictions" dated September 27, 2013.

The above documents are hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and/or maps are on file at:
Town of New Hartford Highway Garage
New Hartford Street

3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS

This Local Law includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention. Including the prior Chapter 67 of the Town Code of the Town of New Hartford.

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

3.4 SEVERABILITY

The invalidity of any section or provision of this local law shall not invalidate any other section or provision thereof.

3.5 PENALTIES FOR NON-COMPLIANCE

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this local law and any other applicable regulations. Any infraction of the provisions of this local law by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than $250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of New Hartford from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for and received an approved variance under Section 6.0 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

3.6 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this local law is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This local law does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Town of New Hartford, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this local law or any administrative decision lawfully made there under.

SECTION 4.0
ADMINISTRATION

4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR

The Codes Enforcement Officer is hereby appointed Local Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

4.2 THE FLOODPLAIN DEVELOPMENT PERMIT

4.2-1 PURPOSE

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner than minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 3.2, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

4.2-2 FEES

All applications for a floodplain development permit shall be accompanied by an application fee of $100.00. In addition, the applicant shall be responsible for reimbursing the Town of New Hartford for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than $500.00 to cover these additional costs.

4.3 APPLICATION FOR A PERMIT

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

(1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permitee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.

(2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permitee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.

(3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 5.2-3, UTILITIES.

(4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in Section 5.4, NON-RESIDENTIAL STRUCTURES.

(5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in Section 3.2, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

(6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in any area of special flood hazard may result in physical damage to any other property.

(7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

4.4 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

Duties of the Local Administrator shall include, but not be limited to the following.

4.4-1 PERMIT APPLICATION REVIEW

The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:

(1) Review all applications for completeness, particularly with the requirements of subsection 4.3, APPLICATION FOR A PERMIT, and for compliance with the provisions and standards of this law.

(2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. IF a proposed building site is located in an area of

special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 5.0, CONSTRUCTION STANDARDS and, in particular, sub-section 5.1-1 SUBDIVISION PROPOSALS.

(3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.

If the proposed development may result in physical damage to any other property or fails to meet the requirements of Section 5.0, CONSTRUCTION STANDARDS, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and re-submit the application.

(4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by State or Federal law.

4.4-2 USE OF OTHER FLOOD DATA

(1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to paragraph 4.3(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.

(2) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this law.

4.4-3 ALTERATION OF WATERCOURSES

(1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.

(2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.4-4 CONSTRUCTION STAGE

(1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

(2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

4.4-5 INSPECTIONS

The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

4.4-6 STOP WORK ORDERS

(1) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found ongoing without a development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 3.5 of this local law.

(2) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found non-compliant with the provisions of this law

and/or the conditions of the development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 3.5 of this local law.

4.4-7 CERTIFICATE OF COMPLIANCE

(1) In areas of special flood hazard, as determined by documents enumerated in Section 3.2, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this local law.

(2) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.

(3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Section 4.4-5, INSPECTIONS, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

4.4-8 INFORMATION TO BE RETAINED

The Local Administrator shall retain and make available for inspection, copies of the following:

(1) Floodplain development permits and certificates of compliance;

(2) Certifications of as-built lowest floor elevations of structures, required pursuant to sub-sections 4.4-4(1) and 4.4-4(2), and whether or not the structures contain a basement;

(3) Floodproofing certificates required pursuant to sub-section 4.4-4(1), and whether or not the structures contain a basement;

(4) Variances issued pursuant to Section 6.0, VARIANCE PROCEDURES; and,

(5) Notices required under sub-section 4.4-3, ALTERATION OF WATERCOURSES.

SECTION 5.0
CONSTRUCTION STANDARDS

5.1 GENERAL STANDARDS

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 3.2.

5.1-1 SUBDIVISION PROPOSALS

The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

(1) Proposals shall be consistent with the need to minimize flood damage;

(2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,

(3) Adequate drainage shall be provided to reduce exposure to flood damage.

5.1-2 ENCROACHMENTS

(1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:

(i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any other location, or,

(ii) the Town of New Hartford agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of New Hartford for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping reimburse the Town of New Hartford for all cost related to the final map revision.

(2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 3.2, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

(i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,

(ii) the Town of New Hartford agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of New Hartford for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of New Hartford for all costs related to the final map revisions.

5.2 STANDARDS FOR ALL STRUCTURES

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 3.2.

5.2-1 ANCHORING

New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

5.2-2 CONSTRUCTION MATERIALS AND METHODS

(1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

(2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.

(3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this

requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

(ii) The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.

5.2-3 UTILITIES

(1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

(2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,

(4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.3 RESIDENTIAL STRUCTURES

5.3-1 ELEVATION

The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 5.1-1, SUBDIVISION PROPOSALS, and 5.1-2, ENCROACHMENTS, and Section 5.2, STANDARDS FOR ALL STRUCTURES.

(1) Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.

(2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.

(3) Within Zone AO, the new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).

(4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

5.4 NON-RESIDENTIAL STRUCTURES

The following standards apply to new and substantially improved commercial, industrial and other non-residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 5.1-1, SUBDIVISION PROPOSALS, and 5.1-2, ENCROACHMENTS, and Section 5.2, STANDARDS FOR ALL STRUCTURES.

(1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure shall either:

(i) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or

(ii) be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(2) Within Zone AO, new construction and substantial improvements of non-residential structures shall:

(i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or

(ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 5.4(1)(ii)

(3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 5.4(1)(ii), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

(4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

(5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES

The following standards in addition to the standards in Section 5.1, GENERAL STANDARDS, and Section 5.2, STANDARDS FOR ALL STRUCTURES apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

(1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:

(i) be on site fewer than 180 consecutive days.

(ii) be fully licensed and ready for highway use, or

(iii) meet the requirements for manufactured homes in paragraphs 5.5(2), (3) and (4).

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

(2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and its securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(3) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

(4) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as two feet above the depth number specified on the Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).

SECTION 6.0
VARIANCE PROCEDURE

6.1 APPEALS BOARD

(1) The Zoning Board of Appeals as established by the Town of New Hartford shall hear and decide appeals and requests for variances from the requirements of this local law.

(2) The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.

(3) Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

(4) In passing upon such applications, the Zoning Board of Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:

(i) the danger that materials may be swept onto other lands to the injury of others;

(ii) the danger to life and property due to flooding or erosion damage;

(iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(iv) the importance of the services provided by the proposed facility to the community;

(v) the necessity to the facility of a waterfront location, where applicable;

(vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(vii) the compatibility of the proposed use with existing and anticipated development;

(viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;

(ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;

(xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

(5) Upon consideration of the factors of Section 6.1(4) and the purposes of this local law, the Town of New Hartford may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.

(6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

6.2 CONDITIONS FOR VARIANCES

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing terms (i-xii) in Section 6.1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

(i) the proposed repair of rehabilitation will not preclude the structure's continued designation as a "Historic structure"; and

(ii) the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

(i) the criteria of subparagraphs 1,4, 5, and 6 of this Section are met; and

(ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

(4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(6) Variances shall only be issued upon receiving written justification of:

(i) a showing of good and sufficient cause;

(ii) a determination that failure to grant the variances would result in exceptional hardship to the applicant; and

(iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:

(i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and

(ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions as required in Section 4.4-8 of this Local Law.

Effective Date:

This local law shall become effective upon the filing of same in the Office of Secretary of State.

SEAL

ATTEST_____CLERK

Attachment A
MODEL FLOODPLAIN DEVELOPMENT
APPLICATION FORM

APPLICATION # _____ Page 1 of 4

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION

This form is to be filled out in duplicate.

SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):_____

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Compliance is issued.
5. The permit is invalid if no work is commenced within six months of issuance, and expires 2 years from date of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements.
7. Applicant hereby gives consent to the Local Administrator or his/her representative to make reasonable inspections required to verify compliance.
8. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

(APPLICANT'S SIGNATURE) _____ DATE

SECTION 2: PROPOSED DEVELOPMENT (To be completed by **APPLICANT)**

NAME ADDRESS
TELEPHONE
APPLICANT

BUILDER

ENGINEER

PROJECT LOCATION:

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well-known landmark. A map attached to this application, and a sketch showing the project layout would be helpful.

DESCRIPTION OF WORK (Check all applicable boxes):

A. STRUCTURAL DEVELOPMENT

ACTIVITY

- ☐ New Structure
- ☐ Addition
- ☐ Alteration
- ☐ Relocation
- ☐ Demolition

STRUCTURE TYPE

- ☐ Residential (1-4 Family)
- ☐ Residential (More than 4 Family)
- ☐ Non-residential (Floodproofing? ☐ Yes)
- ☐ Combined Use (Residential & Commercial)
- ☐ Manufactured (Mobile) Home

☐ Replacement (In Manufactured Home Park? ☐Yes ☐ No

ESTIMATED COST OF PROJECT $ _____

B. OTHER DEVELOPMENT ACTIVITIES

☐ Fill ☐ Mining ☐ Drilling ☐ Grading

☐ Excavation (Except for Structural Development Checked Above)
☐ Watercourse Alteration (Including Dredging and Channel Modifications)
☐ Drainage Improvements (Including Culvert Work), Stormwater Control Structures or
Ponds
☐ Road, Street or Bridge Construction
☐ Subdivision (New or Expansion)
☐ Individual Water or Sewer System
Other (Please Specify)
_____

After completing SECTION 2, APPLICANT should submit form to Local Administrator for review.

SECTION 3: FLOODPLAIN DETERMINATION (To be completed by **LOCAL ADMINISTRATOR)**

The proposed development is located on FIRM Panel No. _____, Dated _____.

The Proposed Development:

☐ The proposed development is reasonably safe from flooding. Entire property is in Zone B, C, or X.

☐ The proposed development is in adjacent to a flood prone area.
100-Year flood elevation at the site is:
_____Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
☐ Unavailable

☐ See Section 4 for additional instructions for development that is or may be in a flood prone area.

SIGNED _____ DATE
APPLICATION # _____

SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by **LOCAL ADMINISTRATOR)**

The applicant must submit the documents checked below before the application can be processed:

- ☐ A site plan showing the location of all existing structures, water bodies, adjacent roads, lot dimensions and proposed development.

- ☐ Development plans and specifications, drawn to scale, including where applicable: details for anchoring structures, proposed elevation of lowest floor (including basement), types of water resistant materials used below the first floor, details of floodproofing of utilities located below the first floor, details of enclosures below the first floor, openings in foundation for entry and exit of floodwaters.

- ☐ Other _____

- ☐ Elevation Certificate

- ☐ Subdivision or other development plans (If the subdivision or other development exceeds 50 lots or 5 acres, whichever is the lesser, the applicant must provide 100-year flood elevations if they are not otherwise available).

- ☐ Plans showing the watercourse location, proposed relocations, Floodway location.

- ☐ Topographic information showing existing and proposed grades, location of all proposed fill.

- ☐ Top of new fill elevation _____ Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)

- ☐ PE Certification of Soil Compaction

- ☐ Floodproofing protection level (non-residential only) _____ ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
  For floodproofed structures, applicant must attach certification from registered engineer or architect.

- ☐ Other:
  _____

  _____

  _____

SECTION 5: PERMIT DETERMINATION (To be completed by **LOCAL ADMINISTRATOR)**

I have determined that the proposed activity: A. ☐ Is
B. ☐ Is not
in conformance with provisions of Local Law #_____, (yr)_____. This permit is herby issued subject to the conditions attached to and made part of this permit.

SIGNED _____, DATE _____

If BOX A is checked, the Local Administrator may issue a Development Permit upon payment of designated fee.
If BOX B is checked, the Local Administrator will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Local Administrator or may request a hearing from the Board of Appeals.

Expiration Date: _____

APPLICATION #_____ Page 4 of 4

APPEALS: Appealed to Board of Appeals? ☐ Yes ☐ No
Hearing date: _____
Appeals Board Discussion---Approved? ☐ Yes ☐ No

Conditions: _____
_____
_____

SECTION 6: AS-BUILT ELEVATIONS (To be submitted by **APPLICANT** before Certificate of Compliance is issued)

The following information must be provided for project structures. This section must be completed by a registered professional engineer or a licensed land surveyor (or attach a certification to this application). Complete 1 or 2 below.

1. Actual (As-Built) Elevation of the top of the lowest floor, including basement (in Coastal High Hazard Areas, bottom of lowest structural member of the lowest floor, excluding piling and columns) is: ____ FT. ☐ NGVD 1929/ NAVD 1988 (MSL).
   Attach Elevation Certificate FEMA Form 81-31

2. Actual (As-Built) Elevation of floodproofing protection is _____FT. ☐ NGVD ☐1929/ NAVD 1988 (MSL).
   Attach Floodproofing Certificate FEMA Form 81-65

NOTE: Any work performed prior to submittal of the above information is at the risk of the Applicant.

SECTION 7: COMPLIANCE ACTION (To be completed by **LOCAL ADMINISTRATOR)**

The **LOCAL ADMINISTRATOR** will complete this section as applicable based on inspection of the project to ensure compliance with the community's local law for flood damage prevention.

INSPECTIONS: DATE _____ BY_____ DEFICIENCIES? ☐ YES ☐ NO
DATE _____ BY_____ DEFICIENCIES? ☐ YES ☐ NO
DATE _____ BY_____ DEFICIENCIES? ☐ YES ☐ NO

SECTION 8: CERTIFICATE OF COMPLIANCE (To be completed by **LOCAL ADMINISTRATOR)**

Certificate of Compliance issued: DATE: _____

BY: _____

Attachment B

SAMPLE
CERTIFICATE OF COMPLIANCE

for Development in a Special Flood Hazard Area

CERTIFICATE OF COMPLIANCE
FOR DEVELOPMENT IN A SPECIAL FLOOD HAZARD AREA

(Owner Must Retain This Certificate)

Premises located at: _____

_____

_____

_____

Owner:

_____

Owner's Address:

_____

_____

_____

_____

Permit No. _____ Permit Date: _____

Check One:

___ New Building
___ Existing Building
___ Fill
___ Other:

The Local Floodplain Administrator is to complete a. or b. below:

a. Compliance is hereby certified with the requirements of Local Law No. ____, (yr) ___.

Signed: _____ Dated:

b. Compliance is hereby certified with the requirements of Local Law No._____, (yr)____, as modified by variance no.____, dated _____.

Signed: _____ Dated:
_____

Public Hearing Scheduled – Local Law Introductory "C" of 2013

Whereas the Town Attorney has previously referred Local Law Introductory "C" of 2013 to the NYS Department of Environmental Conservation for their review, Councilman Miscione offered the following Resolution for adoption, seconded by Councilman Reynolds:

(RESOLUTION NO. 126 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, August 14, 2013 at 7:00 P.M., or as soon thereafter as reached in the regular course of business, in Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory "C" of 2013** which, if adopted, would amend the Code, by repealing the existing Chapter 67 entitled Flood Damage Prevention and replacing it with new language as a result of updated Flood Insurance Study and Flood Insurance Rate Maps; and be it

FURTHER RESOLVED that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

A roll call vote ensued:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Woodberry and lower Beechwood Road

Councilman Reynolds noted that a tentative "walk-thru" had been scheduled for Friday, June 14, 2013 at 9:30 A.M. for this drainage project; the one (1) year warranty is about to expire.

2007 Comprehensive Plan Update - Status

In response to Councilman Backman's inquiry about the status of the 2007 Comprehensive Plan update, the Codes Officer reported the update is nearly complete and will be reviewed by the Town Planning Board. To Councilman Backman's comment, the Town Attorney stated "this is a work in progress and you will not end up with a 'canned' product.

Police Commission – I.D. Badges

Councilman Backman expressed his desire to issue badges to the new Police Commission members, such as was done with the prior Commission. The Town Supervisor asked '..why does a person on a committee need a badge', to which Councilman Backman responded 'they don't.' The Town Attorney stated that badges are not given to persons who don't have the authority to issue citations. The Police Commission was established as an advisory committee only and issuing badges could imply the members have authority when they don't. It was Town Board consensus for the Town Attorney to research the matter and report at the July 2013 Town Board meeting.

Audit of Vouchers

On recommendation of the Town Supervisor, Councilman Reynolds presented the following Resolution for adoption; seconded by Councilman Backman:

(RESOLUTION NO. 127 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the payment of the bills itemized on the following Abstracts, which had been duly audited by the Town Board:

Panera Traffic Light Abstract #1		
Vouchers HP1-HP3	$	14,362.14
Mud Creek Project Abstract #1		
Vouchers HR1	$	3,942.80
Street Lighting Fund Abstract #7		
Vouchers SL8	$	7,596.41
Heavy Equipment Abstract #1		
Vouchers HO1	$	107.73
Stormwater Series II Abstract #5		
Vouchers HK5	$	135.00
Trust & Agency Fund Abstract #19		
Vouchers TT80-TT87	$	13,614.30
Trust & Agency Fund Abstract #20		
Vouchers TT89 & TT97	$	7,241.95
Trust & Agency Fund Abstract #21		
Vouchers TT90-TT96	$	14,326.72
Trust & Agency Fund Abstract #22		
Vouchers TT99-TT107	$	13,669.18
Highway Fund Part-Town Abstract #9		
Vouchers DB318-DB369	$	108,242.51
General Fund Part-Town Abstract #12		
Vouchers BB67-BB69	$	5,804.15

General Fund Part-Town Abstract #13		
Vouchers BB72-BB81	$	3,457.62
General Fund Whole-Town Abstract #17		
Vouchers AA582-AA587;		
AA590-596	$	26,418.83
General Fund Whole-Town Abstract #18		
Vouchers AA600-AA606	$	7,004.87
General Fund Whole-Town Abstract #19		
Vouchers AA608-AA671; AA673-AA697		
AA699-AA710	$	84,329.12
General Fund Part-Town Police Abstract #13		
Vouchers BP115-BP117	$	37,585.65
General Fund Part-Town Police Abstract #14		
Vouchers BP120-BP138	$	25,754.52
Sewer Fund Abstract #13		
Voucher SS40-SS42	$	806.52
Sewer Fund Abstract #14		
Voucher SS45	$	1,293.34
Sewer Fund Abstract #15		
Voucher SS46-SS50	$	26,751.79
	$	**402,445.15**

Whereupon, the Town Board voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Zoning Board of Appeals appointments

The Town Supervisor announced that Frederick Kiehm and Taras Tesak, members of the Zoning Board of Appeals whose terms ended June 9, 2013 have submitted letters of interest for re-appointment; additionally, former Zoning Board member Byron Elias submitted his letter of interest in being appointed to one of the vacancies.
Thereafter, Councilman Reynolds introduced the following Resolution that was duly seconded by Councilman Backman:

(RESOLUTION NO. 128 OF 2013)

WHEREAS, the term of office of Frederick C. Kiehm as a Member of the Zoning Board of Appeals has expired June 9, 2013 and Mr. Kiehm has submitted a letter of interest in being re-appointed to said Board;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby re-appoint Frederick C. Kiehm as a Member of the Zoning Board of Appeals for a five-year term commencing June 10, 2013 and ending June 9, 2018

The Town Supervisor polled the Town Board members who voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Councilman Backman then introduced the following Resolution for adoption; seconded by Councilman Miscione:

(RESOLUTION NO. 129 OF 2013)

WHEREAS, a vacancy exists on the Zoning Board of Appeals due to the expiration of term of office of Taras Tesak;

NOW, THEREFORE, BE IT RESOLVED that the New Hartford Town Board does hereby appoint Byron W. Elias as a Member of the Zoning Board of Appeals for a five-year term commencing June 10, 2013 and ending June 9 2018, filling the position of former member Taras Tesak.

A roll call vote ensued:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Competitive bid award – Consumer Square North Drive Traffic Signal
The following bids were opened in the Town Clerk's Office on Thursday, May 30, 2013:

- Binghamton Road Electric LLC - $199,649.70
- Power Line Constructors, Inc. - $198,134.08

The Town Supervisor noted that bids came in a little higher because the NYS Department of Transportation decided they wanted more, such as crosswalks, etc. He is trying to work out an agreement with Benderson to pay the difference.

Thereafter, Councilman Miscione offered the following Resolution for adoption; seconded by Councilman Reynolds:

(RESOLUTION NO. 130 OF 2013)

RESOLVED that the New Hartford Town Board does hereby accept the low bid of and award the contract "Consumer Square North Drive Traffic Signal Project" to Power Line Constructors, Inc. in the amount of One Hundred Ninety-eight Thousand One Hundred Thirty-four Dollars and Eight Cents ($198,134.08); and be it

FURTHER RESOLVED that the Town Supervisor be, and he hereby is, authorized and directed to enter into and to execute all necessary documents and agreements related to the aforementioned Traffic Signal Project, conditioned upon the Town's receipt of a fully executive agreement from Benderson Corp that said corporation will pay the overage on this project.

Upon roll call, the Town Board voted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

Return of Bid Security – Consumer Square North Drive Traffic Signal
Councilman Reynolds offered the following Resolution for adoption and Councilman Backman seconded same:

(RESOLUTION NO. 131 OF 2013)

RESOLVED that the Town Board of the Town of New Hartford does hereby authorize and direct the Town Clerk to return the bid bond submitted by unsuccessful bidder, Binghamton Road Electric LLC, for the Consumer Square North Drive Traffic Signal, and that the bid bond submitted by successful bidder, Power Line Constructors, Inc. be held until the project has been satisfactorily completed.

The foregoing Resolution was duly put to a vote upon roll call:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED.***

EXECUTIVE SESSION
Councilman Backman introduced the following Resolution for adoption and Councilman Miscione seconded same:

(RESOLUTION NO. 132 OF 2013)

RESOLVED that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss the employment history of a particular employee, the pending Sangertown tax certiorari, Central Paving, the Peters-Adelman litigation and acquisition of land for the Philip Rayhill Memorial Trail Extension.

A roll call vote ensued:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

Thereafter, the Resolution was declared unanimously carried and duly ***ADOPTED***. All persons present, including the news media and Department Heads, were then excused from the meeting at 8:45 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

[NOTE: The Town Attorney provided the following transcription to the Town Clerk on Thursday, June 13, 2013.]

END OF EXECUTIVE SESSION

Councilman Reynolds then offered the following Resolution for adoption and Councilman Miscione seconded same:

(RESOLUTION NO. 133 OF 2013)

RESOLVED that the New Hartford Town Board does hereby move to end its Executive Session and to reconvene the regular portion of the Town Board meeting.

The Board members voted upon roll call that resulted as follows:

Councilman Miscione	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***; the Executive Session ended at 9:20 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public re-invited to the meeting.

ADJOURNMENT

There being no further business to come before the Town Board, upon motion of Councilman Backman and seconded by Councilman Miscione, the meeting was adjourned at 9:21 P.M.

Respectfully submitted,

Gail Wolanin Young, Town Clerk