

# **TOWN OF WESTERLO**

## **LOCAL LAW NO. 1 OF 2020**

### **Amendments to the Town Zoning Law Regarding Code Enforcement**

**BE IT ENACTED** by the Town Board of the Town of Westerlo, County of Albany as follows:

#### **Title.**

This local law shall be known as Amendments to the Town Zoning Law Regarding Code Enforcement.

#### **Purpose and Intent.**

The purpose of this local law shall be to amend portions of the Town Zoning Law regarding administration and enforcement of the zoning laws within the Town of Westerlo to be consistent with applicable state law and regulations.

#### **Authority.**

This local law is adopted pursuant to sections 10 and 22 of the Municipal Home Rule Law.

#### **Effective Date.**

This Local Law shall take effect immediately upon filing with the New York State Secretary of State's Office.

#### **Repeal of All Previous Local Laws Regarding Solid Waste.**

This law amends those portions and provisions of Local Law #1 of 1989, as amended, and any other local law, rule or regulation that contradicts or conflicts with the provisions of this local law, and replaces it with the Amended Zoning Law attached hereto.

#### **SEQRA Determination.**

The Town Board hereby determines that the adoption of this local law is an unlisted action that will not have the potential for at least one significant adverse environmental impact and that no Environmental Impact Statement will be prepared, and no other determination or procedure under the NYS Environmental Quality Review Act (SEQRA) is required.

#### **Severability.**

Each separate part of this local law or the amendments herein shall be deemed independent of all other provisions, and if any provision shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

**Effective Date.**

This local law shall become effective upon its filing with the NYS Secretary of State.

Supervisor William Bichteman Jr.	Aye – Nay – Abstain
Councilwoman Amie L. Burnside	Aye – Nay – Abstain
Councilman Richard Filkins	Aye – Nay – Abstain
Councilman Joseph J. Boone	Aye – Nay – Abstain
Councilman Matthew Kryzak	Aye – Nay – Abstain

Adopted this 18th day of February 2020.

**By Order of the Westerlo Town Board**

**Kathleen Spinnato, Town Clerk**

I, KATHLEEN SPINNATO, Town Clerk of the Town of Westerlo, Albany County, New York, **DO HEREBY CERTIFY** that the foregoing local law was approved by the Town Board of the Town of Westerlo on **February 18, 2020** and that the foregoing is a true and correct transcript of the original local law and of the whole thereof and that said original local law is on file in the Town Clerk's office.

**I DO FURTHER CERTIFY** that each of the members of the Town Board had due notice of the said Town Board meeting.

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the Town of Westerlo this \_\_\_\_\_ day of February 2020.

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Kathleen Spinnato, Town Clerk

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TOWN SEAL

**Attachment 1**

**Town of Westerlo Zoning Law (amended February 18, 2020)**

# **TOWN OF WESTERLO**

## **ZONING LAW**

**Amended February 18, 2020**

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## **ARTICLE I. PREAMBLE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Westerlo (the "Town Board") does hereby enact the Town of Westerlo Zoning Law.

## **ARTICLE 2. SHORT TITLE**

This Local Law may be known and cited as the Town of Westerlo Zoning Law.

## **ARTICLE 3. PURPOSES OF THE LOCAL LAW**

The general and overall intent of this Local Law is to promote the health, safety and welfare of the community. Further purposes of this Local Law are:

- (1) To establish a variety of use districts within the Town to accommodate a diversity of residential densities and types.
- (2) To encourage the most appropriate use of land based on its natural characteristics.
- (3) To minimize conflicts from incompatible uses.
- (4) To prevent undue concentration of population and resultant overcrowding of the land.
- (5) To insure adequate and efficient transportation, water, sewerage, schools, parks and other services.
- (6) To lessen congestion in the streets.
- (7) To secure against fire, flood, panic and other hazards.
- (8) To provide adequate light and air.
- (9) To protect important natural and scenic resources such as lakes, streams, watersheds, wetlands, aquifers, historic sites and agricultural areas.
- (10) To preserve the quality of natural resources including air, water, soil, vegetation and wildlife.
- (11) To maintain and enhance the rural character of the Town.
- (12) To provide for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) within the Town of Westerlo.

## **ARTICLE 4. APPLICATION OF REGULATIONS**

Except as hereinafter provided, no building or structure shall be erected, constructed, reconstructed, moved, altered, or extended, and no land, building or structure or part thereof, shall be altered, occupied or used unless in conformity with this Local Law and with the regulations specified for the district in which it is located.

## **ARTICLE 5. USAGE**

Except where specifically defined herein, all words used in this Local Law shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by "or intended", "arranged", or "designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company, or organization. Doubt as to the precise meaning of any word used in the Local Law shall be clarified by the zoning Board of Appeals under its power of INTERPRETATION by appeal.

## **ARTICLE 6. DEFINITIONS**

*ACCESSORY BUILDING* - See "BUILDING, ACCESSORY".

*ACCESSORY USE* - A use customarily incidental and subordinate to the principle use, and which is located on the same lot with such principal use.

*AGRICULTURAL USE* - Land use for the raising of crops, cows, horses, poultry and other livestock, (exception: No more than four (4) pigs, hogs, swines, boars, etc. may be raised/kept) horticulture or orchards; including the sale of products grown or raised directly on such land, and including the construction, alteration, or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.

*AIRPORT* - A piece of land that is maintained for the horizontal or vertical landing and takeoff of aircraft used for receiving and discharging passengers and/or cargo that usually has facilities for the shelter, supply, and repair of aircraft.

*AIRSTRIP* - A runway without normal airport facilities.

*ALTERATIONS* - Structural change, rearrangement, change of location, or addition to a building, other than repairs and modifications in building equipment.

*AUTOMOBILE SERVICE, GASOLINE OR FILLING STATION* - A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor automobile repairs may be made.

*BUILDING* - Any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more in-pierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side yard requirements.

*BUILDING, ACCESSORY* - A detached building which is of secondary importance to the principal building, the use of which is customarily incidental and subordinate to that of a principal building and located on the same lot therewith.

*BUILDING, FRONT LINE OF* - The line of that face of the building nearest the front lot line. This face shall include bay windows, covered porches, whether enclosed or unenclosed.

*BUILDING, HEIGHT OF* - The vertical distance from the mean finished grade to the highest point of the building measured from a point on the ground along the front wall of the building.

*BUILDING INSPECTOR* - See "CODE ENFORCEMENT OFFICER".

*BUILDING PERMIT* - A permit issued pursuant to Section 7.20 of this local law. The term "Building Permit" shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this local law.

*BUILDING, PRINCIPAL* - A building in which the principal use of the lot on which it is located is conducted.

*CERTIFICATE OF OCCUPANCY* - A written permission issued pursuant to Section 7.60 of this local law by the Enforcement Officer indicating that following examination, the building, dwelling unit, mobile home park or travel trailer park and the lot upon which the same is to be placed, is approved in compliance with all the provisions of this Local Law.

*CODE ENFORCEMENT OFFICER* - The Code Enforcement Officer appointed pursuant to Section 7.10 of this local law.

*CODE ENFORCEMENT PERSONNEL* - The Code Enforcement Officer and all Inspectors.

*COMMERCIAL SOLAR ENERGY SYSTEM*: A solar energy system, as defined herein, which is intended to be utilized for any purpose other than private residential or agricultural use, including community-based systems.

*COMMERCIAL USE* - Any use involving the sale, rental, or distribution of goods and/or services, either retail or wholesale.

*DEVELOPMENT* - Any activity other than agriculture or conservation activity which materially affects the existing condition of land or improvements, including but not limited to:

- a) Excavation or deposit of earth or other fill, including alteration of the banks of any stream or body of water.
- b) Construction, reconstruction, alteration or demolition of any improvement.
- c) Dumping or storing any objects or materials whether gaseous, liquid or solid.
- d) Commencement of any use of the land or improvements and every change in its type or intensity.
- e) Commencement of any noise, light, smoke, or other emission and every change in its intensity.

*DWELLING, MULTIPLE* - A building or portion thereof containing three but no more than four dwelling units.

*DWELLING, ONE FAMILY* - A building containing one dwelling unit.

*DWELLING, TWO FAMILY* - A building or portion thereof containing two dwelling units.

*DWELLING UNIT* - A building or portion thereof providing complete housekeeping for one family.

*ENERGY CODE* - The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

*ENFORCEMENT OFFICER* – See “CODE ENFORCEMENT OFFICER”.

*ENGINEER OR LICENSED PROFESSIONAL ENGINEER* - A person licensed as a professional engineer by the State of New York.

*ESSENTIAL SERVICES* - The construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and similar equipment and accessories in connection herewith, but not including essential service buildings unless granted by special permit and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health, safety or general welfare.

*EXPEDITED PROCESS* - The application, review and approval process for any solar Energy system with a rated capacity of 25 kilowatt (KW) or less, which process is further detailed in Section 18.30 herein.

*FACTORY MANUFACTURED HOME* - Any structure or component thereof designed primarily for residential occupancy which is wholly or in substantial part manufactured in manufacturing facilities located away from the building site for installation, or assembly and installation, on the building site.

*FAMILY* - One or more persons occupying a dwelling unit and living as a single housekeeping unit.

*FLOOD HAZARD AREA* - Maximum area of a flood plain that is likely to be flooded once every 100 years.

*FLOOD PLAIN* - A land area adjoining a river, stream, watercourse, bay or lake, which is likely to be flooded.

*FORESTRY USE* - Any management, including logging, of a forest, woodland or plantation, including the construction, alteration, or maintenance of wood roads, skidways, landing, fences, and forest drainage systems.

*FRONT LOT LINE* - The lot line which abuts upon a street or highway boundary, or private road. For a “Flag” lot, the lot line nearest and most parallel to the street, highway, or private road, and which does not directly abut the street, Flag, highway, or private road boundary.

*GROUND-MOUNTED SOLAR ENERGY SYSTEM* - A solar energy system, as defined herein, that is directly installed in or on the ground and is not attached or affixed to an existing structure. Also referred to as a “freestanding” solar energy system.

*HAMLET* - A small unincorporated village.

*HAZARDOUS WASTES* - As defined in the Town of Westerlo Solid Waste Management Local Law.

*HELIPORT* - A place for helicopters to land and take off.

*HOME OCCUPATION* - An accessory use of a commercial or professional character customarily conducted within the dwelling by the residents thereof and not more than two additional employees. It must

be clearly secondary to the primary residential use and must not change the character of the area from residential. Examples include professional offices, homemade product sales, and minor franchise sales.

*INSPECTOR* – An inspector appointed pursuant to Section 7.10 of this local law.

*LIGHT INDUSTRIAL USE* - Any assemblage of manufactured components to a finished product.

*LOT* - A defined parcel of land considered as a unit, occupied or capable of being occupied by a building and for accessory buildings and/or uses.

*LOT, KEYHOLE* - A lot which has limited road frontage, but is accessed by a right-of-way or narrow strip of land.

*LOT, CORNER* - Lot which has an interior angle of less than 135 degrees at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if tangents to the curve at point of intersection of side lot lines intersect at an interior angle of less than 155 degrees.

*LOT, FLAG* - A lot which has limited road frontage but is regular in shape (generally 4-sided), except for a portion which consists of a narrow corridor of land no less than fifty (50') feet in width which connects the main area of the lot with a public street or highway or private road and which has at least fifty (50') feet of frontage on a public street or highway or, if a private road, one which has been approved by the Planning Board and appears on a filed subdivision plat. The lot, except for the corridor portion, shall have a width to depth or depth to width ratio of no more than 1 to 3.25. The land contained in the corridor connecting the main portion of the lot to the street or highway or private road shall not be considered in any computation of the minimum lot size required by the Zoning Law. The front lot line as defined for Flag lots shall conform to any minimum front lot line requirements in the Zoning Law. The width of the corridor may be used to calculate the length of the front line if said corridor intersects the front lot line.

*LOT DEPTH* - The mean horizontal distance between the front and rear lot lines measured along the median between the two (2) side lot lines.

*LOT LINE* - A boundary defining ownership of land as found in maps, deeds, and similar title documents.

*LOT LINE, SIDE* - Any lot line other than a front or rear lot line. A side lot line separating a lot from a street, road or highway is called a side street, road or highway lot line.

*LOT OF RECORD* - A lot which is a parcel of land or which is part of a subdivision approved and recorded in the office of the County Clerk.

*LOT WIDTH* - The horizontal distance measured at right angles along the front lot line.

*MOBILE HOME* - A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed, or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile Home" shall mean units designed to be used exclusively for residential purposes, excluding travel trailers.

*MOBILE HOME PARK* - Land on which two or more mobile homes are parked, or which is used for the purpose of supplying to the public a parking space for two or more mobile homes.

*MODULAR HOME* - See "FACTORY MANUFACTURED HOME".

*MOTOR VEHICLES* - All vehicles propelled or drawn by power other than muscular power.

*NON-CONFORMING STRUCTURE* - A building or structure existing at the time of enactment or amendment of this law which does not conform to the regulation of this law.

*NON-CONFORMING USE* - Use of land which does not comply with all regulations for the district in which it is located.

*OPERATING PERMIT* - A permit issued pursuant to Section 7.10 of this local law. The term "Operating Permit" shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this local law.

*ORDER TO REMEDY* - An order issued by the Code Enforcement Officer pursuant to Section 7.90 of this local law.

*PERMIT* - Written approval issued by the enforcement officer for the establishment of any land use other than accessory structures.

*PERMIT HOLDER* - The Person to whom a Building Permit has been issued.

*PERSON* - Any individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

*REAL PROPERTY* - See "LOT".

*REAR LOT LINE* - A lot line generally parallel to or directly opposite a front lot line.

*RESIDENTIAL SOLAR ENERGY SYSTEM* - A solar energy system, as defined herein, which is intended to be used solely in a direct private residential or agricultural capacity.

*RESIDENTIAL USE* - One-family dwelling, two-family dwelling, multiple-family dwelling, professional residence, office and mobile home.

*RESORT* - A building or group of buildings providing rental sleeping rooms and which may also include dining rooms, kitchens, ballrooms, and other facilities and services intended primarily for the accommodation of the personal needs of the motoring public, and including facilities for the parking of patron's motor vehicles. Auto courts, motor hotels, motels, motor courts, motor inns, motor lodges, tourist courts, tourist cabins, and roadside hotels are included in this definition.

*RETAIL* - The sale of goods or commodities in small quantities to the consumer. Pertaining to or engaged in the sale of goods or commodities at retail.

*SIDE LOT LINE* - A lot line extending between a front and rear lot line.

*SITE PLAN* - A plan, to scale, showing uses and structures proposed for a parcel of land. It includes lot lines, streets, building sites, reserved open space, buildings, major landscape features, and the locations of proposed utility lines.

*SOLAR ENERGY* - Radiant energy (direct, diffuse, and/or reflected) received from the sun.

*SOLAR ENERGY SYSTEM* - An arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy.

*STOP WORK ORDER* - An order issued pursuant to Section 7.10 of this local law.

*STRUCTURE* - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

*TEMPORARY CERTIFICATE* - A certificate issued pursuant to Section 7.10 of this local law.

*TOWN* - The Town of Westerlo.

*TRAVEL TRAILER* - A vehicle or portable structure built on chassis, designed to be used as temporary dwelling for travel or recreational use.

*TRAVEL TRAILER PARK* - Any plot of ground upon which two or more travel trailers, pickup coaches or similar recreational vehicles and/or tents occupied for dwelling or sleeping purposes for transients are located.

*UNIFORM CODE*- The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

*WETLAND* - Lands and waters of the state as defined by the New York State Freshwater Wetlands Act, as amended.

*YARD* - Space on a lot not occupied by a building. Porches shall be considered as part of the main building and shall not project into a required yard.

*YARD, FRONT* - Yard between front lot line and the front line of principal building or accessory building extended to side lot lines. Depth of front yard shall be measured from street front lot line to front line of building.

*YARD, REAR* - Yard between rear lot line and rear line of principal building or accessory building extended to side lot lines. Depth of rear yard shall be measured from rear lot line to rear line of building.

*YARD, SIDE* - Yard between principal building or accessory building and a side lot line, and extending through from front yard to rear yard.

*ZONING ADMINISTRATOR* - See "CODE ENFORCEMENT OFFICER".

## ARTICLE 7. ADMINISTRATION AND ENFORCEMENT

### Section 7.10. AUTHORITY OF TOWN OFFICIAL AND BOARD

(a) The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this local law. The Code Enforcement Officer shall have the following powers and duties:

- (1) To receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
- (2) Upon approval of such applications, to issue Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in Building Permits, Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
- (3) To conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy, Certificates of Compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this local law;
- (4) To issue Stop Work Orders;
- (5) To review and investigate complaints;
- (6) To issue orders pursuant to Section 7.10 (Violations) of this local law;
- (7) To maintain records;
- (8) To collect fees as set by the Town Board of the Town of Westerlo;
- (9) To pursue administrative enforcement actions and proceedings;
- (10) In consultation with the Town attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this local law; and
- (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this local law.

(b) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.

(c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual may be appointed by the Town Supervisor to serve as a temporary Acting Code Enforcement Officer, to be confirmed by the Town Board. The Acting Code Enforcement Officer shall, during the term

of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(d) One or more Inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this local law. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.

(e) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board.

### **Section 7.20. PERMITS**

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

(b) Exemptions. No Building Permit shall be required for work in any of the following categories:

- (1) Construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);
- (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (3) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- (4) Installation of fences which are not part of an enclosure surrounding a swimming pool;
- (5) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (6) Construction of temporary motion picture, television and theater stage sets and scenery;
- (7) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (8) Installation of partitions or movable cases less than 5'-9" in height;
- (9) Painting, wallpapering, tiling, carpeting, or other similar finish work;

- (10) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (11) Replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (12) Repairs, provided that such repairs do not involve: (i) the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) A description of the proposed work;
- (2) The tax map number and the street address of the premises where the work is to be performed;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code and/or Town Solid Waste Management Code; and
- (5) At least two (2) sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(e) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one

set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

(f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.

(g) Building Permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

(h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

(i) Time limits. Building Permits shall become invalid unless the authorized work is commenced within six (6) months following the date of issuance. Building Permits shall expire twelve (12) months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

(j) Revocation or suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that: (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(k) Fee. The fee specified in or determined in accordance with the provisions set forth in Section 7.70 (Fees) of this local law must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

### **Section 7.30. CONSTRUCTION INSPECTIONS**

(a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected made, where applicable:

- (1) Work site prior to the issuance of a Building Permit;
- (2) Footing and foundation;
- (3) Preparation for concrete slab;

- (4) Framing;
- (5) Building systems, including underground and rough-in;
- (6) Fire resistant construction;
- (7) Fire resistant penetrations;
- (8) Solid fuel burning heating appliances, chimneys, flues or gas vents;
- (9) Energy Code compliance; and
- (10) A final inspection after all work authorized by the Building Permit has been completed.

(c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in Section 7.70 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

#### **Section 7.40. STOP WORK ORDERS**

(a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- (3) Any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

(b) Content of Stop Work Orders. Stop Work Orders shall: (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(c) Service of Stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by registered mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other

Person taking part or assisting in work affected by the Stop Work Order, personally or by registered mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(d) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under Section 7.90 (Violations) of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

### **Section 7.50. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS**

(a) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

- (1) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months;
- (2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months; or
- (3) Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential occupancies, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every thirty-six (36) months.

(b) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:

- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
- (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (“OFPC”) and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in Section 7.70 (Fees) of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

## **Section 7.60. CERTIFICATE OF OCCUPANCY**

(a) Certificates of Occupancy required. A Certificate of Occupancy shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy.

(b) Issuance of Certificates of Occupancy. The Code Enforcement Officer shall issue a Certificate of Occupancy if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy:

- (1) A written statement of structural observations and/or a final report of special inspections, and
- (2) flood hazard certifications.

(c) Contents of Certificates of Occupancy. A Certificate of Occupancy shall contain the following information:

- (1) The Building Permit number, if any;
- (2) The date of issuance of the Building Permit, if any;
- (3) The name, address and tax map number of the property;
- (4) If the Certificate of Occupancy is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy is issued;
- (5) The use and occupancy classification of the structure;
- (6) The type of construction of the structure;
- (7) The assembly occupant load of the structure, if any;
- (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;

- (9) Any special conditions imposed in connection with the issuance of the Building Permit; and
- (10) The signature of the Code Enforcement Officer issuing the Certificate of Occupancy and the date of issuance.

(d) Temporary Certificate. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines: (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed six (6) months, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(e) Revocation or suspension of certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in Section 7.70 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy or for Temporary Certificate.

#### **Section 7.70. FEES**

(a) A fee schedule shall be established by resolution of the Town Board. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of occupancy, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

#### **Section 7.80. NONCONFORMING USES**

(a) The use of any building or land existing at the time of the enactment of the Local law may be continued although such use does not conform with the provisions of this Local Law subject to the following:

- (1) Expansions: A nonconforming use shall not be expanded/extended, except upon obtaining a variance from the Zoning Board of Appeals, except that no variance shall be required when (a) in the discretion of the Code Enforcement Officer, all property lines are clearly physically defined, or (b) the property lines are set forth in a survey prepared by a licensed surveyor, under which either scenario the Code Enforcement Officer can reliably discern that the proposed expansion/extension complies with all zoning setbacks as set forth in Article 8 herein, as well as all other zoning requirements.

(2) Abandonment: Whenever a nonconforming use has been discontinued for a period of one (1) year, such use shall not thereafter be re-established, and any future use shall be required to be in conformity.

(3) Changes: Once changed to a conforming use, no building or land shall be allowed to revert to a nonconforming use.

(b) All lots or parcels of land which are evidenced by a deed of record in the Albany County Clerk's Office prior to February 15, 1989 shall be deemed lawful lots and shall be deemed in conformance with the provisions of the Zoning Law of the Town of Westerlo, the Land Subdivision Regulations of the Town of Westerlo and Resolutions of the Town Board delegating authority to the Planning Board to approve subdivisions, regardless of the size (area) or use of such lots or parcels. Such lots or parcels shall be required to conform to all other requirements of the Zoning Law as to any new structure, building, use or any extensions or expansions of an existing structure, building or use, unless granted a variance therefrom by the Zoning Board of Appeals.

The Planning Board shall hereby recognize any such lots or parcels created by deeds of record in the Albany County Clerk's Office prior to February 15, 1989 as lawful lots and in conformance with the various rules and regulations of the Town of Westerlo as referred to in the previous paragraph in the consideration of any subdivision application, regardless of the date of such application and regardless of the date of the recording of such deeds prior to February 15, 1989.

The Planning Board is hereby authorized to approve retroactively on terms and conditions which, in the exercise of its discretion, it deems appropriate, any subdivision of land which, contrary to law, has not been approved by the Planning Board (an "Unauthorized Subdivision").

(c) The Town Board hereby declares that it is the policy of this Board that Unauthorized Subdivisions must seek formal approval of the Planning Board and in this regard it is hereby declared that it shall be the joint and several obligation of the current owners and any owners prior in title who improperly subdivided the property contrary to the laws and regulations of the Town of Westerlo to apply for subdivision approval effective immediately. The Town Board hereby declares that it will refrain from seeking any penalties to which it may be entitled against said present or prior owners if a proper subdivision application is filed and accepted by the Planning board prior to February 28, 1994 and diligent, good faith effort is made to obtain approval of said subdivision by the applicant.

(d) In order to compensate for the additional administration that will be involved in processing and reviewing Unauthorized Subdivisions a surcharge is hereby assessed to be collected at the time of the filing of any Unauthorized Subdivision application, said fee to be in addition to any regular fee in effect at the time such application is made as follows:

(1) If application is made on or before December 1, 1993, an additional fee of \$150.00 (one hundred fifty and 00/100 dollars) shall be collected at the time application is filed.

(2) If application is made subsequent to December 1, 1993, an additional fee of \$250.00 (two hundred fifty and 00/100 dollars) plus \$100.00 (one hundred and 00/100 dollars) per lot as show on the map accompanying said application shall be collected at time application is filed.

## **Section 7.90. PENALTIES FOR VIOLATIONS**

(a) Orders to Remedy. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this local law.

- (1) An Order to Remedy shall be in writing;
- (2) Shall be dated and signed by the Code Enforcement Officer;
- (3) Shall specify the condition or activity that violates the Uniform Code, the Energy Code, or this local law;
- (4) Shall specify the provision or provisions of the Uniform Code, the Energy Code, or this local law which is/are violated by the specified condition or activity; and
- (5) Shall include a statement substantially similar to the following:

“The person or entity served with this Order to Remedy must completely remedy each violation described in this Order to Remedy by \_\_\_\_\_ [specify date], which is thirty (30) days after the date of this Order to Remedy.”

(b) Abatement. The Order to Remedy may include provisions ordering the person or entity served with such Order to Remedy:

- (1) To begin to remedy the violations described in the Order to Remedy immediately, or within some other specified period of time which may be less than thirty (30) days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within thirty (30) days of the date of such Order to Remedy; and/or
- (2) To take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by this local law or by any other applicable statute, regulation, rule, local law or ordinance, and which the Code Enforcement Officer may deem appropriate, during the period while such violations are being remedied.

(c) Notice. The Code Enforcement Officer shall cause the Order to Remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail within five (5) days after the date of the Order to Remedy. The Code Enforcement Officer shall be permitted, but not required, to cause the Order to Remedy, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail within five (5) days after the date of the Order to Remedy; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(d) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(e) Civil Penalties. In addition to those penalties prescribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, Certificate of Occupancy, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of not more than \$200.00 (two hundred and 00/100 dollars) for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Town.

(f) Injunctive Relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, Certificate of Occupancy, Temporary Certificate, Stop Work Order, Operating Permit, Order to

Remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Order to Remedy or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board.

(g) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in Section 7.40 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in Section 7.40 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

#### **Section 7.100. COMPLAINTS**

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- (1) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (2) If a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in Section 7.90 (Violations) of this local law;
- (3) If appropriate, issuing a Stop Work Order;
- (4) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

#### **Section 7.110. RECORD KEEPING**

(a) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

- (1) All applications received, reviewed and approved or denied;
- (2) All plans, specifications and construction documents approved;

- (3) All Building Permits, Certificates of Occupancy, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- (4) All inspections and tests performed;
- (5) All statements and reports issued;
- (6) All complaints received;
- (7) All investigations conducted;
- (8) All condition assessment reports received;
- (9) All other features and activities specified in or contemplated by sections 4 through 13, inclusive, of this local law, including; and
- (10) All fees charged and collected.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

#### **Section 7.120. PROGRAM REVIEW AND REPORTING**

(a) The Code Enforcement Officer shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in Section 7.110 (Record Keeping) of this local law and a report and summary of all appeals or litigation pending or concluded.

(b) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of the Town, on a form prescribed by the Secretary of State, a report of the activities of the Town relative to administration and enforcement of the Uniform Code.

(c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials the Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Town in connection with administration and enforcement of the Uniform Code.

#### **Section 7.130. NOTIFICATION REGARDING FIRE OR EXPLOSION**

The chief of any fire department providing firefighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

#### **Section 7.140. UNSAFE BUILDING AND STRUCTURES**

Unsafe structures and equipment in this [City / Town / Village] shall be identified and addressed in accordance with the procedures established by Local Law Number 1 of 2012, as now in effect or as hereafter amended from time to time.

## ARTICLE 8. ZONING DISTRICTS

### Section 8.10. ESTABLISHMENT OF DISTRICTS:

For the purpose of this Local Law, the Town of Westerlo is hereby divided into the following districts:

LI - Light Industrial

RD/A - Rural Development/Agricultural

RH - Residential Hamlet

### Section 8.20. DISTRICT MAP

The land use districts are shown, defined and bounded on the district map accompanying this Local Law. The district map is hereby made a part of this Local Law, and shall be on file in the Office of the Town Clerk.

### Section 8.30. INTERPRETATION OF DISTRICT BOUNDARIES

Questions concerned with the exact location of district boundary lines as shown on the district map shall be resolved by the Code Enforcement Officer, subject to appeal to the Zoning Board of Appeals.

Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than fifty (50') feet into the more restricted part, provided the lot has frontage on a street or road in the less restricted district.

### Section 8.40. RURAL DEVELOPMENT/AGRICULTURAL DISTRICT

(1) Purpose and Intent: The purpose and intent of this zone is to encourage the development or residential, agricultural and commercial land uses at densities compatible with the ability of the land to absorb such uses and to establish minimum site development standards for certain specified uses.

(2) Uses Permitted by Right:

- a. One- through four-family dwelling, all of which must be attached
- b. Home occupations
- c. Single mobile homes
- d. Solar energy systems, as regulated by Article 18 herein
- e. Full or part-time agricultural or forestry uses
- f. Any educational or religious use involving less than 50 people

(3) Uses Permitted Upon Obtaining Site Plan Approval and Special Use Permit:

- a. Travel trailer parks and camp grounds
- b. Mobile home parks
- c. All commercial uses

- d. Multiple family dwellings of five or more units all of which must be attached, including homes for the aged
- e. Essential services
- f. Airport strips, airports, heliports
- g. Recreational
- h. Excavation
- i. Any medical, educational, religious, or research use
- j. Excavating and construction contractors

(4) All other uses are hereby expressly prohibited, except upon amendment of this Zoning Law by the Town Board.

**MINIMUM LOT STANDARDS:**

A. SINGLE DWELLING: Minimum lot acres per single family dwelling units or single mobile home shall be three (3) acres. No more than one dwelling unit or mobile home shall be constructed or placed upon one lot, nor shall any such dwelling unit or mobile home be located closer than fifty (50') feet from front lot line of any street or road. No structure shall be more than two and one-half (2<sup>1</sup>/<sub>2</sub>) stories, not to exceed thirty-five (35') feet in height, as defined in the New York State Building Code.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”):**

Minimum Frontage:	200 ft.
Front Yard Minimum:	50 ft.
Side Yard Minimum:	50 ft.
Rear Yard Minimum:	50 ft.

B. TWO-FAMILY AND MULTIPLE DWELLING: A two-family dwelling shall be constructed on a minimum of five (5) acres. For each additional dwelling unit, the minimum lot size over and above five (5) acres shall be increased by a ratio of forty (40') sq. ft. of land for each sq. foot of finished living area, excluding specifically the cellars and garage area. No structure shall be more than two and one-half (2<sup>1</sup>/<sub>2</sub>) stories, not to exceed thirty-five (35') feet in height, as provided by the New York State Building Code, and shall provide two and one-half (2<sup>1</sup>/<sub>2</sub>) parking spaces per dwelling unit. No structure shall be located closer than fifty (50') feet from front lot line of any street or road.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”):**

Minimum Frontage:	200 ft.
Front Yard Minimum:	50 ft.
Side Yard Minimum:	50 ft.
Rear Yard Minimum:	50 ft.

C. ALL OTHER PERMITTED USES: Any other permitted uses shall be constructed on a minimum of three (3) acres. The maximum building coverage for all development, excluding parking area shall not exceed thirty (30%) percent of the gross land area of any single lot or other development site as a whole and twenty (20%) percent of gross land area shall remain forever green or natural. No structure shall be more than two and one half (2<sup>1</sup>/<sub>2</sub>) stories, not to exceed thirty-five (35') feet in height, as defined in the New York State Building Code. No structure shall be located closer than one hundred (100') feet from front lot line of any street or road.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”):**

Minimum Frontage:	300 ft.
Front Yard Minimum:	100 ft.
Side Yard Minimum:	100 ft.
Rear Yard Minimum:	100 ft.

**Section 8.50. RESIDENTIAL HAMLET DISTRICT**

1. Purpose and Intent: The purpose and intent of this zone is to recognize established areas where residential and commercial uses are intermixed and lots are small.

2. Uses Permitted by Right:

- a. One- and two-family dwellings excluding however, mobile homes
- b. Solar energy systems, as regulated by Article 18 herein
- c. Home occupations
- d. Any education or religious activities involving less than 50 people

3. Uses Permitted Upon Obtaining Site Plan Approval and Special Use Permit:

- a. Retail commercial uses (example: retail businesses, auto service station, banks, restaurants, inns and motels)
- b. Essential services
- c. Medical, educational and religious

4. All other uses are hereby expressly prohibited, except upon amendment of this Zoning Law by the Town Board.

**MINIMUM LOT STANDARDS:**

A. SINGLE-FAMILY DWELLING: Minimum lot size for residential use shall be 32,670 square feet. Depending on soil conditions and well location, minimum lot size may have to be increased in order to comply with Health and Sanitary Regulations. No structure shall be located closer than fifty (50') feet from front lot line of any street or road. No structure shall be more than two and one-half (2<sup>1</sup>/<sub>2</sub>) stories, not to exceed thirty-five (35') feet in height, as defined in the New York State Building Code.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”):**

Minimum Frontage:	100 ft.
Front Yard Minimum:	50 ft.
Side Yard Minimum:	30 ft.
Rear Yard Minimum:	30 ft.

B. ALL OTHER PERMITTED USES: All other permitted uses in a residential hamlet district shall have a minimum lot size of 32,670 square feet. No structure shall be located closer than fifty (50') feet from front lot line of any street or road. No structure shall be more than two and one-half (2<sup>1/2</sup>) stories, not to exceed thirty-five (35') feet in height, as defined in the New York State Building Code.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”):**

Minimum Frontage:	150 ft.
Front Yard Minimum:	50 ft.
Side yard Minimum:	30 ft.
Rear Yard Minimum:	30 ft.

**Section 8.60. LIGHT INDUSTRIAL DISTRICT**

1. Purpose and Intent: This district provides for the establishment of facilities, warehousing and related activities of an industrial nature whose activities do not, in their normal use, constitute a fire hazard or emit smoke, glare, noise, odor or dust, which does not extend or impact beyond the lot lines or boundaries of the premises, or impact negatively on the aquifer or on the environment in general or impact in any other ways which constitute a nuisance or detriment to neighboring properties and to public health, safety or the general welfare.

- 2. Uses Permitted by Right: NONE.
- 3. Uses Permitted Upon Obtaining Site Plan Approval and Special use Permit:
  - a. Any assemblage of manufactured components to a finished product.

**MINIMUM LOT STANDARDS:**

Minimum lot size shall be five (5) acres. No structure shall be located closer than one hundred (100') feet from front lot line of any street or road. No structure shall be more than a two and one-half (2<sup>1/2</sup>) stories and not to exceed thirty-five (35') feet in height, as defined in the New York State Building Code.

**MINIMUM SET BACK AND FRONT LOT LINE (“FRONTAGE”)**

Minimum Frontage:	500 ft.
Front Yard Minimum:	100 ft.
Side Yard Minimum:	100 ft.
Rear Yard Minimum:	100 ft.

## ARTICLE 9. SITE PLAN REVIEW

### Section 9.10. AUTHORITY

Pursuant to authority delegated in accordance with Article 16, Section 274-a of the Town Law of the State of New York, the Town Board hereby authorizes the Town Planning Board to review and approve, approve with modifications or disapprove site plans.

No zoning permit shall be issued by the enforcement officer before site plan review has been completed in accordance with this Local Law and a final site plan approved by the Town Planning Board with or without modifications. The Enforcement Officer shall revoke said zoning permit if the provisions of the site plan are not complied with.

### Section 9.20. APPLICATION

An application for site plan review shall be made in writing addressed to the Zoning Administrator and delivered or mailed to the Town Hall. Three (3) copies of the application and required information as set forth below shall be submitted. The application shall be accompanied by all of the following information, as required by the Planning Board, and prepared by a licensed engineer, architect, landscape architect, or surveyor, as certified by the seal and signature of such professional. After the Zoning Administrator reviews the application and supporting documentation, and determines that the same is complete, he/she shall submit the entire application, with supporting documentation, to the Planning Board for their review as set forth herein.

A site plan to be submitted to the Town Planning Board shall include the name and address of applicant and owner, north point, scale, date, and boundaries of the property plotted to scale.

In addition, the site plan shall show the following:

- a. Arrangement, layout and design of the proposed improvements or changes to the existing site;
- b. Location and dimensions of all buildings, structures and signs;
- c. Parking facilities;
- d. Means of access screening or buffer zones;
- e. Signs;
- f. Landscaping;
- g. Architectural features of buildings and improvements;
- h. Lighting including any sign illumination; and
- i. Such other elements as may reasonably be related to the health, safety and general welfare of the community.

Said application shall include an area map showing that portion of the applicant's property under consideration, the applicant's entire adjacent holdings, and all properties, subdivisions, streets and easements within five hundred (500') feet of the applicant's property.

The Planning Board may require the showing of existing contour intervals of not more than five (5') feet of elevation, including those within two hundred (200') feet of any boundary of applicant's property.

The Planning Board may require the showing of proposed finished contour intervals of not more than five (5') feet of elevation and direction of drainage with arrows.

The site plan shall include the following information: title of drawing, include name and address of applicant, north point, scale and date, boundaries of the property plotted to scale, and existing buildings.

The Planning Board may also require architectural plans and elevations and/or engineering drawings, traffic studies, and engineering soil tests showing architectural features of buildings and improvements, lighting including any sign illumination, and such other elements as may reasonably be related to the health, safety and general welfare of the community and surrounding property.

### **Section 9.30. PLANNING BOARD REVIEW AND APPROVAL**

1. General Procedures: All applications for site plan approval shall be filed with the Town Clerk. A public hearing shall be held within forty-five (45) days from the date a completed application is filed. Public notice of all such hearings shall be published in the official newspaper of the Town at least five (5) days prior to the hearing date. A final decision shall be made within forty-five (45) days after the hearing unless extended by mutual consent of the applicant and the Planning Board. All decisions shall be filed in the office of the Town Clerk and a copy mailed to the applicant. Appeals from any determination of the Planning Board under this section shall be made in accordance with the provisions of ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES OF THE STATE OF NEW YORK.

2. The Planning Board shall in its review consider the following matters:

- a. Applicant complies with all provisions contained in this Local Law.
- b. There will be no undue adverse impact upon the natural environment or upon the character or integrity of any land use having unique cultural, historical, architectural or similar significance.
- c. Adequately designed open space, drainage facility, landscaping and other features considered appropriate to the function of the development shall be provided.
- d. Traffic controls for vehicular and pedestrian movement are designed to protect the safety of the general public and the occupants, employees, attendants, and other persons for whose benefit the use is intended. In making this determination, the Planning Board shall review, but need not be limited to the following consideration:
  1. Location and adequacy of parking and loading facilities.
  2. Pedestrian right-of-way.
  3. Traffic regulatory devices.
  4. Location, number and design of points of entrance and exit.
  5. Accessibility for emergency vehicles.
  6. Storage facilities for snow.
  7. Age and mobility of all persons for whose benefit the use is intended.
  8. Speed limits upon and general character of public highways in close proximity.

Compliance with the provisions relating to parking shall not preclude a determination that the foregoing requirement has been met.

- e. The proposed use will be provided with adequate supporting services such as fire and police protection, public and private utilities, and all other supporting government services and appropriate to the proposed use.
- f. The architectural design elements of the site shall be in harmony with the natural environment and in keeping with the character of the surrounding neighborhood.

3. Criteria: In making a determination as to the compliance with any one or more of the findings and conditions specified in Section 9.30(2), consideration shall be given but not limited to the following elements:

- a. Geometric characteristics of all structures and related improvements.
- b. Aesthetic characteristics, including design, texture, materials, colors and illuminations.
- c. Physical attributes of the site, including size, shape, elevations, topography and natural vegetation.

The Planning Board may impose such conditions on the approval of any application which in their opinion are necessary and reasonably implement the provisions of Section 9.30.

4. Distance from Property Lines: The minimum distance between any point on a building and the property line shall not be less than the height of the building.

5. Lot Coverage: Maximum building coverage for all development, excluding parking area shall not exceed thirty (30%) percent of gross land area of any single lot of the development site as a whole, and twenty (20%) percent of gross land area shall remain forever green or natural.

## **ARTICLE 10: SPECIAL USE PERMIT REVIEW PROCEDURES**

### **Section 10.10. PURPOSE**

The purpose of special use approval is to allow the proper integration of uses into the community and zoning districts which are only suitable in such areas given certain conditions, and at appropriate locations. Because of their characteristics, or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objectives of the law and their effect on surrounding properties.

### **Section 10.20. AUTHORIZATION TO GRANT OR DENY SPECIAL USES**

The special uses listed in this Local Law may be permitted, enlarged or otherwise altered upon authorization by the Planning Board. In permitting a special use or the modification of a special use, the Planning Board may impose, in addition to those standards and requirements expressly specified by the law, any additional conditions which the board considers necessary to protect the best interests of the surrounding property, the neighborhood or the town as a whole. These conditions may include but are not limited to increasing the required lot size or yard dimensions; limiting the height or size of buildings; controlling the location and number of vehicle access points; increasing the street widths; increasing the number of off-street parking and loading spaces required; limiting the number, size and location of signs; and required fencing, screening, landscaping, or other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this law and classified in this law as a special use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with special uses.

### **Section 10.30. APPLICATION FOR SPECIAL USE**

Any application for a special use permit shall be made in writing addressed to the Zoning Administrator and delivered or mailed to the Town Hall. Three (3) copies of the application and required information as set forth below shall be submitted. The application shall be accompanied by all of the following information, as required by the Planning Board and prepared by a license engineer, architect, landscape architect or surveyor, and certified by the seal and signature of such professions. After the Zoning Administrator reviews the application and supporting documentation, and determines that the same is complete, he/she shall submit the entire application, with supporting documentation, to the Planning Board for their review as set forth herein. The Chair of the Planning Board may in his or her discretion waive any of the information or requirements hereinafter set forth for a completed application wherein the Chair's judgment of the circumstances warrant such waiver and he obtains the concurrence of at least two (2) other members of the Planning Board.

- a. An area map showing that portion of the applicant's property under consideration, the applicant's entire adjacent holdings, and all properties, subdivisions, streets, and easements within five hundred (500') feet of applicant's property.
- b. A grading plan showing existing contour intervals of not more than five (5') feet of elevation shall be provided, and shall include two hundred (200') feet of adjacent property.
- c. A grading plan showing proposed finished contour intervals of not more than five (5') feet of elevation and direction of drainage with arrows. Data required here may be placed on the same tracing as required in (b) above, provided that the proposed finished contours are illustrated by solid lines.
- d. A site plan including the following information:
  1. Title of drawing, including name and address of applicant, north point, sale and date, boundaries of the property plotted to scale, existing watercourses, and
  2. A plan showing:

- a. Location and size of buildings;
  - b. Location and size of off-street loading facilities, with access and egress drives thereto;
  - c. Location and size of outdoor storage if any and the method of screening the storage area from public view;
  - d. Location of all existing or proposed site improvements, including drains, culverts, retaining walls and fences;
  - e. Description of method of sewage disposal and location of such facilities, and any proposed changes in existing stream channels;
  - f. Location and size of all signs;
  - g. Location and proposed development of buffer areas;
  - h. Location and design of lighting facilities; and
  - i. Any existing and proposed easements and the location, if any, of waste storage and the method of screening from public view, air conditioning units and other facilities located on roof tops of buildings, and location of exhaust fans for use in relationship to adjacent residential areas.
3. A soil map showing all soils areas and their classification, and those areas, if any, with moderate to high susceptibility to flooding, and moderate to high susceptibility to erosion. For areas with potential erosion problems the overlay shall also include an outline and description of existing vegetation.

**Section 10.40. FACTORS FOR CONSIDERATION**

The Planning Board's review of an application for special use permit shall include, but is not limited to, the following considerations:

- a. The appropriateness of the proposed site including such matters as the following:
  - 1. The physical features and the general character, present use of the land in the neighborhood.
  - 2. The density of the land uses in the vicinity such as to warrant the proposed use.
  - 3. The adaptability of the site for the proposed use, in addition to, topography, natural buffers, screening and fencing.
  - 4. The location of the site in relation to transportation, water and sewerage requirements of this Local Law, or where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use.
- b. Whether the project conforms to accepted design and aesthetic principles in the proposed functional roadway system, land use configuration, open space system, and drainage system.
- c. The effect of the proposed use on the other properties in the neighborhood and the enjoyment by the inhabitants of their properties, and whether it will materially affect the value of such

properties and the use and enjoyment of such properties by the occupants and any other effect of such use on the health, welfare and safety of the occupants of such properties.

d. The Planning Board may consider the following specific criteria:

1. Full conformance of the permit request with the provisions of this law;
2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, drainage channelization structures, and traffic controls; consideration will also be given to the project's impact on the overall traffic circulation system of the neighborhood of the town;
3. Adequacy of fire lanes and other emergency zones, traffic circulation and system of fire hydrants;
4. Adequacy and arrangement of pedestrian traffic access and circulation, including, but not solely limited to: separation of pedestrians from vehicular traffic, control of intersections and overall pedestrian convenience; where appropriate, consideration of access and facilities for bicycles;
5. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs; as much as it is possible, consideration should be given to noise sources, privacy, prevailing wind directions and seasonal sun movements when locating structures, patios and open spaces on parcels, exhaust fans and outdoor waste disposal locations;
6. Location, arrangement and setting of off-street parking and loading areas;
7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise deterring buffer between the project and adjoining properties;
8. In the case of an apartment house or multiple dwelling complex, the adequacy of useable open space for playgrounds and informal recreation;
9. Adequacy of provisions for the disposal of storm water and drainage, sanitary waste and sewage, water supply for both fire protection and general consumption, solid waste disposal, and snow removal storage areas;
10. Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion;
11. Protection of adjacent properties against noise, glare, unsightliness, or other objectionable features;
12. Retention of existing trees and vegetation for protection and control of soil erosion, drainage, natural beauty and unusual or valuable ecology;
13. Such use is reasonably necessary or convenient to the public health, welfare or the economic or social benefit of the community;
14. Such use is suitably located in relation to transportation, water and sewerage requirements of this Local Law, or where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use;

15. No undue traffic congestion or hazard will be created; and/or
16. The character of the neighborhood and values of surrounding property are reasonably safeguarded.

In its review the Planning Board is encouraged to consult with the Town Engineer and other town and county officials and boards, as well as with representatives of federal and state agencies including the Soil and Water Conservation District, the U.S. Army Corps of Engineers or the New York State Department of Environmental Conservation. The Planning Board may require that interior design of all structures be made by, or under the direction of a registered architect whose seal shall be affixed to the plans.

#### **Section 10.50. PUBLIC HEARING ON SPECIAL USE PERMIT**

Within forty-five (45) days after receipt of a **completed** application, a public hearing will be held on such application. Before a special use permit is granted, the proposed special use shall be considered by the Planning Board at a public hearing. Notice of said hearing shall be given as provided in Section 274-a of the Town Law (publication in the official newspapers at least five (5) days prior to the date thereof).

#### **Section 10.60. DECISION AND NOTIFICATION OF ACTION**

Within forty-five (45) days after the holding of said public hearing, unless extended by the mutual consent of the applicant and the Planning Board, the Planning Board shall vote and file its decision in writing with the office of the Town Clerk. A copy thereof shall be mailed to the Town Clerk to the Applicant as of the date of filing with the Town Clerk.

#### **Section 10.70. MISCELLANEOUS**

A special use permit shall become void one (1) year after approval unless construction has begun within such time or by conditions of the use permit, greater or lesser time is specified as a condition of approval, or unless prior to the expiration of one (1) year the permit is extended for a period of no more than one (1) year.

The Planning Board on its own motion, may revoke any special use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a special use permit.

## **ARTICLE 11. OFF-STREET PARKING AND LOADING**

### **Section 11.10. NEW LAND USE ACTIVITIES**

Uses established after the effective date of this Local Law shall provide off-street parking and loading spaces in accordance with the following standards:

1. One (1) parking space for every three (3) seats in a place of public assembly.
2. One (1) parking space for every employee at places of employment.
3. One (1) parking space for every two hundred fifty (250') square feet of floor space in a commercial establishment, except that a commercial use as part of a home occupation is exempt from this requirement.
4. One (1) parking space for each one hundred (100') square feet of floor space devoted to home occupation uses as defined in Article 6 of this Local Law.

### **Section 11.20. LOCATION**

Parking spaces accessory to a principal use shall be located on the same lot as the principal use, unless a special permit is granted under Article 10.

### **Section 11.30. YARD DEPTH:**

No parking shall be located within twenty (20') feet of any side or rear lot line, except in driveways.

### **Section 11.40. JOINT USE OF PARKING FACILITIES**

The Planning Board may approve as part of its site plan approval procedure the use of joint parking facilities by one or more applicants, upon a finding that:

- a. No substantial conflict will exist during principal hours or periods of peak demand of the uses for which the joint space is provided.
- b. Such spaces shall not be located further than five hundred (500') feet from any of the principal uses which they serve.
- c. A parking covenant is executed.

### **Section 11.50. OFF-STREET LOADING REQUIREMENTS**

- a. Each loading berth shall be at least ten (10') feet by fifty (50') feet in size and have a minimum clear height providing access to the street of fourteen (14') feet.
- b. Off-street loading facilities shall otherwise be subject to the provisions applicable to parking spaces.

## **ARTICLE 12. SUPPLEMENTARY REGULATIONS**

### **Section 12.10. FLOOD HAZARD AREAS**

These areas are shown on the Flood Hazard Boundary Map for the Town of Westerlo Federal Insurance Administration, Federal Emergency Management Agency. All activity in such areas shall conform to the Town of Westerlo Flood Hazard Regulations.

### **Section 12.20. WETLAND AREAS**

All activities occurring in the areas shown on the Department of Environmental Conservation's Freshwater Wetlands Map for the Town of Westerlo shall conform to the Town's freshwater wetlands regulations.

### **Section 12.30. STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

All activities occurring within the town shall conform to the requirements and guidelines of Article 8 of the Environmental Conservation Law, "STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR)", Part 617 of Title 6.

If it is determined that an Environmental Impact Statement will be prepared for any proposal or project governed by this Local Law, all time frames and deadlines are delayed until a draft Environmental Impact Statement is filed. An application is not complete, and therefore the review clock does not start, until a determination of no significance has been made or until a draft Environmental Impact Statement has been completed. When the draft Environmental Impact Statement is completed, the time frame for Planning Board review begins (forty-five (45) days). If another agency has determined that the proposal in question may have a significant effect on the environment, the Planning Board shall not issue a decision until a final Environmental Impact Statement has been filed.

### **Section 12.40. SEWAGE DISPOSAL**

The applicant shall be responsible for meeting the requirements of the Public Health Law and in conjunction with New York State Department of Health.

### **Section 12.50. WATER SUPPLY**

No zoning permit shall be issued until applicant has conclusively established and had certified by competent experts that a supply of water is adequately available for all domestic purposes and meets commercial and industrial requirements if related to a non-domestic project. In quality, the water must meet the New York State Drinking Water Standards of the Public Health Law.

### **Section 12.60. STORM WATER DRAINAGE**

For any use requiring planning board site plan approval, a storm water drainage plan shall be prepared by the applicant. A surface channel system shall be designed to convey through the peak storm run-off from a 100-year storm. Controlled release and storage of excess storm water run-off shall be required in combination for all commercial and industrial projects and for residential projects larger than three (3) acres whenever the capacity of the natural downstream outlet channel is inadequate. No habitable structures shall be constructed within this floodway, but street, parking and playground areas and utility easements may be considered. Outlet control structures shall be of ample design requiring little or no alteration for proper operation. Each storm water storage area shall be provided with an emergency overflow facility designed for a storm of 100-year intensity. An adequate easement over the land within the project shall be dedicated for the purpose of improving and maintaining any drainage ways and facilities.

### **Section 12.70. ROAD STANDARDS**

Before any road can be accepted by the Town of Westerlo, it must be approved by the highway superintendent and comply with any design and construction standards adopted by the Town Board.

### **Section 12.80. MINING**

No person shall mine more than one thousand (1,000) tons of minerals from the earth within one (1) calendar year without applying for a permit from the Department of Environmental Conservation, as required by Title 27, Article 23 of the Environmental Conservation Law.

### **Section 12.90. HAZARDOUS WASTE OR MATERIALS:**

Storage, treatment, reclamation, management or recycling of hazardous waste or substances is hereby prohibited in any district, unless site plan approval and a special use permit are obtained, and the proposed action will not adversely affect the public health, safety and welfare. This is a Type I Action under SEQR.

### **Section 12.100. DUMPS AND RECYCLING OPERATIONS**

All dumps, landfills and solid waste transfer stations are prohibited in all zoning districts, except those run by the Town of Westerlo.

All recycling operations involving non-hazardous or non-toxic materials are permitted in any district upon receipt of site plan approval and a special use permit pursuant to this Local Law. This is a Type I Action under SEQR.

All dumping of refuse, waste material and other substances is prohibited except as specified in the Town of Westerlo Local Law No. 2 of 1992, as amended.

### **Section 12.110 SIGNS**

No sign, whether private, commercial, industrial or otherwise, which size shall exceed an area of thirty-two (32') square feet shall be displayed on any property in the Town of Westerlo. Such restriction shall apply to all signs, notwithstanding whether they are affixed to a building or pole, or displayed by some other method or manner. Signs may only be illuminated by way of indirect, downward lighting; internal lighting is strictly prohibited. Signs may be lit from dawn until 11:00 p.m. Lighting of signs after 11:00 p.m. is strictly prohibited.

Any change to any sign in existence on or before March 31, 2001 must be made in full conformance with this provision.

### **Section 12.120 POLE LIGHTS**

All pole lights installed after March 31, 2001 must be:

1. Filled with reflectors or shields, which shall provide for the light being concentrated on the ground in a condensed lighting area, as opposed to skyward or omni-directional; or
2. Energy-efficient, full cutoff, low pressure sodium streetlights, utilizing high efficiency, recessed fixtures hooded pole lights. Pole lights must provide for automatic shutoff at 11:00 p.m. The location of the pole lights must be at least fifty (50') feet from the side lot lines of the property on which they are being installed; and

3. Provide illumination and candle power not to be excessive as to illuminate property other than the land on which it is erected.

Any movement of or changes to the pole lights in existence on or before March 31, 2001 must be in conformance with this provision.

## **ARTICLE 13. JUNK AND AUTO PARTS**

The purpose and intent of this article is to regulate and control the activities of businesses known as auto "graveyards", junk yards, second-hand parts collection areas, the processing recycling or reclaiming of metals for resale and the dumping, storage and disposal of waste, second-hand or used materials of whatever composition. Such activities or businesses can constitute a hazard to property and persons and be a public nuisance. Such materials may be highly inflammable, toxic, hazardous and sometimes explosive.

Gasoline tanks and old autos often contain, in some quantity, combustible gasoline; the engine and other parts of such autos are frequently covered with grease and oil which is also inflammable. The tires, plastic seats, tops and other elements of such autos are also inflammable. Batteries and other elements of such motor vehicle can contain acids and other matter potentially harmful to humans. These motor vehicles frequently contain sharp metal or glass edges or points upon which a human could receive serious cuts and abrasions. These motor vehicles can constitute attractive nuisances to children. The presence of junk yards is unsightly and tends to detract from value of surrounding land and property unless such areas are properly maintained and operated. In addition, two (2) auto dismantling or junk car businesses currently are in operation in the Town of Westerlo. These two (2) businesses adequately serve the needs of the community and provide authorized facilities for the disposal of unwanted or abandoned motor vehicles.

### **Section 13.10. PROHIBITED**

No person shall use, permit, engage in or conduct on real property activities or businesses known as auto dismantling, auto "graveyards", junk yards, second-hand parts collection areas, the processing, recycling or reclaiming of hazardous or toxic metals and the dumping, storage and disposal of waste, second-hand or used materials of whatever composition within the Town of Westerlo either for himself/herself or for and on behalf of any other person directly or indirectly as agent, employee or otherwise. No person shall engage in any use, activity or business whether or not for profit, which involves the collection, storage, burning, dumping, disassembling, dismantling, salvaging, sorting or otherwise handling or arranging for sale, resale, storage, burial or disposal of motor vehicle parts or of any other second-hand or used property of whatever material or any waste material.

The possession or storage of three (3) or more unregistered, used or secondhand motor vehicles whether held for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, for the purpose of disposing of the same, or for the purpose of storage or for any other purpose is hereby prohibited. The storage or deposit of used parts or waste materials from motor vehicles, which taken together in bulk equal two (2) motor vehicles, is hereby prohibited.

#### **EXCEPTIONS:**

a. Farm equipment and motor vehicles not licensed but being considered useful to the operation of a working farm shall not be considered junk or in violation of the prohibition against three (3) or more unregistered used or second-hand motor vehicles.

b. The possession for private and personal use of second-hand or used motor vehicles, or used or second-hand materials other than of a toxic, hazardous or dangerous material when stored or contained in a fully enclosed and lockable building shall not constitute a violation of this Local Law unless deemed to constitute a hazard to property or persons or be a public nuisance or constitute a violation of the New York State Building Code as in effect from time to time or State and Local Public Health Laws.

c. When expressly permitted by this Local Law in a specific zoning district.

## **ARTICLE 14: MOBILE HOME AND TRAVEL TRAILER PARKS**

### **Section 14.10. GENERAL**

After the effective date of this law, it shall be unlawful for any person to construct, maintain, operate, or alter any mobile home park or travel trailer park without obtaining site plan approval and license to construct and maintain such park as herein provided in Articles 9, 10 and 14 of this Local Law. No person, firm or corporation being the owner or occupant of any land or premises within the town shall use or permit the use of such land as a mobile home park or travel trailer park contrary to the provisions of the New York State Sanitary Code and a violation of such sanitary code shall be a violation of this Local Law.

### **Section 14.20. APPLICATION AND LEGAL DATA FOR A PARK PERMIT**

a. The applicant for a mobile home park or travel trailer park permit shall be responsible for furnishing all percolation tests, plans, engineering, land surveying services, environmental studies, and all other information required to determine compliance with the provisions of this Local law. All applications shall be in triplicate and in writing and signed by the applicant and filed with the Town Clerk.

b. Each application shall be accompanied by a site plan as required in Article 9 at a scale of one (1) inch equals one hundred (100') feet, and shall show location of proposed lots, interior roadways and walkways, parking spaces, power and telephone lines, water and sewer systems, service buildings, park property boundary lines and dimensions, significant natural features such as woods, watercourses, rock outcrops, etc., and the names of adjacent property owners.

This site plan shall be submitted to the Albany County Health Department for approval prior to submitting the site plan to the Town Planning Board for its approval. Materials to be submitted to the health department shall also include a detailed refuse removal plan in accordance with Article 9.

c. Any modification or expansion to the original park site shown on the application shall require a permit following the same procedure noted herein.

Expansion or modification of a park existing prior to the effective date of this law shall also require a permit. Violation of this section may result in the relocation of any existing park permit.

d. Each application shall be accompanied by a complete set of plans which are prepared by a surveyor or engineer and shall bear the seal of a "duly Licensed Professional Engineer."

e. The name and address of the applicant; or the name and address of each partner is needed if the applicant is a partnership; or the name and address of each officer and director if the applicant is an association or corporation.

### **Section 14.30. PARK DESIGN STANDARDS**

In addition to the general requirements as herein provided in the Local Law, the following standards shall apply to all mobile homes and travel trailer parks:

1. **GRADING AND DRAINAGE:** Lands used as a mobile home or travel trailer park shall be well-drained, of ample size, and free from heavy or dense growth of brush and weeds. The land shall be properly graded to insure proper drainage during and following a rainfall and shall at all times be drained so as to be free from stagnant pools of water. No lots shall be laid out in areas designated as wetlands on State Wetland maps or subject to flooding as shown on Federal Flood Hazard Maps.

2. ACCESS: Each park shall have at least two hundred (200') feet of frontage on a public road. Internal roads shall be such that access to the public road is no more than five in five hundred (500') feet of frontage.
3. LOTS: Each park shall be marked off into lots numbered consecutively, and the number shall be conspicuously posted on each lot with such number to correspond to the lot shown on the site plan submitted. All lots shall face interior roadways.
4. SEPARATION DISTANCE: No service buildings, mobile homes or travel trailers shall be closer than one hundred (100') feet from the front lot line of any public road. Such areas shall be seeded and adequately landscaped to provide screening from road.
5. INTERIOR ROADS: All roads shall be at least twenty (20') feet wide and shall be designed, surfaced and lighted in a manner to facilitate the movement of emergency vehicles at all times. The owner or operator shall be responsible for constructing, maintaining, and plowing such roads.
6. UTILITIES: Water supply, sewage disposal and other distributions systems for electricity, fuel oil, gas, etc., shall be provided in accordance with the requirements of the New York State Sanitary Code of this Local Law.
7. GARBAGE: Each park shall provide equipment sufficient to prevent littering and shall provide metal depositories with tight fitting covers. Depositories shall be placed at convenient locations, emptied regularly and kept at all times in a sanitary condition.
8. FIRE INSPECTION: Each park owner or manager shall cooperate with the fire chief of the district in which the park is located in arranging an annual inspection of the premises and conditions within the park. The fire chief shall submit his findings and recommendations to the Planning Board prior to license renewal.
9. PARK OFFICE: The owner or manager of a park shall maintain an office in the immediate vicinity of the park and shall maintain accurate records of the names of park residents, home addresses, make, description, year, and license or identification number of the mobile home or travel trailer. These records shall be available to any law enforcement official, the town enforcement officer and the town assessor.

#### **Section 14.40. MOBILE HOME PARK REQUIREMENTS**

- (1) LOT SIZE: Each mobile home lot shall contain at least ten thousand, eight hundred ninety (10,890') square feet and no more than one (1) mobile home shall be permitted to occupy one (1) lot. The total number of mobile home lots in a mobile home park shall not exceed four (4) per gross acre.
- (2) STAND: Each mobile home lot shall have a mobile home stand which will provide for the practical placement on and removal from the lot of both the mobile home and its appurtenant structures and the retention of the home on the lot in a stable condition. The stand shall be of sufficient size to fit the dimensions of the anticipated mobile homes and their appurtenant structures or appendages. Mobile homes shall be supported on masonry piers, and the space between the underside of such structure and the ground shall be completely enclosed by a skirting consisting of a fire retarding material. The stand shall be suitably graded to permit rapid surface drainage.

- (3) YARDS: Each mobile home lot shall have a minimum front yard of fifteen (15') feet from interior streets and there shall be a minimum of fifty (50') feet between any mobile home in any direction.
- (4) BOUNDARY: All mobile homes shall be at least one hundred (100') feet from any public street and/or highway, and at least one hundred (100') feet from an adjacent property line.
- (5) PARKING: Each mobile home lot shall provide off-street parking, spaces for two (2) motor vehicles, which shall be covered with a hard surface to eliminate mud and dust. Guest parking shall also be provided reasonably nearby in the amount of two (2) spaces for every ten (10) lots.

#### **Section 14.50. INDIVIDUAL MOBILE HOME OUTSIDE MOBILE HOME PARK**

The owner of land must file an application for a permit with the enforcement officer together with a fee determined by the Town Board. Any mobile home parked or placed outside a duly licensed mobile home park shall have an adequate supply of pure water for drinking and domestic purposes, and a septic system. Both systems shall satisfy the requirements of the New York State Department of Health.

No occupied mobile home outside a duly licensed mobile home park shall be parked or placed upon a lot unless the following are adhered to:

- a. Minimum Lot Standards under Section 8.40 for a Single dwelling.
- b. Stand under Section 14.40(2).
- c. No mobile home shall be used as a storage shed.
- d. No mobile home shall be placed on a lot which is occupied by another mobile home.

No mobile home shall be parked or allowed to remain upon any street, highway or other public place, except that emergency stopping or parking, when caused by mechanical failure, shall be permitted upon the shoulder of any street or highway for a period of not more than forty-eight (48) hours, subject however to any prohibition or limitation imposed by other regulations or laws.

#### **Section 14.60. TRAVEL TRAILER PARK REQUIREMENTS**

1.LOT SIZE: Each lot in a travel trailer park shall be a minimum of twenty-five hundred (2,500') square feet in size.

2.SLOPE: Lots shall be located on generally level ground, not to exceed an eight (8%) percent slope, that is well-drained, free of flood hazard and clear of dense brush. Where terrain is adequate, pull-through sites should be provided.

3.MOBILE HOMES: Mobile homes "SHALL NOT BE" parked permanently or temporarily in any travel trailer site.

4.OCCUPANCY: Travel trailers shall not be parked for occupancy in a travel trailer park for more than one hundred eighty (180) days in any one year, unless a winterized service building is provided. However, the travel trailer operator may designate an area of the park site to be used to store unoccupied travel trailers for periods longer than one hundred eighty (180) days.

5.RECREATION: A minimum of five (5%) percent of the total area of the travel trailer park shall be dedicated to a recreation area by the operator.

6.SERVICE BUILDING: Any park containing five (5) or more lots shall provide a building(s) containing at least one (1) automatic washer and dryer, a dump station, and a public telephone, and unless admission to the park is restricted to units equipped with these facilities, one (1) toilet, lavatory and shower for each sex for each five (5) lots. All service buildings shall be of substantial construction and shall be maintained in a clean, sanitary and slightly condition.

**Section 14.70. INSPECTION**

Upon completion of final inspection, issuance of a certificate of completion and payment of the license fee as required in Section 14.90, a license to operate the mobile home park or travel trailer park shall be issued by the Town Clerk, authorizing the operation of the park for the period of one (1) year from the date thereof. The Town Board may revoke any license to maintain and operate a park when the licensee has been found guilty by a court of competent jurisdiction of violating any provision of this law. The license certificate shall be conspicuously posted in the office of or on the premises of the park at all times.

**Section 14.80. LICENSE RENEWAL**

The park license shall be renewed every year on the anniversary of the original date of approval. It shall be the park owner's responsibility to initiate the renewal procedure by completing the renewal application form and submitting it to the Town Clerk thirty (30) days prior to the expiration date of the current license. After the fire inspector and enforcement officer, in coordination with the Albany County Health Department, has investigated the park for health and safety irregularities and design modifications, the enforcement officer and fire inspector shall approve or disapprove the application in writing.

**Section 14.90. LICENSE FEE**

The license fee or the license renewal fee, in such amount as the Town Board may establish by resolution, shall be submitted with the completed renewal application. The license fee shall not be returned if the renewal application is disapproved. An applicant whose renewal application has been disapproved shall be granted a thirty (30) day grace period in which to correct any deficiencies noted by enforcement officer, fire inspector, or by the Albany County Health Department. The original or renewal license fee shall include the original inspection and up to two (2) reinspections.

**Section 14.100. EXISTING MOBILE HOME PARKS OR TRAVEL TRAILER PARKS**

All mobile home parks or travel trailer parks built prior to the enactment of this Local Law which do not meet the standards of this Local Law shall be considered as nonconforming to the mobile home or travel trailer park site development standards of this Local Law. All future changes or additions to such parks shall be made in accordance with this Local Law and reviewed and approved by the Planning Board.

**Section 14.110. TRAVEL TRAILERS OUTSIDE TRAVEL TRAILER PARKS**

No unoccupied trailer shall be left on a vacant lot, without a special permit approved by the Town Board. No occupied travel trailer shall be used as a year-round occupancy.

## **ARTICLE 15. AIRPORTS, AIRSTRIPS AND HELIPORTS**

### **Section 15.10. REGULATION**

All Federal, State, and Local government rules and regulations shall be fully complied with. There shall be special use and site plan approval by the Town Planning Board, including but not limited to, that such airport, airstrip, or heliport shall not cause a hazard to or be detrimental to nearby properties and buildings, both in the town and adjacent municipalities considering the location of buildings accessory to the airport, airstrip or heliport, approach and take-off patterns and lights.

## **ARTICLE 16. ZONING BOARD OF APPEALS:**

### **Section 16.10. CREATION AND ORGANIZATION**

A Zoning Board of Appeals is hereby created pursuant to the authority granted in Section 267 of the Town Law. The Zoning Board of Appeals shall consist of five (5) members and they shall be appointed by the Town Board in accordance with the provision of Section 267(2) of the Town Law. The board shall appoint a secretary and shall prescribe rules subject to the approval of the Town Board, for the conduct of its affairs.

The Town Board shall designate annually the Chairman of the Zoning Board of Appeals. The Town Board shall provide for compensation to be paid to said members, experts, clerks and their secretary and provide for such other expenses as may be necessary and proper, not exceeding in all the appropriations that may be made by the Town Board for such Board of Appeals. No person who is presently a member of the Town Board shall be eligible for membership on such Board of Appeals.

Each member appointed shall serve five (5) years from and after his or her appointment. Their successors shall be appointed for the term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be fill by the Town Board by appointment for the unexpired term. The Town Board shall have the power to remove any member of the Board for cause and after public hearing.

### **Section 16.20 MEETINGS**

All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the board may determine. The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The board shall keep minutes of its proceedings showing the vote of each member upon every question, or if absent or failing to vote indicating such fact, and shall also keep records of its examinations and other official actions.

### **Section 16.30. RECORDS**

All decisions of the board shall be in writing, and a copy of each decision shall be sent to the Enforcement Officer. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the board shall immediately be filed in the Office of the Town Clerk and shall be a public record. Each decision shall set forth fully the reason for the decision of the board and the findings of fact on which the decision was based. Such findings and reasons shall include references to the standards of Section 16.40 where the appeal is for a variance.

### **Section 16.40. POWERS AND DUTIES**

- A. Appeals and Interpretations

The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of this Zoning Law. It shall also hear and decide all matter referred to it or upon which it is required to pass under the terms of said Zoning Law. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under the Zoning Law or to effect any variation in such Zoning Law. Such appeal may be taken by any person agreed, or by an officer, department, board or bureau of the Town.

1. Notice of Appeal shall be filed with the Enforcement Officer and the Secretary to the Board of Appeals in writing, in a form required by such Board, within thirty (30) days of the date of the action appealed from, specifying the grounds thereof. Every appeal or application shall refer to the specific provisions of the Zoning Law involved and shall exactly set forth the interpretation that is claimed, or the use for which the special use permit is sought or the grounds on which it is claimed that a variance should be granted.
2. Upon filing of a Notice of Appeal and payment of a filing fee in accordance with the schedule of fees as promulgated from time to time by the Town Board by the appellant, the Enforcement Officer shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
3. The Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given notice and at which hearing he shall appear in person or by agent or attorney.
4. An appeal stays all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certified to the Board of Appeals, after Notice of Appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay, would in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Enforcement Officer.
5. Following public notice and hearing, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination, appealed from and shall make such order, requirements, decision, or determination, as in its opinion ought to be made in the premises and to that end shall have all the power of the Enforcement Officer. If the action by the Board of Appeals is to reverse the action of the Enforcement Officer, in whole, the filing fee shall be refunded to the appellant.

B. Variances

1. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Law, the Board of Appeals shall have the power, after public notice and hearing, to vary or modify the application of any of the regulations or provisions of the Law relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of the Law shall be observed, public safety and welfare secured and substantial justice done.
2. All applications for variances shall be filed with the Secretary to the Board of Appeals in writing, shall be made in a form required by the Board of Appeals, and shall be accompanied by payment of a filing fee in accordance with the schedule of

fees as promulgated from time to time by the Town Board, and a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot.

3. Any variance which is not exercised within one (1) year from the date of issuance is hereby declared to be revoked without further hearing by the Board of Appeals.
4. Criteria for granting variances:
  - a. A variance to the provisions of this Law shall be granted by the Board of Appeals in order to vary or adapt the strict application of any of the requirements of this Law in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions where such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance in the strict application of any provision of this Law shall be granted by the Board of Appeals except by the adoption of a resolution fully setting forth the reasons for the following findings:
    1. That there are special circumstances or conditions applying to such land or buildings and not applying generally to land or buildings in the vicinity and under identical district classification, and that said circumstances or conditions are such that strict application of the provisions of this Law would deprive the applicant of the reasonable use of such land or buildings or privileges enjoyed by other properties in the vicinity and under identical district classification.
    2. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board of Appeals is the minimum variance that will accomplish this purpose.
    3. That the granting of the variance will be in harmony with the general purpose and intent of this Law, and will not be injurious to the vicinity or otherwise detrimental to the public welfare.
    4. That any variance shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which subject property is situated.
  - b. In no case shall a variance be granted solely for reason of additional financial gain on the part of the owner of the land or building involved.

The Zoning Board of Appeals shall notify the Town Board, Enforcement Officer, and the Planning Board of each interpretation or variance granted under the provisions of this Local Law.

## ARTICLE 17: WIRELESS COMMUNICATIONS FACILITIES

### Section 17.10: PURPOSE

This section specifically addresses the placement, design, construction, removal and modifications of wireless communication facilities, excluding satellite dishes and antennas for residential use, in order to ensure that such services are provided with minimal harm to the public health, safety and general welfare. This section has been specifically created to:

- a. Protect the general public from hazards associated with wireless communication facilities;
- b. Minimize adverse visual impacts from wireless communication facilities; and
- c. Prevent adverse impact on local property values while complying with federal laws addressing wireless communication facilities.

### Section 17.20: DEFINITIONS

*ADEQUATE COVERAGE:* Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be signal strength of at least  $-90$  dBm. It is acceptable for there to be minor temporary loss of signal within the area of adequate coverage. The outer boundary of the area of adequate coverage is that location past which the signal does not regain uniformity.

*ANTENNA:* The surface from which wireless radio signals are sent and received by a personal wireless service facility.

*APPLICANT:* A licensed carrier, as provided for in the Telecommunications Act of 1996.

*BASE LOCATION:* The location where a tower is attached to its foundation.

*CARRIER:* A company that provides wireless services.

*CO-LOCATION:* The use of a single mount on the ground by more than one carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one carrier.

*FUNCTIONAL EQUIVALENT SERVICES:* Cellular, personal communication services (PCS), enhanced specialized mobile radio, specialized mobile radio and paging.

*MONOPOLE:* A type of tower that is self-supporting with a single shaft of wood, steel or concrete.

*MOUNT:* The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof Mounted: mounted on the roof of a building.
2. Side-Mounted: mounted on the side of a building.
3. Ground-Mounted: mounted on the ground.
4. Structure-Mounted: mounted on a structure other than a building.

*OMNI-DIRECTIONAL (WHIP) ANTENNA:* A thin rod that beams and receives a signal in all directions.

*PANEL ANTENNA:* A flat surface antenna or dish antenna usually developed in multiples

*RADIO FREQUENCY RADIATION (RFR):* The emissions from wireless communication facilities.

*STEALTH TOWER:* A structure designed to blend with or be hidden by surrounding terrain, architectural design or buildings.

*TRANSMITTER RECEIVER:* Equipment that sends or receives telecommunications service signals.

*WIRELESS COMMUNICATION FACILITY:* Any and all materials, equipment storage structures, monopoles, towers, satellite dishes and/or antennae intended for transmitting or receiving telecommunications services, equivalent to Personal Wireless Service Facility as defined by the Telecommunications Act.

*WIRELESS COMMUNICATIONS PROVIDER:* An entity licensed by the FCC to provide telecommunications services.

### **Section 17.30. USE REGULATIONS**

1. No wireless communication facility shall be erected, constructed, installed, operated or modified except as set forth below, and upon issuance of a special use permit by the Planning Board pursuant to this Article and Article 10 of this Zoning Law, and site plan approval by the Planning Board pursuant to Article 9 of this Law. All applicants for such a special use permit must be wireless communications carriers licensed by the FCC, or must provide a copy of its executed contract to provide land or facilities to an existing wireless communications provider at the time that an application is submitted. A "letter of intent" is not acceptable to exhibit a binding agreement with a carrier for use of said facility. A permit shall not be granted for a tower or facility to be built on speculation.

2. No permits for wireless communication facilities (including communication towers) will be issued:

- a. In the Residential Hamlet Districts of Westerlo and South Westerlo;
- b. On property upon which is located a school, park, cemetery, designated historic building or a building eligible for the National or State Historic Registry, or any property adjacent thereto;
- c. Any state or federally regulated wetlands.

3. Wherever a wireless communication carrier seeks to build a facility the company should build its tower to the minimum height necessary, rather than to the maximum height allowed.

4. All minimum side yard, front yard and rear yard lot line requirements as set forth in Article 8 of this Law are hereby waived for wireless communication facilities and the towers, to facilitate increasing setbacks of these facilities from public and private roads and property, as set forth in this Article.

5. Whenever feasible, wireless communication facilities shall be located on existing structures, including, but not limited to buildings, water towers, existing telecommunication facilities, utility and light poles and towers, and related facilities, provided that such installation preserves the

character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communication facilities. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

6. Co-location:

a. Licensed carriers shall share wireless communication facilities and sites where feasible and appropriate, thereby reducing the number of wireless communication facilities that are stand-alone facilities. All applicants for a special use permit for a wireless communication facility shall demonstrate a good faith effort to co-locate with other carriers. All applicants shall:

1. Survey all existing structures for co-location of wireless communication facilities;
2. Contact all other licensed carriers for commercial mobile radio services operating in the county;
3. Share information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location.

b. Applicants shall provide a written statement explaining the steps taken to determine the feasibility of co-location on existing structures. In the event that co-location is found not to be feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Town.

c. The Applicant shall provide a letter of intent committing the tower owner and his or her successors to permit shared use of the tower, if the additional user agrees to meet reasonable terms and conditions for shared use.

d. The Town may retain a technical expert in the field of RF engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

e. In no case shall any facility, allowed pursuant to this Article, be located closer than two and one-half (2 1/2) mile to any other such facility, unless it is determined by a qualified engineer licensed to practice in the State of New York that a closer proximity is needed for "Adequate Coverage" as defined herein. Under no circumstances shall any wireless communications tower be within one (1) mile of each other unless such tower is a stealth tower and the applicant's technology cannot be used on an existing tower as determined by a qualified engineer licensed to practice in the State of New York.

7. All wireless communication facilities placed within the Town limits shall be required to accommodate antennas, base equipment and other space and access rights as necessary and feasible, in order to permit the facility to be used by the Town of Westerlo, and the fire and rescue services located within the Town limits. This shall be a continuing obligation, such that municipal equipment can be added, altered or expanded at any time during the existence of the facility.

8. All applicants shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or ordinance, and must maintain the same, in full force and effect, for as long as required by the Town or other appropriate government entity or agency.

9. A special use permit issued under this Article shall not be assignable or transferable without the express written consent of the Planning Board.

10. A special use permit issued under this Article may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Article.

#### **Section 17.40. PROCEDURES**

In addition to the usual procedures and information required to file for a special use permit under Article 10 of this law, the following shall also be required:

1. A report prepared by one or more registered professional engineers who specializes in radio frequency engineering certifying that the proposed wireless communication equipment shall be installed, erected, maintained, and used in compliance with all applicable Federal, State and local regulations, including, but not limited to: the radio frequency emissions regulations set forth in the 1996 Federal Communications Act, and applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC);

2. A report from a qualified and licensed professional engineer that

- a. Sets forth the names and address of the person preparing the report, the name and address of the property owner, operator and applicant;
- b. States the address and section, block and lot or parcel number of the property, along with the size and classification of the property on which the proposed tower is to be located;
- c. Describes the facility height, design and elevation, including the make, model and manufacturer of the Tower and Antenna(s);
- d. A description of the facility and the technical and other reasons for the proposed location, height and design, including reasons for not co-locating on other existing facilities or structures;
- e. Documents the height above grade for all proposed mounting positions for antennas to be co-located on a wireless communications tower or facility and the minimum separation distances between antennas;
- f. Describes the capacity of the facility including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the type(s) of Functionally Equivalent Services that are being used at the facility;
- g. Evidences that the communications structure meets the current structural standards for steel antenna tower and antenna support structures published by the Electrical Association/Telecommunications Industry Association;
- h. Describes existing and proposed coverage, demonstrating that existing structures within the town and abutting Towns, and within a 10-mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the town of Westerlo;
- i. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a detailed

computer-generated Actual Received level propagation model that describes coverage of the existing and proposed facilities;

- j. Describes the output frequency, number of channels and power output per channel for each proposed antenna;
- k. Includes a written five-year plan for use of the proposed wireless communications facility, including reasons for seeing capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the town of Westerlo;
- l. Demonstrates compliance with the setback and height requirements; and
- m. Describes the fall zone for the proposed tower.

3. A clear and accurate locus plan which shall show all property lines, the exact location of the proposed facilities, streets, water bodies, wetlands, landscape features, and all buildings within one thousand (1000') feet of the facility shall be submitted.

4. A location map of the proposed structure on the most recent U.S.

5. Geological Survey Quadrangle Map, showing the area with at least a three-mile radius of the proposed tower site.

6. A map of the property proposed to be developed, prepared by a licensed registered land surveyor, drawn to scale and with the area to be developed clearly indicated.

7. A color photograph or rendition of the facility with its antennas and/or panels at the proposed site, including landscaping, utility lines, screening and roads.

8. Elevations showing all facades and indicating all exterior material and color of towers, building and associated facilities.

9. Approximate average height of vegetation within two hundred (200') feet of the tower base.

10. Construction sequence and estimated time schedule for completion of each phase of the project.

11. A view test to be conducted utilizing a crane or other acceptable means, but not a balloon, to document the extent of visual impact. The Planning Board and Zoning Board of Appeals are to be notified at least seventy-two (72) hours prior to the testing date. Photographs of the view test showing the impact of the proposed facility on abutting street, adjacent property owners and residential neighborhoods shall be submitted.

12. A complete environmental assessment report, as required by the National Environmental Policy Act and SEQR, describing the probably impacts of the proposed facilities.

13. Proof that either the applicant or a co-applicant holds a bona fide license from the FCC to provide the telecommunication services that the proposed tower is designed to support.

14. A letter or report from the FAA that the proposed tower complies with all safety requirements for any airports in the vicinity of the site.

15. A plan for removal of the wireless communication facility upon its abandonment or obsolescence, including detailed procedures and methods to be employed, and accompanied by an estimate of the cost of such removal, including engineering or other supervisory services.

16. Any additional information requested by the Planning Board.

The permit application shall be signed under penalties of perjury. All permit requests which do not conform with the requirements herein pertaining to permit applications shall not be deemed submitted, will not be reviewed and shall be returned to the applicant.

The Town, acting through the Planning Board, may require the applicant to pay reasonable fees for review of the applicant's proposal for compliance with FCC regulations, standards and requirements at the time of application and on an annual basis, by a professional or radio frequency engineer or other qualified professional.

## **Section 17.50. TYPE, DESIGN, LAYOUT AND PLACEMENT OF FACILITY**

### **Section 17.50.1 General requirements and limitations**

1. In order to prevent damage or injury resulting from ice, fall debris and to avoid and minimize all other impacts upon adjoining properties, all facilities and towers, unless incorporated within an existing building, tower or steeple, shall be:

- a. One hundred (100') feet horizontally from any regulated wetland; and
- b. Two hundred (200') feet from any existing permanently occupied residential dwelling; and
- c. Two hundred eighty-five (285') feet or 1.5 times the height of the tower or wireless communication facility, whichever is greater, from an existing property line; and
- d. Erected on a lot that fully conforms to the lot size requirements as set forth in this law.

2. Where a wireless communication facility is structurally mounted to the roof of an existing building, the facility shall be set back no less than fifty (50%) percent of the tower height.

### **Section 17.50.2 Facility and tower design and layout**

1. Any wireless communication facility which meets all of the requirements set forth in this Article, shall be a stealth tower or monopole. Lattice style towers and similar facilities requiring three (3) or more legs and/or guy wires for support are not allowed.

2. Towers, antennas and all related facilities shall not exceed one hundred ninety (190') feet in height, measured from the lowest existing ground elevation of such tower base to the topmost point of the tower including an antenna or other appurtenances.

3. All utilities shall be routed underground via conduit from public road to site.

4. All towers shall be of such a color that they blend in to the surroundings in which they are placed. All coatings must be rust-proof. Facilities shall be painted or otherwise screened or camouflaged to minimize their visibility to abutters and adjacent streets. Wireless communication facilities equipment and fixtures visible against the sky or other background shall be colored to minimize visibility against such background. A different coloring scheme shall be used to blend the facility with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent practicable.

5. All cables must be flush mount, and there shall be multiple use of single channel boxes, until maximum use is achieved. Antennas, panel antennas or dishes located on any structure shall not exceed ten (10') feet above the structure. Such attachments shall be colored, molded and/or installed to blend into the structure and/or the landscape.

6. Equipment shelters for wireless communication facilities shall be designed consistent with one of the following design standards:

1. Equipment shelter shall be located in underground vaults; or
2. Equipment shelter shall be camouflaged behind an effective year-round natural landscape buffer, equal to the height of the proposed building.

7. A security barrier, consisting of a locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespassing, and being at least ten (10') feet high, shall surround the ground mounted wireless communication facilities, all equipment shelters and the outreach of all antennas and panels. The wireless communications facility shall be equipped with an anti-climbing device.

8. Towers shall not be artificially illuminated. Lighting shall be limited to minimal security lighting and that required by the Federal Aviation Administration (FAA) only. All lighting is subject to Article 12 of this law.

9. Vehicle access to the facility site shall be required. A sturdy posted swinging lockable gate must be installed which is more than fifteen (15') feet and less than thirty (30') feet off the public road upon which said access is situated. A KNOX box or keys shall be provided to a designated town official for municipal access. The access road shall be no less than eighteen (18') feet wide. Finish grade must be approved by the Highway Superintendent.

10. Easements shall be provided to the Town of Westerlo for access and removal in the case of facility/tower abandonment.

11. There shall be at least one (1) parking space at each facility to be used in connection with the maintenance of the facility and the site, and not to be used for storage of vehicles or other items.

12. No signage or advertising of any kind including carrier identification signs, shall be mounted on telecommunications towers. Only warning signs and safety signs shall be allowed. A sign, no greater than two (2') square feet stating the name of the facility's owner and a 24-hour emergency number shall be posted on the entry gate. In addition, "No Trespassing" and any other mandated warning signs shall be posted and maintained at the site.

### **Section 17.50.3 Facility placement, lighting, landscaping**

1. Proposed facilities shall not unreasonably interfere with any scenic views, and when possible, shall be sited off ridgelines and where their visual impact is least detrimental to scenic views and areas. In determining whether the proposed tower will have an undue adverse impact on the scenic beauty of a ridge or hillside, the Town shall consider, among other things:

- a. The period of time during which the proposed tower will be viewed by the traveling public on a public highway, public trail, or public body of water;
- b. The frequency of the view of the proposed tower by the traveling public;
- c. The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
- d. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;

- e. The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
- f. The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point; and
- g. The sensitivity or unique value of the particular view affected by the proposed tower.

2. The wireless communication facility, including but not limited to the equipment shelter, tower and security barrier, shall be screened from view by a suitable vegetation screen that is consistent with existing vegetation. A planted or existing vegetation screen shall be maintained. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbances to existing topography shall be minimized unless disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

### **Section 17.60. SAFETY STANDARDS**

1. All equipment proposed for a wireless communication facility shall be authorized per the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation.

2. No hazardous wastes shall be discharged on the site of any wireless communication facility. If any hazardous materials are used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred ten (110%) percent of the volume of the hazardous materials stored or used on the site.

3. Ground mounted equipment for wireless communication facilities, and emergency power equipment shall not generate noise in excess of 50dB at the property line. If there is a question as to the noise levels being generated, the Town may hire an acoustical engineer to verify noise levels at the carrier's expense.

### **Section 17.70. MONITORING AND MAINTENANCE**

1. After the wireless communication facility is operational, the applicant shall submit, within ninety (90) days of beginning operations, and at annual intervals from the date of issuance of the Special Use Permit written documentation that the facility is in compliance with all FCC standards, as well as existing measurements of RFR from wireless communication facility. Such measurements shall be signed and certified by an RF engineer, stating that RFR measurements are accurate and met FCC guidelines.

2. The applicant shall maintain the wireless communication facility in good condition. Such maintenance shall include, but shall be limited to painting, structural integrity of the mount and any security barrier, and maintenance of the buffer area and landscaping. The facility shall be inspected at the expense of the service provider by a licensed professional engineer at any time, upon a determination by the building inspector that the facility may have sustained structural damage, but in no case less than every five (5) years. A copy of the inspection report shall be submitted to the building inspector.

## **Section 17.80. MODIFICATIONS**

A modification of a wireless communication facility may be considered equivalent to an application for a new wireless communication facility and will require a Special Use Permit and/or Site Plan approval when the following events apply:

1. The applicant and/or co-applicant wants to alter the terms of the Special Use Permit by altering any condition of approval or by changing the wireless communication facility in one or more of the following ways:

- a. Change in the number of wireless communications facilities permitted on the site;
- b. Change in technology used for the wireless communication facility.
- c. Addition or change of any external equipment or an increase in the height of the tower, including profile of additional antennas, not specified in the original application; or
- d. Change in ownership.

2. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

## **Section 17.90. ABANDONMENT AND DISCONTINUANCE**

1. The owner of a facility/tower shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and shall be considered abandoned.

2. At such time that the licensed carrier plans to abandon or discontinue operation of a wireless communication facility, such carrier will notify the town by certified U.S. Mail of the proposed date of abandonment or discontinuance of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuance of operations. In the event that a carrier fails to give notice, the wireless communication facility shall be considered abandoned upon such discontinuance of operations. In any event, a facility/tower shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of twelve (12) months.

3. Upon abandonment or discontinuance of use, the carrier shall physically remove the wireless communication facility with ninety (90) days from the date of abandonment or discontinuance of use. "Physically Remove" shall include, but shall not be limited to:

- a. Removal of monopole, antennas, mount, equipment shelters and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- c. Restoring the location of the wireless communication facility to its natural condition, except that any landscaping and grading shall remain in the "after" condition.

4. If the owner of a facility/tower fails to properly remove said facility/tower within ninety (90) days from the date of abandonment, the town may exercise its option to remove said facility/tower at its own discretion upon notification to the owner.

5. The applicant shall provide the town with written authority from the owner or owners of record for the subject property where the facility is located to bind successors and assigns to allow the town to enter onto the subject property to physically remove the facility in the event that the carrier fails to remove the facility in accordance with the requirements of this Zoning Law.

6. The applicant shall provide the Town with a bond in an amount determined by the Planning Board, but in no case less than \$50,000.00 (fifty thousand and 00/100 dollars) to cover the cost for the removal of the wireless communication facility and the remediation of the landscape, in the event that the town must remove the facility. The bond shall be in a form acceptable to the town Attorney. The bond amount shall be reviewed every year by the Planning Board and shall be adjusted if deemed necessary. If the bond is deemed to be adjusted the applicant shall have ninety (90) days from notice to provide an adjusted bond.

### **Section 17.100. REQUIRED FEES, ESCROWS, INSURANCE, AND INDEMNIFICATION**

1. The Town Board of the Town of Westerlo shall establish a schedule of fees to cover permitting and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

2. Prior to the processing of an application, the applicant will establish an escrow account of not less than \$9,500.00 (nine-thousand five hundred and 00/100 dollars) to cover all costs and expenses incurred by the Town for the attorneys and consultant's/expert's evaluation and consultation with the Town, as may be necessary to review the proposal, including but not limited to the review of financial and technical aspects of the proposal and of the financial and technical practicability of alternatives which may be available to applicant. The total fee may vary with the scope and complexity of the project and the degree of cooperation of the applicant. Additional funds, as required, shall be paid by the Applicant.

3. Insurance:

- a. The wireless communications facility owner shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the special use permit in amounts established by the Planning Board.
- b. The public and personal liability and property damage insurance policy shall specifically include the Town and its official, employees and agents as additional insureds, shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- c. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- d. Within fifteen (15) days of issuance of the special use permit, and prior to construction of a permitted facility, the facility owner shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

- e. Failure to comply with the foregoing shall automatically deem the special use permit revoked without further proceeding. Written revocation of the special use permit shall be forwarded to the facility owner within five days of the revocation.

4. Any special use permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the Town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a wireless communications facility within the Town. Reasonable attorneys' fees, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.

#### **Section 17.110. Public Hearing Required**

Prior to the approval of any application for a Special Use Permit for a Wireless Communications Facility, a public hearing shall be held to enable public input on the application. The applicant shall be required to mail notice of the public hearing directly to all landowners whose property is located within fifteen hundred (1500') feet of any property line of the parcel on which the proposed wireless communications facility is proposed at least two (2) weeks prior to the date of said public hearing. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed facility would be visible, if constructed. Notification in all cases, shall be made by U.S. Certified Mail, with a receipt evidencing delivery. Documentation of this notification shall be submitted to the Planning Board at least seven (7) days prior to the scheduled hearing.

#### **Section 17.120. Severability**

If a court of competent jurisdiction holds any portion of this Article unconstitutional or invalid, the remainder of this Article shall not be affected.

## **ARTICLE 18. SOLAR ENERGY SYSTEMS**

### **Section 18.10: Purpose**

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”) recognizes that in recent years the installation of solar energy systems on commercial and residential properties has become widespread due to various tax incentives and leasing and provider incentives. Solar panels are promoted by both New York State and the Federal Government as sustainable, renewable energy sources that reduce dependence on fossil fuels. Solar panels are becoming typical accessory uses for residential and commercial properties, and the Town of Westerlo recognizes that solar panels have many benefits for the property owner and the community in general.

The Town of Westerlo (hereinafter referred to as “Town”) has always recognized the existence, importance and relevance of solar energy. The Town of Westerlo, in its Zoning Law (hereinafter referred to as “Zoning Law”) adopted in 1989 addressed solar energy. The Zoning Law (which is still in effect) defines solar energy as “radiant energy (direct, diffuse, and/or reflected) received from the sun. The Zoning Law further defines “solar energy system” as “an arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy”. The Zoning Law specifically includes “solar energy systems” as a use permitted by right in the rural development/agricultural district and the hamlet district, subject to the remainder of the zoning requirements (to wit, setbacks, height, etc.).

This law is intended to provide more specific standards and guidance to the Town, the Town’s Code Enforcement Officer and Building Department, and the regulatory boards within the Town, including but not limited to the Zoning Board of Appeals and the Planning Board, with respect to the construction and installation of roof mount and ground mount Solar Energy Systems, as defined herein. This law is intended to establish guidelines for such construction and installation that take into consideration the impact of these systems on the surrounding neighbors and street traffic and ensure that solar collectors are located in a manner that reasonably minimizes shading of adjacent properties while still providing adequate solar access for collectors, while preserving the rights of property owners to install Solar Energy Systems.

### **Section 18.20: APPLICABILITY**

This Law is applicable to all Solar Energy Systems, for which a building permit or special use permit has not yet been issued by the Town: however, any modification, expansion or alteration of an existing system or approved, but not yet constructed system, shall be subject to the terms and provision set forth herein. All applications hereunder shall be on the application form designated by the Town of Westerlo.

### **Section 18.30: EXPEDITED PROCESS**

1. **APPLICABILITY:** This section shall apply to Solar Energy Systems with a rated capacity of 25 KWs or less, notwithstanding the use therefor. No ground mounted system, however, shall be permitted on a nonconforming lot, as the same is described in the Zoning Law, and all ground-mount systems must meet the set-back requirements set forth for said zoning district in the Zoning Law.

2. **PROCEDURE:** To utilize this procedure, the applicant shall submit to the Town Building department/Code Enforcement Officer the following:

- a. A completed application, as provided by the Town;
- b. A set of project plans which includes, at a minimum:
  - (i) The project address;

- (ii) Section, block and lot number of the subject property (tax identification number);
- (iii) Property owner's name, address and telephone number; and
- (iv) Name, address and telephone number of the person preparing the plans.

c. A site plan showing the location of the major components of the Solar Energy System and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks and height measurements for all ground mounted systems. The plan should set forth the relative location of the components at the site, including but not limited to, location of the solar array, existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.

3. APPROVAL: Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer, and the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for a grid-tied solar electric system.

**Section 18.40: RESIDENTIAL SOLAR ENERGY SYSTEM**

1. APPLICABILITY: This provision shall apply to small scale Solar Energy Systems used strictly for private residential or agricultural purposes, and which have a capacity of not greater than twenty-five (25) KW.

2. PROCEDURE: All small-scale Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the International Building Code, International Fire Prevention Code and NAFPA 70.

(a) Rooftop and flush-mount Solar Energy Systems: Solar Energy Systems that are installed on rooftops and/or are flush with existing legal structures are permitted in all zoning districts in the Town, subject to the following conditions:

(i) A building permit shall be required for installation of all rooftop and flush-mounted Solar Energy Systems.

(ii) The structure upon which the solar Energy system is installed must:

- 1. Be legally permitted comply with the height limitations for the subject zoning district as set forth in the Zoning Law; and
- 2. Comply with all setback requirements for the subject zoning district as set forth in the Zoning Law.

(iii) Solar Energy System must be installed a minimum of three (3') feet away from any chimney and shall not be installed on any roof overhangs.

(iv) Solar Energy Systems installed on any pitched roof shall not extend more than eighteen (18") inches from the surface of the angle of the roof.

(b) Ground-mount and freestanding Solar Energy Systems: Ground-mount and freestanding Solar Energy Systems shall be permitted as an accessory structure in the Rural Residential/Agricultural Districts in the Town, subject to the following conditions:

- (i) No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.
- (ii) All Solar Energy Systems shall be designed and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.
- (iii) A building permit shall be required for installation of all ground-mount and freestanding Solar Energy Systems. In the event that the proposed solar Energy system requires a Special Use Permit (see subsection (viii) below) no building permit shall be issued until and unless a Special Use Permit has first been issued by the Town of Westerlo Planning Board.
- (iv) All solar collectors shall be installed at least fifty (50') feet from any lot line, and must be located in compliance with NYS Department of Environmental Conservation ("DEC") and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- (v) All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.
- (vi) All solar collectors shall have a maximum height of twenty (20') feet from ground elevation, measured from the base of the unit or support structure, as it touches the ground.
- (vii) If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- (viii) A Special Use Permit from the Planning Board is required for all ground-mounted and freestanding Solar Energy Systems greater than fifteen (15') feet in height or greater than thirty (30') feet in length, or if the solar array surface area is greater than four hundred (400') square feet in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

**Section 18.50: COMMERCIAL SOLAR ENERGY SYSTEMS**

1. **APPLICABILITY:** This provision shall apply to Solar Energy Systems that are intended to be used for purposes other than residential or agricultural. Commercial Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Section 2 below.

No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

2. **GENERAL REQUIREMENTS:** All Commercial Solar Energy Systems require issuance of a Special Use Permit and are subject to site plan review approval by the Planning Board as set forth in the Zoning Law and in accordance with the following specifications:

- (a) All Solar Energy Systems shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.

(b) A building permit shall be required for installation of all commercial Solar Energy Systems, which shall only be issued after a Special Use Permit has first been issued by the Town of Westerlo Planning Board ("Planning Board").

(c) All solar collectors shall be installed at least 100' from any lot line, and must be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.

(d) All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.

(e) All solar collectors shall have a maximum height of twenty (20') feet from ground elevation.

(f) All buildings and accessory structures, other than the actual solar collectors, associated with the solar Energy system shall be in compliance with the height limitations in the Zoning Law.

(g) All buildings and accessory structures associated with solar energy systems shall be a minimum of 100' from any lot line.

(h) A solar energy system, inclusive of buildings and accessory structures, shall only cover a particular parcel as set forth herein, with a maximum coverage of a parcel being twenty (20) acres:

(i) For lots located in the Hamlets of Westerlo and South Westerlo, the maximum coverage shall be  $\frac{1}{3}$  (33  $\frac{1}{3}$ %) of the entire parcel.

(ii) For lots consisting of three (3) acres to ten (10) acres, the maximum total coverage shall be  $\frac{1}{3}$  (33  $\frac{1}{3}$ %) of the entire parcel.

(iii) For lots consisting of ten (10) acres to twenty (20) acres, the maximum total coverage shall be  $\frac{2}{5}$  (40%) of the entire parcel.

(iv) For lots consisting of twenty (20) acres to thirty (30) acres, the maximum total coverage shall be  $\frac{1}{2}$  (50%) of the entire parcel.

(v) For any parcel thirty (30) acres and more, the maximum total coverage shall be 20 acres.

(i) If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.

3. PROCEDURE: All commercial Solar Energy Systems shall provide a site plan in accordance with the site plan requirements of the Zoning Law. The Site Plan, in addition to said requirements, shall also include and/or comply with the following:

(a) All signage pertaining to the solar Energy system shall be indicated on the site plan and shall be in conformance with the sign requirements in the Zoning Law.

(b) All commercial Solar Energy Systems shall be sited in a manner to have the least possible visual effect on the immediate neighbors and general environment.

(c) The Site Plan shall include a Visual Environmental Assessment Form (Visual EAF), landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key points identified in the Visual EAF, existing tree lines, surrounding topography and proposed elevation.

(d) Proposed landscaping, screening and/or earth berming to minimize the potential visual impacts associated with the commercial solar Energy system and its accessory buildings, structures and/or equipment. If the same is deemed inadequate by the Planning Board, additional landscaping, screening and/or earth berming may be required to mitigate visual and aesthetic impacts.

(e) Any associated structure shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the Site Plan. Where feasible, all utilities serving the site shall be underground.

(f) A lighting plan shall be included with the Site Plan. No artificial light is permitted, unless the same is required by a federal, state or local authority. Exterior lighting may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only.

(g) The Site Plan shall also include written confirmation that the electric grid has the capacity to support the energy generated from the commercial Energy system.

(h) The Site Plan shall identify all existing and proposed access routes to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities, existing and proposed, within the property boundaries of the proposed location. Whenever possible, existing roadways shall be used for access to the site.

(i) The site plan shall include fencing of not less than 2.1 m (7 feet) in height or a combination of 1.8 m (6 ft) or more of fence fabric and a 300 mm (1 ft) or more extension utilizing strands of barbed wire or equivalent, as currently set forth in the National Electric Code. In the event that fencing as specified in the National Electric Code is changed, this provision shall default to those specifications set forth in the National Electric Code.

(j) The Site Plan shall provide for placement of noise-producing equipment such that placement of the same minimizes noise impacts on adjacent properties.

4. ADDITIONAL REQUIREMENTS:

(a) LEASE: Where a commercial solar energy system is to be located on private lands owned by a party other than the applicant, a copy of the lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department

(b) STATUS OF SYSTEM: The applicant shall provide to the Building Department on an annual basis on the anniversary date of the commencement of operation of the commercial solar energy system documentation from the utility company verifying that said system is active.

(c) INSURANCE, ESCROWS AND INDEMNIFICATION:

(i) Prior to the processing an application, the applicant will establish an escrow account of not less than \$2,500.00 (two thousand five hundred and 00/100 dollars) to cover all costs and expenses incurred by the Town for the attorney's and consultant's/expert's evaluation and consultation with the town, as may be necessary to review the proposal, including but not limited to the review of financial and technical aspects of the proposal and of the financial and technical practicability of alternatives which may be available to the applicant. The total fee may vary with the scope and complexity of the project and the degree of cooperation of the applicant. Additional funds, as required, shall be paid by the applicant.

(ii) Insurance:

(a) The system owner shall secure and at all times maintain a \$1,000,000.00 (one million and 00/100 dollars) commercial insurance policy, including coverage for the Town of Westerlo and its officials, employees and agents as insureds. The policy shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.

(b) Renewal or replacement policies of certificates shall be delivered to the town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

(c) Within fifteen (15) days of issuance of the special use permit, and prior to construction of a permitted solar energy system, the system owner shall deliver to the Town a copy of each of the policies of certificates representing the insurance in the required amounts.

(d) Failure to comply with the foregoing shall automatically deem the special use permit revoked without further proceeding. Written revocation of the special use permit shall be forwarded to the system owner within five (5) days of the revocations.

(iii) Any special use permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a solar energy system within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

(d) SURETIES/BOND: The applicant shall be required to provide sureties, as set forth below, for the removal of the commercial solar Energy system

5. ABANDONMENT/REMOVAL:

(a) The owner of a solar energy system shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said system installed subject to these regulations, as well as the status notification set for in 4(c) above. Failure

to file a declaration shall mean that the system is no longer in use and shall be considered abandoned.

(b) At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town by certified U.S. Mail of the proposed date of abandonment, or discontinuance of operations. In the event that a system owner fails to give notice, the system shall be deemed abandoned upon such discontinuance of operations. In any event, a solar energy system shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of twelve months.

(c) Upon abandonment or discontinuance of use, the system owner shall physically remove the solar energy system, and all accessory structures and/or equipment within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to:

- (i) Removal of panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property;
- (ii) Proper disposal of the waste material from the site in accordance with local and state solid waste disposal regulations; and
- (iii) Restoring the location of the solar energy system to its natural condition, except that any landscaping and grading shall remain in the "after" condition.

(d) If the owner of the system fails to properly remove said solar energy system and associated structures and equipment within ninety (90) days from the date of abandonment, the Town may exercise its option to remove said system at its own discretion upon notification to the owner of the system and the property owner, at the expense of the owner for which the surety set forth in section (f) herein shall be used.

(e) The applicant must provide the Town with written authority from the owner or owners of record for the subject property where the solar energy system is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the system in the event that the owner fails to remove the system in accordance with the requirement of this law.

(f) The applicant shall provide the Town with a bond in an amount determined by the Planning Board, but in no case less than twenty (20%) percent of the construction cost to cover the cost for the removal of the system and remediation of the landscape, in the event the Town must remove the facility. The bond shall be in a form acceptable to the Town Attorney, which include but are not limited to letter of credit, perpetual bond, or any combination thereof. The amount shall be reviewed every year by the Planning Board and shall be adjusted if deemed necessary. If the bond is deemed to be adjusted the applicant shall have ninety (90) days from notice to provide an adjustment bond.

### **Section 18.60 FEES**

The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover application and permitting, review and approval, and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

### **Section 18.10: Purpose**

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”) recognizes that in recent years the installation of solar energy systems on commercial and residential properties has become widespread due to various tax incentives and leasing and provider incentives. Solar panels are promoted by both New York State and the Federal Government as sustainable, renewable energy sources that reduce dependence on fossil fuels. Solar panels are becoming typical accessory uses for residential and commercial properties, and the Town of Westerlo recognizes that solar panels have many benefits for the property owner and the community in general.

The Town of Westerlo (hereinafter referred to as “Town”) has always recognized the existence, importance and relevance of solar energy. The Town of Westerlo, in its Zoning Law (hereinafter referred to as “Zoning Law”) adopted in 1989 addressed solar energy. The Zoning Law (which is still in effect) defines solar energy as “radiant energy (direct, diffuse, and/or reflected) received from the sun. The Zoning Law further defines “solar energy system” as “an arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy”. The Zoning Law specifically includes “solar energy systems” as a use permitted by right in the rural development/agricultural district and the hamlet district, subject to the remainder of the zoning requirements (to wit, setbacks, height, etc.).

This law is intended to provide more specific standards and guidance to the Town, the Town’s Code Enforcement Officer and Building Department, and the regulatory boards within the Town, including but not limited to the Zoning Board of Appeals and the Planning Board, with respect to the construction and installation of roof mount and ground mount Solar Energy Systems, as defined herein. This law is intended to establish guidelines for such construction and installation that take into consideration the impact of these systems on the surrounding neighbors and street traffic and ensure that solar collectors are located in a manner that reasonably minimizes shading of adjacent properties while still providing adequate solar access for collectors, while preserving the rights of property owners to install Solar Energy Systems.

### **Section 18.20: APPLICABILITY**

This Law is applicable to all Solar Energy Systems, for which a building permit or special use permit has not yet been issued by the Town: however, any modification, expansion or alteration of an existing system or approved, but not yet constructed system, shall be subject to the terms and provision set forth herein. All applications hereunder shall be on the application form designated by the Town of Westerlo.

### **Section 18.30: EXPEDITED PROCESS**

1. APPLICABILITY: This section shall apply to Solar Energy Systems with a rated capacity of 25 KWs or less, notwithstanding the use therefor. No ground mounted system, however, shall be permitted on a nonconforming lot, as the same is described in the Zoning Law, and all ground-mount systems must meet the set-back requirements set forth for said zoning district in the Zoning Law.

2. PROCEDURE: To utilize this procedure the applicant shall submit to the Town Building Department/Code Enforcement Officer the following:

- a. A completed application, as provided by the Town;
- b. A set of project plans which includes, at a minimum:
  - a. The project address;

b. Section, block and lot number of the subject property (tax identification number);

c. Property owner's name, address and telephone number;

d. Name, address and telephone number of the person preparing the plans;

c. A site plan showing the location of the major components of the solar Energy system and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks and height measurements for all ground mounted systems. The plan should set forth the relative location of the components at the site, including but not limited to, location of the solar array, existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.

3. APPROVAL: Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer, and the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for a grid-tied solar electric system.

#### **Section 18.40: RESIDENTIAL SOLAR ENERGY SYSTEM**

1. APPLICABILITY: This provision shall apply to small scale Solar Energy Systems used strictly for private residential or agricultural purposes, and which have a capacity of not greater than 25 KW.

2. PROCEDURE: All small scale Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the International Building Code, International Fire Prevention Code and NAFFPA 70.

a. Rooftop and flush-mount Solar Energy Systems: Solar Energy Systems that are installed on rooftops and/or are flush with existing legal structures are permitted in all zoning districts in the Town, subject to the following conditions:

i. A building permit shall be required for installation of all rooftop and flush-mounted Solar Energy Systems

ii. The structure upon which the solar Energy system is installed must:

1. be legally permitted comply with the height limitations for the subject zoning district as set forth in the Zoning Law.

2. comply with all setback requirements for the subject zoning district as set forth in the Zoning Law

iii. Solar Energy System must be installed a minimum of three feet away from any chimney and shall not be installed on any roof overhangs.

iv. Solar Energy Systems installed on any pitched roof shall not extend more than eighteen inches from the surface of the angle of the roof

b. Ground-mount and freestanding Solar Energy Systems: Ground mount and freestanding Solar Energy Systems shall be permitted as an accessory structure in the Rural Residential/Agricultural Districts in the Town, subject to the following conditions:

i. No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

- ii. All Solar Energy Systems shall be designed and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFFPA 70 Standards.
- iii. A building permit shall be required for installation of all ground-mount and freestanding Solar Energy Systems. In the event that the proposed solar Energy system requires a Special Use Permit (see subsection viii below) no building permit shall be issued until and unless a Special Use Permit has first been issued by the Town of Westerlo Planning Board ("Planning Board").
- iv. All solar collectors shall be installed at least 50' from any lot line, and must be located in compliance with NYS Department of Environmental Conservation ("DEC") and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- v. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.
- vi. All solar collectors shall have a maximum height of 20 feet from ground elevation, measured from the base of the unit or support structure, as it touches the ground.
- vii. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- viii. A Special Use Permit from the Planning Board is required for all ground-mounted and freestanding Solar Energy Systems greater than 15 feet in height or greater than 30 feet in length, or if the solar array surface area is greater than 400 square feet in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

**Section 18.50:COMMERCIAL SOLAR ENERGY SYSTEMS**

1.APPLICABILITY:This provision shall apply to Solar Energy Systems that are intended to be used for purposes other than residential or agricultural. Commercial Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Section 2 below. No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

2.GENERAL REQUIREMENTS:All Commercial Solar Energy Systems require issuance of a Special Use Permit and are subject to site plan review approval by the Planning Board as set forth in the Zoning Law and in accordance with the following specifications:

- a. All Solar Energy Systems shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFFPA 70 Standards.
- b. A building permit shall be required for installation of all commercial Solar Energy Systems, which shall only be issued after a Special Use Permit has first been issued by the Town of Westerlo Planning Board ("Planning Board").

- c. All solar collectors shall be installed at least 100' from any lot line, and must be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands
- d. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.
- e. All solar collectors shall have a maximum height of 20 feet from ground elevation.
- f. All buildings and accessory structures, other than the actual solar collectors, associated with the solar Energy system shall be in compliance with the height limitations in the Zoning Law.
- g. All buildings and accessory structures associated with solar energy systems shall be a minimum of 100' from any lot line
- h. A solar energy system, inclusive of buildings and accessory structures, shall only cover a particular parcel as set forth herein, with a maximum coverage of a parcel being 20 acres:
  - i. For lots consisting of 3 acres to 10 acres, the maximum total coverage shall be 1/3 (33 1/3%) of the entire parcel
  - ii. For lots consisting of 10 acres to 20 acres, the maximum total coverage shall be 2/5 (40%) of the entire parcel
  - iii. For lots consisting of 20 acres to 30 acres, the maximum total coverage shall be 1/2 (50%) of the entire parcel
  - iv. For any parcel 30 acres and more, the maximum total coverage shall be 20 acres
- i. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- j. The application shall include a decommissioning plan, consistent with the decommissioning requirements under § 18.50(4)(d)(ii), which ensures that the solar PV site will be restored to its original condition prior to construction or in a natural condition with any landscaping and grading approved under the decommissioning plan. The decommissioning plan must be implemented upon abandonment and/or in conjunction with removal of the facility as defined in § 18.50(4)(d)(i). A permit for removal activities shall be obtained from the Code Enforcement Department prior to any decommissioning work. Compliance with the decommissioning plan shall be a condition of the special use permit issued under this section. In addition to all other requirements set forth in § 18.50(4)(d), the decommissioning plan must include:
  - i. photographs of the property prior to construction
  - ii. a timeframe for the completion of the site restoration work
  - iii. a cost estimate detailing the projected cost of executing the decommissioning plan prepared by a professional engineer or contractor. Cost estimates shall take inflation into account. Applicant's cost estimate may be taken into consideration by the Town when determining the decommissioning security requirements set forth in 18.50 (4)(e)(ii) but will not be binding upon the Town. Final determination

of the security amount shall be at the discretion of the Town Board in consultation with the Town's engineer.

- iv. details on how the removal of the solar energy system and all related equipment and structures will be conducted and how the remediation of soil and vegetation will be conducted to restore the site to its original condition prior to construction or in a natural condition with any landscaping and grading.
- k. Any subsequent owner or operator of the permitted commercial solar system operating under a special use permit granted under this section shall be bound to all requirements or conditions under the Zoning Code, established by the Planning Board, or otherwise set forth in the special use permit., including compliance with the decommissioning plan and consent from the permit holder to allow the Town to enter onto the subject property for inspection or removal and restoration under § 18.50(4)(d)(iv).

3.PROCEDURE: All commercial Solar Energy Systems shall provide a professionally prepared site plan in accordance with the site plan requirements of the Zoning Law. The site plan, in addition to said requirements, shall also include and/or comply with the following:

- a. All signage pertaining to the solar Energy system shall be indicated on the site plan and shall be in conformance with the sign requirements in the Zoning Law.
- b. All commercial Solar Energy Systems shall be sited in a manner to have the least possible visual effect on the immediate neighbors and general environment.
- c. The Site Plan shall include a Visual Environmental Assessment Form (Visual EAF), landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key points identified in the Visual EAF, existing tree lines, surrounding topography and proposed elevation.
- d. Proposed landscaping, screening and/or earth berming to minimize the potential visual impacts associated with the commercial solar Energy system and its accessory buildings, structures and/or equipment. If the same is deemed inadequate by the Planning Board, additional landscaping, screening and/or earth berming may be required to mitigate visual and aesthetic impacts.
- e. Any associated structure shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the Site Plan. Where feasible, all utilities serving the site shall be underground.
- f. A lighting plan shall be included with the Site Plan. No artificial light is permitted, unless the same is required by a federal, state or local authority. Exterior lighting in accordance with "darksky" guidelines may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only.
- g. The Site Plan shall also include written confirmation that the electric grid has the capacity to support the energy generated from the commercial Energy system.
- h. The Site Plan shall identify all existing and proposed access routes to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities, existing and proposed, within the property boundaries of the proposed location. Whenever possible, existing roadways shall be used for access to the site.

- i. The site plan shall include fencing of not less than 2.1 m (7 feet) in height or a combination of 1.8 m (6 ft) or more of fence fabric and a 300 mm (1 ft) or more extension utilizing strands of barbed wire or equivalent, as currently set forth in the National Electric Code. In the event that fencing as specified in the National Electric Code is changed, this provision shall default to those specifications set forth in the National Electric Code.
- j. The Site Plan shall provide for placement of noise-producing equipment such that placement of the same minimizes noise impacts on adjacent properties.

#### 4.ADDITIONAL REQUIREMENTS:

a.LEASE:Where a commercial solar energy system is to be located on private lands owned by a party other than the applicant, a copy of the lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department

b.STATUS OF SYSTEM: The applicant shall provide to the Building Department on an annual basis on the anniversary date of the commencement of operation of the commercial solar energy system documentation from the utility company verifying that said system is active.

#### c.ESCROWS, INSURANCE, INDEMNIFICATION:

- i. The applicant for a commercial solar system shall be responsible for reimbursing the Town for the cost of the engineering and legal review by a Town designated engineer or attorney.

An Applicant shall execute the Town's escrow agreement and deposit with the Town Clerk funds commensurate with the scale of the project and sufficient to reimburse the Town for all reasonable costs of its consultant evaluation connection with the review of any application. An initial deposit of \$2,500.00 (the "Initial Deposit") shall be filed with the application. The Town will maintain such funds in escrow and pursuant to the terms of the escrow agreement which shall be binding on the applicant and Town. The Town's consultants/experts shall invoice the Town for their services in reviewing the application.

The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. In the event the Planning Board determines that the Initial Deposit will be insufficient for review of the application, the Planning Board shall notify the applicant, and the applicant shall supplement the escrow fund within thirty (30) days of notice from the Building Inspector of the estimated amount of the review fees necessary to process the application.

Should the sums being maintained in the escrow account by the Town of Westerlo become reduced to the point where there remains \$ 500.00 or less in said escrow account, upon receipt of written notice of such balance from the Town, Applicant will be required to replenish the escrow account with a deposit of an amount acceptable to the Town, which may be specified in the written notice. Failure on the part of Applicant to timely make such replenishment may result in the suspension of all activities by the Town in connection with the review or determination of any pending Application(s). In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.

ii. Insurance:

- a. The system owner shall secure and at all times maintain a \$1,000,000.00 commercial insurance policy, including coverage for the Town of Westerlo and its officials, employees and agents as insureds. The policy shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- b. Renewal or replacement policies of certificates shall be delivered to the town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- c. Within 15 days of issuance of the special use permit, and prior to construction of a permitted solar energy system, the system owner shall deliver to the Town a copy of each of the policies of certificates representing the insurance in the required amounts.
- d. Failure to comply with the foregoing shall automatically deem the special use permit revoked without further proceeding. Written revocation of the special use permit shall be forwarded to the system owner within five days of the revocations.

iii. Any special use permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a solar energy system within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

d. DECOMMISSIONING: The owner of a solar energy system shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said system installed subject to these regulations. At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town by certified U.S. Mail of the proposed date of abandonment, or discontinuance of operations

i. Commercial solar energy systems are deemed abandoned after:

- a. 12 months without electrical energy generation;
- b. 18 months after issuance of all municipal permits and construction is not complete;
- c. upon the effective date of notice the applicant or subsequent owner provides to the Town
- d. upon a failure to file a declaration as set forth above.

ii. Within 90 days after a commercial solar system is deemed abandoned, the system must be removed and the property restored to its original condition by the applicant or any subsequent owner as set forth below. Applications for extensions are reviewed by the Planning Board and may be granted for a period of 30-90 days at the discretion of the Planning Board.

iii. Removal and restoration shall include:

- a. removal of all infrastructure and accessory structures and/or equipment such as panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property
- b. removal of all above- and below-ground equipment, structures and foundations
- c. proper disposal of all solid and hazardous waste from the site in accordance with local and state solid waste disposal regulations;
- d. restoration of the surface grade and soil after removal of equipment;
- e. re-vegetation of restored soil areas; and
- f. remediation of soil and vegetation shall be conducted to return the property to either its original state prior to construction or in a natural condition with any landscaping and grading approved under the decommissioning plan.

Iv. Upon the applicant or subsequent owner's failure to comply with the decommissioning requirements set forth herein or in the decommissioning plan, the Town may remove the commercial solar system and restore the site upon notification and at the sole cost and expense of the applicant or subsequent owner.

e. SURETIES/BOND: The applicant shall deposit with the Town Clerk security in an amount sufficient to pay for the costs and expenses of removal of the solar energy system and related equipment and structures and the restoration of the site as follows:

- i. The security may be in the form of cash, letter of credit, bond or another instrument acceptable to the Town's attorney and the Town Board and shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and site restoration is complete.
- ii. The security amount shall be determined by the Town Board in consultation with an engineer designated by the Town. The amount of the security shall be sufficient, during the first five (5) years of operation, to cover:
  - a. the costs to deconstruct and dispose of all equipment, structures and materials related to the solar energy system;
  - b. costs to restore the site; and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process.
- iii. Such amount shall be re-evaluated every five (5) years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.

iv. If the amount of the security does not fully cover such fees, costs and expenses ("costs") or if the Town cannot recover adequate proceeds of the security, then the owner and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered. In addition, the Town may assess such costs against the property, which assessment shall constitute a lien on the property, and which amount may be collected in the same manner as real property taxes.

#### **Section 18.60 FEES**

The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover application and permitting, review and approval, and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

## **ARTICLE 19. PLANNED UNIT DEVELOPMENT**

The Planned Unit Development regulations are intended to provide for new residential, commercial or manufacturing uses in which economies of scale, or creative architectural or planning concepts may be utilized by the developer without departing from the spirit and intent of this Law. In no case shall the regulations of this section be so interpreted as to circumvent the benefits of this Law for the owners or residents of such development, or the owners or residents of adjacent properties.

The purpose of Planned Unit Development shall be to encourage development which will result in:

- (a) A choice in the types of environment and living units available to the public and quality in residential land uses so that development will be a permanent and long-term asset to the Town.
- (b) Open space and recreation areas.
- (c) A pattern of development which preserves unique natural features such as but not limited to outstanding natural topography and geologic features and prevents soil erosion.
- (d) An efficient use of land resulting in smaller networks of utilities and streets.
- (e) An environment in harmony with surrounding development.
- (f) A more desirable environment than would be possible through the strict application of other sections of the Law.
- (g) Creation of new hamlets when needed to prevent the sprawl of the residential area.
- (h) Encourage energy efficiency.

### **Section 19.10. ESTABLISHMENT OF A PLANNED UNIT DEVELOPMENT DISTRICT**

Application for the establishment of a Planned Unit Development District by amendment of the Town Zoning Ordinance shall be made in writing to the Town Board. Application shall be made by the owner(s) of the Land(s) to be included in the district, or by a person or persons holding an option to purchase the lands contingent only upon approval of the application for the change of zone.

The Town Board shall refer the application to the Planning Board. The applicant shall submit a site plan to the Planning Board and the Planning Board shall conduct a site plan review as set forth in this Local Law. The Planning Board may require such changes in the preliminary plans as are found to be necessary or desirable to meet the requirements of this Local Law to protect the established or permitted uses in the vicinity, and to promote the orderly growth and sound development of the community. The Planning Board shall notify the applicant of such changes and may discuss the changes with the applicant.

The Planning Board shall approve, approve with modification, or disapprove the application and shall report its findings to the Town Board. Planning Board approval of the preliminary plans shall not constitute nor imply approval of a building project for the area included in the application.

Following receipt of the report of the Planning Board, the Town Board shall hold a public hearing on the application. The Town Board shall then either amend the ordinance to establish the Planned Unit Development District or reject the application.

**Section 19.20. PLANNED UNIT DEVELOPMENT STANDARDS**

In all Planned Unit Developments, the following standards shall apply:

- (a) The area of land to be developed shall not be less than one hundred (100) acres.
- (b) All Planned Unit Developments shall comply with the Town Comprehensive Plan, if such plan exists.
- (c) All Planned Unit Developments shall have a maximum density of one family per twenty thousand (20,000') square feet.
- (d) At least twenty-five (25%) percent of the area of the Planned Unit Development shall be retained in usable open space for common usage.

**Section 19.30. REQUIRED DATA**

The applicant shall furnish with the petition for the desired zoning change basic data, including a map at scale sufficient to show the boundaries of the proposed Planned Unit Development District, existing zoning, topography, drainage and soil conditions, and such preliminary plans as may be required for an understanding of the proposed development and such additional information as may be required by the Board.

## ARTICLE 20. CLUSTER DEVELOPMENT

Proposals for Cluster Projects shall be submitted to the Enforcement Officer who shall submit copies to the Planning Board. The Planning Board shall have sixty (60) days to review such plans. The material accompanying the proposal shall contain the following:

A required site plan shall show, among other things, all buildings, parking areas, and landscaping at the scale sufficient to permit the study of all elements in the plan. All utilities shall also be shown and described. Typical elevations and floor plans of all buildings may also be required. In addition, the site plans shall show the adjacent building outlines and other outstanding features within two hundred (200') feet, and surrounding property should be identified.

The Planning Board possesses the power to approve or deny any proposal for a Cluster Development. This power is commensurate with subdivision plat approval, also the responsibility of the Planning Board. By reviewing Cluster Development in the form of a subdivision plat, the Planning Board is able to modify provisions of the Zoning Law subject to the following conditions:

1. The proposal is of benefit to the Town.
2. The proposed density does not exceed that permitted in the district where such development is to be located.
3. Any proposed uses are permitted in the districts where such development is to be located.

After reviewing the project, the Planning board must then hold a public hearing (the same hearing required under subdivision review). If the subdivision plat incorporating the Cluster Project is approved and filed, the Town Clerk then must note the necessary changes on the Zoning Law and zoning map.

The purpose of Cluster Development shall be to encourage a development which will result in:

(a) A choice in the types of environment and living units available to the public and quality in residential land uses so that development will be a permanent and long-term asset to the Town.

(b) Open spaces and recreation areas.

(c) A pattern of development which preserves unique natural features such as, but not limited to, trees, outstanding natural topography and geologic features and prevents soil erosion.

(d) An efficient use of land resulting in smaller networks of utilities and streets.

(e) An environment in harmony with surrounding development.

(f) A more desirable environment than would be possible through the strict application of other sections of the ordinance.

The area of the land to be developed shall not be less than six (6) contiguous acres. Lot size, width, front yard depth and side yard requirements may be waived; however, these will be evaluated by the Planning Board on their individual merit.

A Cluster Development shall consist of land, seventy (70%) percent of which is developable space. Ravines, wetlands, swamps, ponds and other areas which would not normally be considered suitable for the construction of buildings shall not be considered developable space as required hereby.

## **ARTICLE 21. AMENDMENT**

### **Section 21.10. AMENDMENTS BY THE TOWN BOARD**

The Town Board may, from time to time on its own motion or by recommendation or petition of the Planning Board, amend, supplement, change, modify or repeal the requirements of this Local Law following a public hearing.

### **Section 21.20. ADVISORY REPORT BY THE PLANNING BOARD**

If the Town Board directs, each such proposed amendment or change may be referred to the Planning Board for report thereon before the public hearing provided for in the above. The Planning Board shall submit to the Town Board its advisory report within thirty (30) days after receiving notice from the Town Clerk of the proposed change. Failure to make such a report within thirty (30) days shall be deemed as no recommendation.

### **Section 21.30. PUBLIC NOTICE AND HEARING**

1. PUBLIC HEARING: No such change in text or zoning district boundary of this law shall become effective until after a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.

2. NEWSPAPER NOTICE OF HEARING: At least ten (10) days prior to the date of such public hearing, a notice of the time and place shall appear in the newspaper of general circulation in the Town.

3. WRITTEN NOTICE OF CHANGE OR AMENDMENT: At least ten (10) days prior to the date of said public hearing, written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under housing law, as such area is shown on approved zoning map filed with the town officer charged with enforcement of zoning regulations, or property within five hundred (500') feet of boundaries of any city, village, town, county, state park, or parkways shall be given in the case of a housing project to the housing authority erecting or owning the project and to the government providing aid or assistance thereto, in the case of any state park or parkway, to the regional state park commission having jurisdiction over such state park or parkway, in the case of a city, village, or town to the clerk of such city, village, or town, and in the case of a county, to the clerk of the board of supervisors or other person performing like duties, at least ten (10) days prior to the date of such public hearing.

Such city, village, town, or county shall have the right to appear and to be heard at such public hearing with respect to any proposed change or amendment, but shall not have the right or review by a court as hereinafter provided.

4. The Town Clerk shall promptly transmit to the Albany County Planning Board any matters required to be referred pursuant to the provision of section 239-l and 239-m of the General Municipal Law.

### **Section 21.40. PROTEST**

Amendments pursuant to this section are subject to New York Town Law section 265.

## **ARTICLE 22. EFFECTIVE DATE: ADOPTION AND AMENDMENTS**

This law was adopted as Local Law 1 of 1989 and amended as follows:

1. Local Law 1 of 1992;
2. Local Law 2 of 1992;
3. Local Law 3 of 1992;
4. Local Law 4 of 1992;
5. Local Law 2 of 2001;
6. Local Law 2 of 2003;
7. Local Law 1 of 2009;
8. Local Law 3 of 2013;
9. Local Law 2 of 2016;
10. Local Law 1 of 2017;
11. Local Law 2 of 2017;
12. Local Law 2 of 2018;
13. Local Law 4 of 2018;
14. Local Law 1 of 2019.