

TOWN OF HAMILTON

ZONING LAW

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COMMITTEE

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ZONING LAW OF TOWN OF HAMILTON

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ZONING LAW OF TOWN OF HAMILTON

ARTICLE 1 TITLE, SCOPE, EFFECTIVE DATE AND PURPOSES

SECTION 1.1 TITLE

This local law shall be known and may be cited as the “Zoning Law of the Town of Hamilton.”

SECTION 1.2 SCOPE

This is a local law that regulates the location, design, construction, alteration, occupancy, and use of structures and the use of all land located within the municipal boundaries of the Town of Hamilton. This local law has been designed to further the policies of the Town of Hamilton set forth in the Town Comprehensive Plan and as enumerated below in section 1.5. Its intent is to regulate land uses in a manner that appropriately balances the preservation of agriculture within the Town as well as the unique rural character of the Town while at the same time fostering responsible economic growth and opportunities. In this regard, this law divides the Town into various zoning districts and sets forth those uses that are allowed in each district and the various requirements for those uses. Also, this law creates a review process of varying levels of scrutiny depending on the proposed use, its size and intensity and its proposed location. These levels of review are as follows:

A. Those uses which have been found to be most suitable for certain areas are permitted upon review by the Town Code Enforcement Officer and the issuance of a zoning permit provided all requirements are met as set forth in this Law;

B. Those uses which have been found to be generally suitable for a particular area of the Town but due to the type of use and its nature may create issues of compatibility with the area surrounding its proposed location require review by the Town Planning Board via a special permit process so that the proposals of this type can be reviewed on a case by case basis in order to protect the surrounding area and properties;

C. Those uses which have been found to be generally acceptable in a particular area but may have certain issues of concern with respect to the construction and layout of the proposed structure and uses or operation of the use on the proposed site require a site plan to be approved by the Planning Board in order to minimize any impacts on nearby areas and properties.

D. Those uses that are prohibited in certain zones but nevertheless are still proposed require either a zoning change, a legislative amendment of this law, by the Town Board or a variance by the Town Zoning Board of Appeals.

SECTION 1.3 APPLICABILITY - COMPLIANCE REQUIRED

No land use activity as listed below shall hereinafter be commenced, carried out, or continued except in full compliance with this law including issuance of a zoning permit by the Code Enforcement Officer or other applicable permit or approval by the appropriate Board, stating

that the proposed building, structure, use of land or structure, or development activity complies with the provisions of this law:

- A. Establishment of a new use on a parcel of land;
- B. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion, enlargement or relocation of an existing use;
- C. Change of the exterior structural dimensions of a building or structure;
- D. The resumption of any use which has been discontinued for a period of one (1) year or longer;
- E. Erection, re-erection, demolition, or movement of a building or structure;
- F. Establishment of or change in the dimensions of a parking area for nonresidential or multi-family residential uses.

SECTION 1.4 EXEMPTIONS (PERMIT NOT REQUIRED)

A zoning permit, special permit or other approval under this law shall not be required for the following (however, a building permit may be required):

- A. Exempt signs listed in Article 5, section 5.10-2 of this law;
- B. Fences or walls complying with Article 5, section 5.6 of this law;
- C. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding and roofing replacement, etc.);
- D. Minor accessory structures such as posts, sidewalks, driveways, flagpoles, playground equipment, etc.;
- E. The sale of products grown or raised on the land and the construction, alteration and maintenance of agricultural fences, roads, drainage systems and farm ponds;
- G. Garage, lawn and porch sales not exceeding three days in duration provided such sales shall not have taken place on the property except on an occasional basis;
- H. Non-commercial outdoor recreation uses, except those that involve substantial physical improvements; and
- I. Any activity for which a permit has been obtained pursuant to a prior zoning law, or which did not require a permit under the prior zoning law and for which substantial on-site work had been completed prior to the effective date of this local law.

SECTION 1.5 ENACTING CLAUSE AND PURPOSES

This local law is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, Section 10, et. seq. and Article 16 of the Town Law of the State of New York in conformance with the Comprehensive Plan for the Town of Hamilton, to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

1.5-1 To conserve the natural resources and rural character of the Town by encouraging development in the most appropriate locations and by limiting building in areas where it would conflict with the Town's rural character;

1.5-2 To preserve and protect agricultural lands, especially prime agricultural soils, and active farms so that agriculture is maintained as an important and vital economic base of the Town;

1.5-3 To encourage the preservation of open space;

1.5-4 To protect wooded areas, scenic views, ridgelines, existing and potential recreational areas, waterways, ground and surface water supplies, wetlands, and natural vegetation;

1.5-5 To locate commercial and other non-residential uses in a reasonable manner that provides freedom for landowners to make beneficial economic use of their land, provided that such uses are not harmful to neighboring properties or the natural environment;

1.5-6 To provide opportunities and incentives for a variety of housing options for all segments of the local population with due consideration for regional housing needs;

1.5-7 To regulate building density in order to concentrate population in appropriate locations, and to limit expansion of infrastructure in areas where increased growth is not encouraged by the Plan;

1.5-8 To base such flexible land use regulations on the unique characteristics of the landscape, the needs of the people of the Town of Hamilton, the impact of proposed land uses on the natural and human environment, and the purposes articulated in this local law, and to avoid "suburban sprawl" patterns of development; and

1.5-9 To further the policies, goals and recommendations of the Town of Hamilton Comprehensive Plan.

SECTION 1.6 EFFECTIVE DATE AND EFFECT ON PRIOR LAWS

This local law shall be effective upon adoption of the Town Board and filing with the Secretary of State of the State of New York. Once effective, this local law supersedes and replaces, in its entirety, the Town of Hamilton Zoning Law enacted in 1987, and as amended from time to time, with the last amendment occurring in 1989.

ARTICLE 2 ADMINISTRATION AND ENFORCEMENT

SECTION 2.1 CODE ENFORCEMENT OFFICER

This local law shall be administered by the Code Enforcement Officer together with the Town Board, the Planning Board and Zoning Board of Appeals depending on the appropriate jurisdiction pursuant to this law. Compliance with this local law shall be enforced by the Code Enforcement Officer.

SECTION 2.2 GENERAL PROVISIONS

No person shall undertake any development or commence any land use activity without first applying for, and obtaining, a zoning permit from the Code Enforcement Officer unless otherwise exempt pursuant to the Town of Hamilton Zoning Law and/or the Town of Hamilton Subdivision Regulations. A zoning permit will be issued only when the Code Enforcement Officer has determined that all requirements of this local law and all other applicable laws and regulations have been satisfied.

SECTION 2.3 APPLICATION PROCEDURE

2.3-1 Meeting with Code Enforcement Officer

Any person intending to engage in an activity that may be subject to the Town of Hamilton Zoning Law and/or the Town of Hamilton Subdivision Regulations should meet with the Code Enforcement Officer as early as possible to determine which, if any, permits or approvals may be required and what review procedures, if any, apply.

2.3-2 Filing Application for Zoning Permit

A person desiring a zoning permit shall file an application for a zoning permit with the Code Enforcement Officer, together with the appropriate fee. The application shall be submitted on forms provided for such purpose by the Code Enforcement Officer, and shall include a plot plan drawn to scale showing the actual dimensions of the land to be built on or otherwise used, the size and location of all buildings or other structures or other uses to be built or undertaken and such other information as may be necessary in the evaluation of the application and the administration of this local law. Within 10 working days following receipt of an application, the Code Enforcement Officer shall notify the applicant of any additional information required for completion of the application. If no such notice is timely given, then the application shall be deemed complete as filed. When all additional information is received, the Code Enforcement Officer shall acknowledge the same in writing. The Code Enforcement Officer shall provide a report or copies of application to the Planning Board.

2.3-3 Determination

Not later than 10 working days after receiving a completed application, the Code Enforcement Officer shall mail or deliver to the applicant the determination that either:

- A. The proposed project or activity complies with the requirements of the Town of Hamilton Zoning Law and/or the Town of Hamilton Subdivision Regulations and all other applicable and local laws and regulations and requires no other approvals, and accordingly a zoning permit is issued; or

- B. The proposed project or activity is inconsistent with one or more specified requirements of the Town of Hamilton Zoning Law and/or the Town of Hamilton Subdivision Regulations or other applicable local law or regulation, and a zoning permit is denied; or
- C. The proposed project requires one or more specified special approvals before a project permit can be granted. The proposed project may, for example, be for a use allowable by Special Permit and/or Site Plan approval, requiring approval of a Special Permit by the Zoning Board of Appeals and/or approval of a Site Plan by the Planning Board.
- D. Note that any decision of the Code Enforcement Officer may be appealed to the Board of Appeals, or a variance may be sought from the Zoning Board of Appeals pursuant to Article 10 below.

2.3-4 The Code Enforcement Officer will advise the applicant of the requirements for the special approvals needed, and shall provide information when requested in the preparation of the required application. When the required special approvals have been obtained, and all other legal and regulatory requirements have been satisfied, the Code Enforcement Officer shall issue a zoning permit.

2.3-5 Issuance and Posting

All zoning permits shall be issued in duplicate and one copy shall be kept by the applicant conspicuously on the premises affected at all times (protected from the weather, if necessary, and whenever construction work is being performed thereon). In issuing a zoning permit, the Code Enforcement Officer shall sign, date, and return one copy of the approved plans bearing the notation "Approved." No person shall perform any construction or otherwise undertake a project requiring a permit unless a zoning permit for such project is displayed as set forth above, nor shall any person perform such activities after notification of the revocation of a zoning permit.

2.3-6 Revocation

If the Code Enforcement Officer determines that an application or accompanying plans are in any material respect false or misleading, or that work being done upon the premises differs materially from what is allowed by the zoning permit, the Code Enforcement Officer may forthwith revoke the zoning permit. The permittee shall thereupon cease the use, activity, or construction, and surrender the zoning permit to the Code Enforcement Officer.

2.3-7 Lapse and Renewal

A zoning permit shall lapse one year following the date it was granted if the project has not been commenced or the use has not been commenced. The Code Enforcement Officer may renew any zoning permit for a period terminating not later than one year from the date it would have originally lapsed, provided that the facts upon which the zoning permit was granted have not substantially changed.

SECTION 2.4 SITE INSPECTION

The submission of an application for a zoning permit, or for any other approval or variance, shall constitute consent to the Code Enforcement Officer and to members or designates of the

boards with authority to grant the required approvals or variance to conduct such inspections of the site as such persons deem necessary and appropriate for the purposes of this local law.

SECTION 2.5 CERTIFICATE OF COMPLIANCE

No use for which a zoning permit was granted shall be occupied or maintained except pursuant to a certificate of compliance issued by the Code Enforcement Officer. The Code Enforcement Officer, within 10 working days after receipt of request for inspection of a project or operation of a use for which a zoning permit has been issued, shall inspect and issue a certificate of compliance if the project has been completed, or the use is being operated in compliance with all terms of the zoning permit and with all applicable provisions of this local law and other laws and regulations including any approvals issued by the Zoning Board of Appeals and/or Planning Board, if applicable. Such certificate shall constitute a permit to occupy and/or conduct the use. If the project involves the construction of a building or structure, a building permit and certificate of occupancy must also be issued by the Code Enforcement Officer before the building or structure can be occupied.

SECTION 2.6 VIOLATIONS

Whenever a violation of this local law occurs, the Code Enforcement Officer may enforce compliance to remedy the violation or any person may file a complaint requesting enforcement action by the Code Enforcement Officer. All such complaints shall be made to the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report findings thereon to the Town Board. The Code Enforcement Officer shall have authority to serve an order to cease or remove a violation upon any person owning, leasing, controlling or managing any building, structure, or land. The undertaking of a land use or development for which a zoning permit is required, or the construction of any improvement in a manner that materially deviates from an approved plan and the violation of any condition imposed by a zoning permit, certificate of compliance, special permit, site plan, variance, or subdivision approval shall constitute a violation of this local law.

2.6-1 Penalty

- A. Any person owning, leasing, managing or otherwise controlling any building, structure, or land where a violation of this local law occurs and any person who commits or assists in the commission of any violation of this local law who, after being served with an order to cease or remove such violation, fails to comply with such order within 10 days after such service, shall be guilty of an offense and subject to a fine as authorized in Section 268 of the Town Law. Each week such violation continues shall constitute a separate violation. The Code Enforcement Officer has the authority under this law and the Town Law to prosecute any such violations in the Town of Hamilton Justice Court.
- B. In addition to the penalties in Subsection (A) above, any person who violates any provision of this local law shall, for every such violation, forfeit and pay a civil penalty of not more than \$100.00. When a violation of any of the provisions of this local law is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional civil penalty. The Code Enforcement Officer has the authority under this law to commence a civil action in order to obtain a civil penalty under this provision in the Town of Hamilton Justice Court. To the extent that this provision is inconsistent with the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, section 268, the Town Board of the Town of Hamilton hereby declares its intent to supersede said section of the Town Law, pursuant to its home

rule powers under the Municipal Home Rule Law, Article 2, Section 10, et. seq. of the Consolidated Laws of the State of New York.

- C. For the purposes of this Section, where a "person" is an entity other than an individual, the principal executive officer or partner or agent or manager of such entity may be considered to be such person.
- D. The methods of enforcement as set forth in paragraphs A and B above, as well as section 2.7-2 below, are not exclusive and may be utilized together, alternatively, repeatedly or in any combination thereof until compliance is obtained and the violation is abated. Abatement of the violation does not preclude the exaction of a penalty, fine or collection of attorney's fees and costs and such other relief a court may order.

2.6-2 Injunctive Relief

In case of any violation or threatened violation of any of the provisions of this local law, or conditions imposed in any project permit or certificate of compliance, the Town may, by resolution of the Town Board, institute an action for injunctive relief to prevent, restrain, correct or abate such violation. As part of such action, the Town may request the Court for an order that requires the violator to reimburse the Town for the costs, including the attorney fees, incurred with respect to the action for injunctive relief.

SECTION 2.7 Misrepresentation

Any zoning permit or other approval granted under this local law shall be void if it is based upon or is granted in reliance upon any material misrepresentation or failure to make a material fact or circumstance known.

SECTION 2.8 Fees

The Town Board, by resolution, shall establish and amend (from time to time) a schedule of fees for the applications and permits required or contemplated by this local law. The current schedule shall be on file with the Code Enforcement Officer and with the Town Clerk. Such fees shall be payable to the Town Clerk at the time of application or, as appropriate, at the time of issuance of a permit. In certain instances where the reviewing Board deems the application, or any aspect thereof, requires a legal, engineering, planning or other professional consultant to assist the reviewing Board, said Board may require as part of the fee, a deposit in an amount sufficient to reimburse the Town for reasonably estimated costs of a consultant to be retained by the reviewing Board in order to assist the Board in reviewing the application. Said amount shall be based on the specific fee schedule of the particular consultant or consultants retained as well as the scope of services to be provided by such consultant(s). The Town shall hold such deposit in escrow for the sole purpose of paying the costs and fees of the consultant(s) retained for review of the application. The consultant retained shall provide the Town with detailed invoices showing the services rendered for the time-period billed and the Town shall provide the applicant with an opportunity to review said invoices prior to payment. Additional deposits may be required as the review process continues. Any deposit amounts that remain at the end of the process shall be returned to the applicant.

ARTICLE 3 NONCONFORMING USES

SECTION 3.1. RIGHTS TO CONTINUE NONCONFORMING USES.

- A. A use, building, lot or structure lawfully in existence as of the effective date of this Zoning Law, as amended, and nonconforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Code Enforcement Officer may issue certificates of nonconformance to owners or operators of bona fide nonconforming uses, buildings or structures who desire confirmation of their rights hereunder.
- B. It is the purpose of this Article to limit the injurious impact of nonconforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of nonconforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this Zoning Law, when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration.
- C. It is further the purpose of this Article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a nonconforming use and to establish when Town review and approval shall be required for such actions.
- D. The protections extended by this Article to existing nonconforming uses, buildings, lots or structures, commonly known as grandfathering, shall not extend to any nonconforming activity not lawfully established or occurring subsequent to the effective date of this Zoning Law, or any future amendments as such may apply.
- E. A structure, in lawful existence prior to the adoption, or subsequent amendment, of this Zoning Law which by adoption or amendment of this Zoning Law is made nonconforming, may be used for any allowable use listed for the zoning district in which the structure and property is located provided that such structure shall not be enlarged or altered so as to increase its nonconformity in terms of dimensional or area requirements.
- F. No nonconforming structure shall be moved or otherwise relocated so as to occupy a different area of the lot or land than was occupied by the structure at the time of the adoption, or subsequent amendment, of this Zoning Law unless a new location would be more conforming in terms of minimum dimensional or area requirements of this Zoning Law or subsequent amendment thereto.

SECTION 3.2. NORMAL MAINTENANCE AND REPAIRS.

- A. Normal maintenance and repair activities, such as painting, replacing a roof or fixing gutters, shall be permitted. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas or result in extended or increased nonconforming use of a building, lot or structure.
- B. Increases in outside storage or display of retail or wholesale inventory, which in the ordinary course of business would be sold within one year, shall be permitted, provided they do not eliminate parking spaces, unoccupied open spaces or accesses required by this Zoning Law. Notwithstanding this provision, however, the Planning

Board, in reviewing any special permit application for expansion or upon determining, with respect to any present use, that a condition exists which requires remedies, may establish limits on such storage or display or require removal or inventory (altogether or to another location on the site) to preserve adequate sight distances and residential buffers or otherwise protect public health, safety, and welfare.

SECTION 3.3. RESTORATION, RECONSTRUCTION OR REESTABLISHMENT.

- A. If any nonconforming use, building or structure is damaged, it may be restored or reconstructed within 18 months of the date of the damage, with an extension in time allowable where proven necessary to the Planning Board. If more than 50% is affected or the restoration or reconstruction includes an expansion of the prior building in terms of total square footage or footprint, then the replacement or reconstruction shall not be permitted except by issuance of a special permit.
- B. A nonconforming use, building or structure in the Hamlet, Residential/Agricultural and Prime Agricultural zoning districts may be reestablished within a period of 36 months after it has been discontinued or vacated, and a nonconforming use, building or structure in all other zoning districts may be reestablished within a period of 12 months after it has been discontinued or vacated with an extension of 12 months allowable where proven necessary to the Planning Board.
- C. A nonconforming use, building or structure shall be considered abandoned under the following circumstances:
 - (1) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or assessments or other measures which demonstrate the enterprise is going out of business or the use is otherwise ending.
 - (2) The building has not been occupied for 12 months or more; or
 - (3) The nonconforming use has been replaced by a conforming use or changed to another use under permit from the Town; or
 - (4) The equipment and furnishings used in furtherance of the nonconforming use have been removed from the premises.

SECTION 3.4. CHANGES AND ADDITIONS.

All changes and additions to nonconforming uses shall be considered special uses, and permits for alterations, changes in use or additions shall be granted only after a determination by the Planning Board that the following conditions have been or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a nonconforming facility that is used for storage of materials, supplies and/or products, excepting with respect to those types of uses outlined below.

- B. Where the nonconforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
- C. No addition, change or expansion of a nonconforming use shall further violate setback and/or height regulations of the district in which it is located in any material way. Moreover, no change of use shall be to one of less restrictive classification, as determined by the Planning Board. A nonconforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.
- D. There shall be no increase in the amount of storm water runoff for the site over what existed as of the date of the enactment of this Zoning Law. The U.S.D.A. Natural Resource Conservation Service, a professional engineer or other appropriate professional may be relied upon to recommend appropriate measures to control storm water runoff. Such measures shall be attached as conditions of approval by the Planning Board.
- E. In no case will a change, addition or extension of a nonconforming use be allowed which would result in a traffic increase which would decrease the level of service for the highway, the diversion of traffic closer to a nearby residence or a substantial modification of any of the parking and unloading requirements of this Zoning Law. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this Zoning Law, the Planning Board may require vegetative screening of the parking area from nearby residential areas.
- F. The use may only be expanded or extended onto another property of record if that property is immediately adjacent to the lot on which the original structure or use was located as of the effective date of this Zoning Law or amendments hereto, and the use is not one which has been altogether prohibited as a new use under this Zoning Law.
- G. Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this Zoning Law, the requested expansion or extension shall be denied.

SECTION 3.5. USE OF EXISTING NONCONFORMING LOTS OF RECORD.

If a lot of record duly existed prior to the adoption of this Zoning Law, or any applicable amendment thereto, fails to meet applicable density, set back or lot size standards as set forth herein, the lot may be developed with any compatible use listed for the zoning district in which such nonconforming lot is located provided that such lot has sufficient width, depth, and area to undertake development that will meet the minimum yard setbacks and other dimensional requirements that were effective at the time when the lot of record was created and that all other provisions of this Zoning Law or other laws or regulations, which may be applicable, are met.

ARTICLE 4 ZONING DISTRICTS AND ZONING MAP

SECTION 4.1 ZONING DISTRICTS

The Town of Hamilton is hereby divided into the following Zoning Districts:

- RD Residential District
- ARD Agricultural-Residential District
- PAOD Prime Agricultural Overlay District
- HD Hamlet District
- C Commercial District

The aforesaid Districts are described below and are shown on the Zoning Map. The Zoning Map includes overlay maps. The Zoning Map (Sheets 1-5) is annexed hereto and made a part of this Zoning Law as Schedule B. The Zoning Districts and overlays are subject to regulations contained in this Zoning Law. The uses applicable to each District and overlay are set forth in the Schedule of Uses attached to this Zoning Law as Schedule A. Uses that are not explicitly allowed by issuance of a zoning permit, special Permit and/or site plan approval are prohibited.

4.1-1 Residential District (AB)

A. Purpose and Intent

This District generally provides the primary residential area of the Town. It consists of mainly residential uses at a greater density than the Agricultural Districts, and provides a range of housing types. The purpose of this District is to provide attractive housing in rural settings that will maintain the Town's rural character and that will maintain public health and safety by the provision of proper sewage disposal, safe water supply, the traffic safety and the minimum of nuisance in surrounding land uses.

B. Allowed Uses

As set forth on the Use Table, this District permits primarily single-family dwellings, selected agricultural uses (including animal husbandry per Section 6.2-7), customary residential accessory uses/structures and home occupations in compliance with Section 6.1-1 upon the issuance of a zoning permit by the Code Enforcement Officer. All other uses are allowed only upon issuance of a special permit and site plan review approval.

C. Dimensional Requirements

- Minimum Lot Size: 1.0 acre – single-family detached dwelling
1.5 acres – two-family dwelling
Multi-family - 1.5 acres plus 10,000 sq.ft. per unit
- Minimum lot width: 150 feet
- Minimum lot depth: 125 feet
- Minimum Front and Rear Yard Setback: 50 feet
- Minimum Side Yard Setbacks: 25 feet
- Minimum Road Frontage: 150 feet
- Maximum building height: 35 feet

4.1-2 Agricultural-Residential District (ARD)

A. Purpose and Intent

This District is intended to principally accommodate appropriate residential development that may coexist with existing agricultural uses located throughout this District. This District has a much lower density for development so that the agricultural and rural character is maintained.

B. Allowed Uses

As set forth on the Use Table, this district permits primarily agricultural uses and single-family and two-family dwellings, customary residential accessory uses/structures and home businesses in compliance with Section 6.1-1 upon the issuance of a zoning permit by the Code Enforcement Officer. All other uses are allowed only upon issuance of a special permit and site plan review approval.

C. Dimensional Requirements

Minimum Lot Size: 1.0 acre – single-family and business uses
1.5 acres – two-family dwelling
Multi-family - 1.5 acres plus 10,000 sq.ft. per unit
5.0 acres – Farm

Minimum Lot Width: 150 feet

Minimum Lot depth: 125 feet

Minimum Front Yard Setback: 50 feet (75 feet for farm buildings)

Minimum Side Setbacks: 25 feet – residential buildings

50 feet – farm buildings/structures

40 feet – non-residential buildings/structures

Minimum Road Frontage: 150 feet

Maximum Building Height: 35 feet (except for farm structures)

Maximum Lot Coverage: 20%

Maximum Building Coverage: 10%

4.1-3 Prime Agricultural Overlay District (PAOD)

A. Purpose and Intent

The primary purposes of the Prime Agricultural District are to permit, protect, and encourage the continued use of the land within the Overlay District for agricultural purposes. This District is composed of those areas in the Town whose predominant land use is agricultural and where valuable prime agricultural soils exist. The regulations for this Overlay District are designed to protect and stabilize the essential characteristics of these areas, to minimize conflicting land uses detrimental to agricultural enterprises, to limit development which requires major infrastructure improvements and public facilities in excess of those required by agricultural uses and to maintain agricultural parcels or farms in sizes which permit efficient agricultural operations. New non-agricultural development will be required to preserve as much land where prime agricultural soils exist to the extent feasible and to encourage such development on lands which do not contain prime agricultural soils. The techniques and methods set forth in Article 6,

section 6.2 of this Law are designed to accomplish such purposes. The secondary purposes of the Prime Agricultural Overlay District is to protect the agricultural and rural character of this area of the Town which is so important in maintaining the overall character of the Town as well as to foster continuing harmony between agricultural and non-agricultural uses. As such, since the predominant land use in this zoning district is agriculture, the regulations also require that non-agricultural properties (principally residential properties) contain a buffer area along agricultural properties so as to not have conflicts between accepted agricultural practices such as the application of fertilizers on crop fields and on-site wells for residential properties. The techniques and methods set forth in Article 6, section 6.2 of this Law are designed to accomplish such purpose.

B. Parcels Included

The Prime Agricultural Overlay District is hereby created and is depicted on the Zoning Map as areas of the Town that have the following characteristics at the time of enactment of this Law comprising what the Town considers valuable agricultural lands:

1. Parcels of property of 10 acres or more possessing Prime Agricultural Soils (Classes I and II) as defined by the USDA Natural Resources Conservation Services;
2. Parcels with existing, or history of recent (last five years) agricultural operations as defined by the Common Land Unit(CLU) field records maintained by the USDA Farm Services Administration and where the CLU field contains a minimum of 30% Prime Agricultural Soils.
3. Parcels outside of the incorporated villages and unincorporated hamlets within the Town and not within the residential areas of the Town; and
4. Only that CLU field portion of the parcel will be in the Overlay District.

C. Allowed Uses

Allowed uses are set forth on the Use Table annexed to, and made a part of, this Zoning Law as Appendix A. As set forth on the Use Table, this District allows primarily agricultural uses and single-family and two-family dwellings, with limited non-agricultural and nonresidential uses allowed via site plan review or special permit.

D.. Dimensional Requirements

Minimum Lot Size: 2 acres
Minimum Lot Width: 150 feet
Minimum Front Yard Setback: 50 feet – non-agricultural buildings
75 feet – agricultural buildings
Minimum Side Setbacks: 25 feet – non-agricultural buildings
50 feet – agricultural buildings
Minimum Rear Setbacks: 50 feet – all buildings
Minimum Road Frontage: 150 feet
Maximum Building Height for Non-Agricultural Uses: 35 feet

Minimum Agricultural Buffer: 200 feet from dwelling, well and septic

E. Other Requirements/Incentives for Subdivisions:

1. Conservation Design Subdivision Required. Any proposed subdivision of land located in the Overlay District is required to be a Conservation Design Subdivision pursuant to section 6.2-5 and at least 50% of the land consisting of Prime Agricultural soils will be preserved pursuant to such design.
2. Development Transfer. Any proposed subdivision of land located in the Overlay District may increase density upon the same parcel of land or an abutting parcel of land outside of the overlay district by the addition of one building lot per each 3 acres of prime agricultural soils preserved over 50% of the total of prime agricultural soils on the parcel to be subdivided and located in the Overlay District.
3. Minimum Road Frontage Exceptions: Any proposed subdivision of land located in the Overlay District shall be entitled to develop lots that may not meet the minimum road frontage requirements for the Overlay District, such as flag lots and private roads, pursuant to the requirements of Section 6.2-4 and provided that such techniques will result in the preservation of prime agricultural soils and furtherance of the goals set forth in subsection A above.

4.1-4 Hamlet District (HD)

A. Purpose and Intent

This District comprises the Hubbardsville and Poolville hamlets and are relatively small in area. Accordingly, it allows a mixture of residential uses and compatible commercial uses on a small scale and at a higher density appropriate for traditional hamlet areas.

B. Allowed Uses

Allowed uses are set forth on the Use Table annexed to, and made a part of, this Zoning Law as Schedule A. As set forth on the Use Table, this District permits primarily single-family and two-family dwellings, and allows selective non-residential uses by special permit and site plan review approval.

C. Dimensional Requirements

- Minimum Lot Size: 0.5 acres with public water and sewer;
0.75 acre without public water and sewer
- Minimum Lot Width: 75 feet with central water and sewer;
100 feet without central water and sewer
- Minimum Front Yard Setback: 30 feet
- Minimum Side and Rear Setbacks: 20 feet
- Minimum Road Frontage: 100 feet
- Maximum Building Height: 35 feet

4.1-5 Commercial District (CD)

A. Purpose and Intent

This district is relatively small in area and is located generally along the major highway corridors of the Town. Accordingly, it allows a variety of commercial uses of a type and on a scale appropriate to highway corridors.

B. Allowed Uses

Allowed uses are set forth on the Use Table annexed to, and made a part of, this Zoning Law as Appendix A. As set forth on the Use Table, this District permits primarily office, retail, personal services, and selected agricultural uses, and home occupations mostly only upon issuance of a special permit and site plan review approval.

C. Dimensional Requirements

- Minimum Lot Size: 0.5 acres with public water and sewer;
1.0 acre without public water and sewer
- Minimum Lot Width: 75 feet with central water and sewer;
100 feet without central water and sewer
- Minimum Front Yard Setback: 20 feet on secondary and internal roads, see Design Guidelines
- Minimum Side and Rear Setbacks: 15 feet
- Minimum Road Frontage: 100 feet
- Maximum Building Size for Non-residential uses – see Schedule of Uses
- Maximum building height: 45 feet
- Maximum Lot Coverage: 70%
- Maximum Building Coverage: 50%

SECTION 4.2 ZONING MAP

The boundaries of the land use districts are hereby established on a map entitled "Town of Hamilton Zoning Map," adopted by the Town Board as part of this Zoning Law. The official Zoning Map is maintained in the office of the Town Clerk. An unofficial photo-reduction of this map is attached hereto for reference purposes only as Schedule B. If changes are made in district boundaries or other matter portrayed on the Zoning Map, such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the amendment has been approved by the Town Board.

SECTION 4.3 INTERPRETATION OF DISTRICT BOUNDARIES

4.3-1 Location of Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of streets or highways shall be construed to follow such center lines.
- B. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.

- C. Boundaries indicated as following shorelines of streams, lakes and reservoirs shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.
- D. Boundaries indicated as parallel to or extensions of features indicated in Subsection (A) through (C) above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

4.3-2 Lots in More Than One District

Where a land use district boundary line divides a lot in a single ownership, the district requirements of the less restricted portion of such lot may extend up to a maximum of 50 feet into the more restricted portion of the lot.

SECTION 4.4 ACCESSORY USES

Uses customarily incidental to principal uses listed in on the Use Table shall be allowed on the same terms as the principal uses, whether or not on the same lot, unless otherwise indicated in the Use Table or other provisions of this Zoning Law.

SECTION 4.5 HEIGHT RESTRICTIONS

4.5-1 General Application

No building or structure shall exceed in building height the number of feet permitted the maximum restriction for the District where such building or structure is located as set forth above in this Article.

4.5-2 Permitted exceptions

Such maximum height restrictions shall not apply to church spires, chimneys, smokestacks or flagpoles. Radio, transmission and telecommunication towers, and windpower facilities shall be subject to the requirements of sections 6.8 and 6.9 in Article 6 of this Zoning Law.

ARTICLE 5 SUPPLEMENTARY REGULATIONS

This Article addresses general standards and regulations applicable in all zoning districts or certain zoning districts as specified below.

SECTION 5.1 PARKING, LOADING, ACCESS

5.1-1 Adequacy

All uses shall provide adequate off-street parking. Parking shall be considered adequate as long as actual parking demand does not exceed parking capacity more often than three times in any one-month period. Waivers from requirements for on-site parking may be granted if the property owner can demonstrate that actual parking demand for the specific use will be less than required

and/or that off-site, on-street, or shared parking can feasibly meet the need. Specific minimum requirements are as follows:

- A. Residential: Two parking spaces for each single-family dwelling unit; 1.5 spaces per dwelling unit in multi-family dwellings or apartments plus one per 3 units for guests and services.
- B. Public/Commercial Facilities: One parking space for every four (4) seats in any public meeting or gathering place or for every four persons of maximum capacity if seating is not accurate indicator of intensity of use.
- C. Parking for employees: One parking space for every employee at offices and other places of employment (calculated for peak employment); note, parking for employees is in addition to other parking requirements that may apply.
- D. Office: In addition to employee parking (paragraph C above), at least one parking space per 500 square feet of office floor area plus employee parking per paragraph C above.
- E. Retail: One parking space per 300 square feet of space devoted to retail use plus employee parking per paragraph C above.
- F. Restaurant/Bar/Tavern: One parking space per four seats or one parking space per 5 persons of maximum occupancy capacity, whichever is greater, plus employee parking per paragraph C above.
- E. Motel/Hotel/Inns/Bed & Breakfast: One parking space per dwelling unit or overnight accommodation room plus one additional space per 5 units for guests or services plus employee parking per paragraph C above.
- F. Industry: One parking space per 3000 square feet of indoor area devoted to use and/or one space per 5000 square feet of outdoor area devoted to use, plus employee parking per paragraph C above.
- H. General: The Planning Board in its discretion may require more or less than the minimum number of parking spaces provided above if it is determined that such different number of spaces is warranted given the surrounding circumstances, the use proposed, the location, configuration and lay-out of the site in question. Parking needs shall be determined as part of the review process with consideration of the following factors:

(1) The characteristics of the proposed customers, residents, occupants or visitors to a given facility or location;

(2) The expected occupancy rates, traffic levels, hours of operation, impact of daily peak visitation or use periods, employee shifts and number of employees in connection with any facility or location, and the degree to which these directly relate to parking needs;

(3) Arrangements for shared parking;

(4) Industry standards or studies for the type of use proposed (the Planning Board may require the applicant to submit such data or studies in support of its proposed parking); and/or

(5) Recommendations, if any, from other public agencies.

5.1-2 Parking Location, Layout and Landscaping

The standards and guidelines set forth below shall be adhered to with respect to parking layout, location and landscaping.

- A. Off-street parking areas for non-residential and multi-family uses shall be located behind or to the side of the principal structure.
- B. Off-street parking shall be designed to prevent backing out onto a public road.
- C. Non-residential parking shall not be located within applicable side, rear and front yard setbacks and in no case less than 10 feet from lot lines.
- D. Off-street parking may be located off-site but must be within 300 feet of the site and the site owner must demonstrate ownership or contractual right for continuous use of off-site parking area.
- E. Parking areas of five or more spaces shall be suitably landscaped and provision made for erosion and storm-water run off control.
- F. Existing uses with less than the required minimum number of parking spaces at the time this law becomes effective need not provide additional off-street parking unless one or more of the following conditions occur:
 - 1. The use changes, including the addition of another use such as the addition of a home occupation to a dwelling unit; or
 - 2. The use expands its gross area by 25% or more in a 3-year period.

5.1-3 Requirements

The following dimensional and other requirements shall apply to all parking and loading areas:

- A. Parking:
 - a. The minimum parking space size shall be 9 feet by 19 feet.
 - b. Each parking space shall consist of not less than 270 square feet of useable area for motor vehicles including interior driveways and/or driveways connecting the parking space with a street.
- B. Loading Areas:
 - a. The minimum size loading space shall be 60 feet in depth and 12 feet in width with an overhead clearance of 14 feet.
 - b. Loading areas shall be required for any non-residential use that receives deliveries by truck or involves loading or unloading activities for supplies, products or goods.
- C. Access Drives:
 - a. Access drives shall not open upon any public right-of-way within 80 feet of the nearest right-of-way line of any intersecting public street or highway or where the sight distance in either direction will be less than 200 feet.
 - b. Separate entrance and exits shall be at least 80 feet apart whether or not on the same property.
 - c. There shall be no more than one entrance and one exit for any non-residential

- property unless particular highway safety considerations require it.
- d. Access to and from all non-residential off-street parking, loading and vehicle service areas along public streets, highways and rights-of-way shall consist of well-defined separate or common entrances and exits.
 - e. All access points, drives or curb cuts shall be subject to obtaining a written permit or approval from the Town Highway Superintendent for Town roads, the Madison County Department of Public Works for County roads, and/or the New York State Department of Transportation for State highways or roads.

SECTION 5.2 CORNER LOTS AND THROUGH LOTS

Wherever a side or rear yard is adjacent to a street, the front yard setback shall apply to such side or rear yard. Corner lots shall be deemed to have two front yards, two side yards, and no rear yard. There shall be no obstruction of vision on a corner lot that creates a safety hazard on the adjacent intersecting roads. The determination of an appropriate “clear zone” on the front yards of the lot shall be made by the code enforcement officer working in consultation with the Town Highway Superintendent for Town roads, the Madison County Department of Public Works for County roads, and/or the New York State Department of Transportation for State highways or roads.

SECTION 5.3 PROJECTIONS INTO REQUIRED SETBACKS

The following projections into required setback areas may be permitted:

5.3-1 Porches and steps: four feet into any required setback area. Open or screened porches or decks may project six feet into required front setback areas.

5.3-2 Awnings or movable canopies: six feet into any required setback area.

5.3-3 Cornices, eaves, and other similar architectural features: three feet into any required setback area.

SECTION 5.4 SETBACKS FOR ACCESSORY STRUCTURES AND USES

5.4-1 In the case of any detached garage, tennis court, swimming pool, or any non-agricultural accessory structure attached to the principal structure, all the minimum setback requirements of this Zoning Law applicable to the principal structure shall be met. Other detached accessory structures or uses may encroach into required setback areas provided that they:

- A. Are not used for human habitation;
- B. Have a footprint no larger than 100 square feet;
- C. Do not exceed 16 feet in height;
- D. Do not occupy more than 10% of a required rear setback area;

- E. Are set back at least 10 feet from side or rear lot lines;
- F. Do not prevent emergency fire fighting access or to shade a residential structure on an adjacent lot;
- G. Are not located closer to the street than the front setback required for a principal structure, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, and similar roadside structures with less than 100 square feet of footprint, as well as ornamental structures such as entry pillars and statues.

5.4-2 For corner lots, the setback from all streets shall be the same for accessory structures as for principal structures.

5.4-3 The aggregate ground area covered by one or more accessory structures shall not exceed 50% of the rear yard area. Storage trailers, railroad cars, bulk containers, or any other storage containers or vehicles shall not be used for purposes of accessory structures in connection with any nonagricultural use.

SECTION 5.5 FENCES (INCLUDING HEDGES) AND WALLS

5.5-1 The setback requirements of this Zoning Law shall not apply to retaining walls or to fences less than or equal to six feet high in any side or rear yard, except where corner clearances are required for traffic safety, and shall not exceed four feet in height in any front yard.

5.5-2 The setback requirements of this Zoning Law shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher.

SECTION 5.6 NONINTERFERENCE WITH DRAINAGE AND WATER FEATURES

Development should not interfere with natural drainage patterns and water features such as streams, ponds, floodplains, lakes and wetlands.

SECTION 5.7 EROSION AND SEDIMENTATION CONTROL

Any land use shall comply with the New York State Department of Environmental Conservation requirements for stormwater runoff and erosion and sedimentation control. Any permit, notice of intent (NOI), plans, or other documentation filed with the Department of Environmental Conservation with respect to stormwater runoff, erosion or sedimentation control shall also be filed with the Town Code Enforcement Officer and any terms of such permit, notice of intent, plans or other documentation shall be enforceable by the Town pursuant to this section and Article 2 above.

SECTION 5.8 CONSTRUCTION ON STEEP SLOPES

The construction of new buildings, roads, and other facilities on slopes of 15% or more grade (15% = 1½

foot rise in 10 feet horizontal distance) shall require a special permit, and a performance bond may be required. Logging on such areas shall comply with New York State Department of Environmental Conservation requirements.

SECTION 5.9 OUTDOOR STORAGE

Materials used in any commercial, business, manufacturing, fabricating, industrial or servicing operation may be stored outside the structure or structures accommodating such operations provided such materials shall not be visible from public roads, or from adjacent properties. Such requirement shall not be deemed to apply to construction materials stored on-site during a period of construction, logs or firewood (except for a sawmill use) or agricultural products or materials.

- 5.9-1 Unregistered vehicles** – No more than one unregistered vehicle shall be maintained outside of a fully enclosed structure on any given lot.
- 5.9-2 Storage of recreational vehicles** – Outdoor storage of up to three recreational vehicles and/or boats of any size is permitted on residential lots provided that such vehicle or boat is not stored between the street line and the front yard setback or within any side or rear yard setbacks except when stored in a driveway. The outdoor storage of one recreational vehicle or boat of more than 20 feet in length is permitted on any residential lot provided that such vehicle or boat is not stored between the street line and the front yard setback or within any side or rear yard setbacks except when stored in a driveway.
- 5.9-3 Storage of commercial vehicles** – The outdoor storage or parking of commercial vehicle on a residential lot in excess of 18,000 pounds shall be restricted to one such vehicle and shall not be stored between the street line and the front yard setback or within any side or rear yard setbacks except when stored in a driveway. The outdoor storage of agricultural vehicles and equipment used for agricultural purposes on the property where such are stored shall be permitted in all Districts.
- 5.9-4 Outdoor display and storage of merchandise -**
Any outdoor storage that does not meet the above requirements shall require a special permit from the Zoning Board of Appeals prior to the storage occurring. The Zoning Board of Appeals may condition such permit on suitable landscaping and screening to be provided in order to shield the outdoor storage from views of neighboring properties and public roads.

SECTION 5.10 SIGNS

Signs are accessory uses which may be erected and maintained upon issuance of a sign permit and in accordance with the following requirements. Signs proposed in connection with a special permit or Site Plan shall be part of such process and the Planning Board shall have jurisdiction over the approval of such signs as part of that process. The issuance of a special permit or of a site plan approval shall include approval for the signage. All other signs proposed that are not part of an approval process shall be under the jurisdiction of the Code Enforcement Officer. For purposes of this section the area of the sign specified is for one side of a sign and two sides of a sign may be displayed.

5.10-1 Location on Premises

A sign, other than an off-premises sign allowable by Special Permit pursuant to Section 5.10-5, shall be erected and maintained only on the same parcel of land where the subject of the sign is

located, and not more than 200 feet from the principal location thereof. For purposes of this regulation, the principal location of the subject of a sign shall be deemed to include the principal private access road connecting the subject with a public highway.

5.10-2 Signs Not Requiring A Permit

The following signs may be erected and maintained without a Sign Permit, provided that they are less than four square feet in sign area and are non-illuminated (except as indicated below):

- A. Signs advertising the sale or rental of the premises upon which the sign is located. Such signs must be non-illuminated and limited to two per property. They shall be set back a minimum of 10 feet from any property line on a non-corner lot and 35 feet from any property line on a corner lot.
- B. Signs denoting the architect, engineer, or contractor where construction, repair, or renovation is in progress, limited to one per property.
- C. Signs that mark property boundaries, give directions for roads or trails, prohibit trespassing, hunting, fishing, or off-road vehicles, or warn of hazards.
- D. Any sign erected by the federal, state, county, or town government or any department or agency thereof. Such signs are not limited in size.
- E. Political campaign signs.
- F. Signs giving the name of the residents of a dwelling and/or its address. Such signs may be illuminated by external white light only and shall be limited to one per dwelling.
- G. Temporary signs, including banners or pennants, relating to garage, lawn, or other individual, non-recurring sales, or for a church bazaar, fund drive, parade, fair, fireman's field day, or other event or undertaking conducted by a political, civic, religious, charitable, or educational organization. Such signs may be erected no more than 90 days prior to the event and shall be removed by the sponsor within 15 days after the close of the event. Such temporary signs are not limited in size.
- H. A sign placed temporarily to advertise the sale of produce grown or harvested by the property owner where the subject sign is located, limited to one per principal location of the subject of the sign. Such temporary signs shall be removed immediately after the termination of the activity being advertised.
- I. Temporary signs, customarily of paper or cardboard, placed in the windows of grocery stores and supermarkets to advertise weekly specials. Such temporary signs are not limited in size or number.
- J. Signs that provide the name, and/or owner, of a farm that is located on said farm and that does not advertise any other enterprise or business.

5.10-3 Signs Allowable by Sign Permit

The following signs may be erected and maintained only upon the issuance of a Sign Permit by the Code Enforcement Officer. The Code Enforcement Officer shall issue a Sign Permit upon a proper application showing compliance with all the applicable provisions of this Section.

- A. A freestanding or attached and projecting advertising sign, being perpendicular or approximately perpendicular to the line of a public highway from which it is intended to be seen. No such sign shall exceed 24 square feet in sign area on any one side. There shall be not more than one such sign for any commercial enterprise or for any group of enterprises located on a parcel of land under single ownership.
- B. An advertising sign located on and parallel to a wall of a building housing the enterprise advertised. No such sign shall exceed 40 square feet in sign area. There shall be no more than one such sign for any commercial enterprise.
- C. A sign, including a bulletin board, customarily used by places of worship, libraries, museums, social clubs, and societies, provided that there shall be no more than one such sign per establishment or organization, and that no such sign shall exceed 16 square feet in sign area on any one side.

5.10-4 General Sign Regulations

The following regulations apply to signs throughout the Town:

- A. No sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights. All luminous signs, indirectly illuminated signs, and lighting devices shall employ only lights emitting light of constant intensity, except in the case of digital street clocks and temperature indicators. No luminous sign shall exceed 15 square feet of sign area.
- B. No luminous sign, indirectly illuminated sign, or lighting device shall be placed or directed so as to cause beams of light to be cast upon any public highway, sidewalk, or adjacent premises, or otherwise to cause glare or reflection that may constitute a traffic hazard or nuisance. No sign shall contain any mirror or mirror-like surface, nor any day-glow or other fluorescent paint or pigment.
- C. No sign relating to a permanent commercial enterprise, with the exception of traditional barber poles, shall contain or consist of any banner, pennant, ribbon, streamer, spinner, or other similar moving, fluttering, or revolving device. No sign or part thereof may rotate or move back and forth, except that a sign may be suspended and swing, though not rotate, in the wind.
- D. No permanent sign shall extend more than 15 feet above the natural ground elevation or be located upon or higher than the roof of the associated establishment.
- E. Where feasible and practical no sign shall be painted or placed upon or supported by any tree, rock, or other natural object other than the ground.
- F. No motor vehicle, trailer, or wagon upon which is painted or placed any sign shall be parked or stationed in a way primarily intended to display the sign.
- G. All signs shall be constructed of durable materials and maintained at all times in good repair.
- H. No advertising sign shall be maintained with respect to an enterprise which, for a period of one year, conducts no business or with respect to a product or service which is no longer offered by the enterprise maintaining the sign.

- I. No sign shall be erected or maintained within the right-of-way nor within 10 feet of the roadbed of any public highway. Such minimum setback shall not apply to any signs located on and parallel to a wall of a building entirely housing the business or activity with which the signs are principally associated.

5.10-5 Off-Premises Signs

The Planning Board, in accordance with the Special Permit procedure set out in Article 8 hereof, may grant approval for an off-premises sign. As a condition to approval of an off-premises sign, the Planning Board shall find that the sign:

- A. Meets all the applicable requirements of this Section other than on-premises location.
- B. Will be useful in providing information not otherwise reasonably available to the public.
- C. Will be visually compatible with its surroundings.
- D. Will not pose a traffic hazard or otherwise endanger the health, safety, or welfare of the public.

5.10-6 Abandoned or Illegal Signs

In the event that a sign is (a) unlawfully erected after the effective date of this Zoning Law, (b) is a non-complying sign maintained in violation of Article 3 of this Zoning Law or (c) is maintained in violation of this section and/or the terms of a sign permit previously issued, then the Code Enforcement Officer shall mail to the owner of said sign, if known, at the sign owner's last known mailing address and to the owner of the parcel of land upon which such sign is situated, at the parcel owner's last known mailing address, an order that the violation be cured within 30 days after the date of the order. If after such date the violation is not cured, the Code Enforcement Officer may enter upon the land and remove and discard the sign, without liability to the Town or its agents.

ARTICLE 6 SUPPLEMENTARY REGULATIONS APPLICABLE TO PARTICULAR USES

This Article provides specific regulations and requirements applicable to particular types of uses or developments identified below that are in addition to the regulations and requirements set forth elsewhere in this Zoning Law. All applicable regulations and requirements in this Zoning Law must be adhered to and where there is conflict between the regulations and requirements provided in this Article and those provided in other Articles and sections of this Law, the stricter shall apply.

SECTION 6.1 HOME OCCUPATIONS

Home occupations are defined as any occupation or business activity that occurs within structures or on property where the primary land use is residential and where the occupation, business or commercial activity is clearly incidental to such residential use. Such uses may include, but not be limited to, professional occupations, antique and craft shops, artisan activities, personal service shops and other related types of businesses.

6.1-1 Minimal Impact.

All home occupations, as defined above, that comply with the following requirements are considered minimal impact home occupations and are allowed accessory uses to a residential dwelling pursuant to a Zoning Permit issued by the Code Enforcement Officer:

- A. No employees working on the premises other than family members residing thereon;
- B. No additional parking required;
- C. No outside storage of equipment, vehicles or materials used in the business other than an automobile for personal transportation;
- D. No regular traffic to the site for other than mail services, occasional deliveries and client/customer visits. Such mails services, deliveries or client/customer visits shall occur no more than three (3) times per week.
- E. No signage advertising or noticing the home occupation on the premises.

6.1-2 Non-Minimal Impact.

All home occupations, as defined above but do not meet the requirements of section 6.1-1, are considered non-minimal impact home occupations and must comply with the following requirements in order to be an allowed accessory use to a residential dwelling upon review and issuance of a special permit by the Planning Board:

- A. The off-premises impact of noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall be no greater than that produced by a typical single-family residence in the neighborhood.
- B. Traffic generated shall not be in greater volume than would normally be expected in the neighborhood.
- C. Parking shall be provided off-street and shall not be located within the front setback area unless it is screened from public roads and no more than a total of 6 parking spaces shall be allowed for both the residence and the home occupation.
- D. No more than two signs, non-illuminated, and not larger in the aggregate than six square feet in size, shall be allowed.
- E. No more than three employees or co-owners in addition to the inhabitants of the residence are employed or works at the home occupation site.
- F. Less than 35% or 1000 square feet, whichever is less, of the gross area of the residence is devoted to the home occupation or, if located in a barn, garage or other outbuilding, the total area of the home occupation is less than 2500 square feet.
- G. The external appearance of the residential dwelling and/or accessory structure shall not be altered in any manner that changes its residential appearance.
- H. The home occupation shall be compatible with the surrounding neighborhood, shall not attract undue attention to the occupation or business, shall not adversely affect the appearance, character or environmental conditions of such neighborhood, and shall not adversely affect adjacent residential properties.
- I. The general criteria applicable for all special permits as set forth in Article 8 below are met.

6.1-3 No Change

No home occupation, having once been permitted or otherwise legally established, shall be added to, expanded, enlarged or otherwise increased or materially changed in character without complying with this Zoning Law. Such permit or establishment shall not, under any circumstances, be a basis for establishment of a principal commercial or business use.

6.1-4 Abandoned Use

Once the principal residential use is abandoned or the residence is unoccupied for residential purposes, the home occupation use shall automatically cease.

6.1-5 Signs

Signs for home occupations, other than minimal impact home occupations for which no signage is allowed, shall be limited to the following:

- A. One non-illuminated identification sign no larger than two square feet in size may be attached to the principal structure.
- B. In cases where the principal structure is obscured from the frontage road or street, or the structure is set back more than 50 feet from the property line, a non-illuminated ground sign not to exceed four square feet may be placed ten feet from the front boundary line of the property.

SECTION 6.2 PROTECTION OF AGRICULTURE

6.2-1 A. Right To Farm.

Notwithstanding any other provisions of law, it being the intention of this section to supersede to the extent legally possible any prior statutory or court developed rule of law regarding nuisances or similar types of actions, an agricultural practice shall not constitute a private nuisance when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the New York State Commissioner of Agriculture and Markets. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

B. Required Disclosure

In the case of any proposed residential development that abuts agricultural uses within the Agricultural-Residential District or the Prime Agricultural Overlay District, the Planning Board shall require the applicant to issue a disclosure to potential purchasers of lots or dwelling units as follows: "It is the policy of the State of New York and the Town of Hamilton to conserve, protect, and encourage the development and improvement of Agricultural Land for the production of food and other products and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that FARMING ACTIVITIES are the MAIN LAND USE occurring within the district. Such farming activities may include but not be limited to the following activities:

1. That FARMING does not only occur between 8:00 a.m. and 5:00 p.m. and is dependent on mother nature. Residents should be aware of NOISE FROM AGRICULTURAL MACHINERY being operated in nearby fields on both EARLY MORNING AND EVENING HOURS and noise from crop drying fans which are RUN 24 HOURS A DAY during the harvesting season.
2. That the roads leading to and from the subdivision area frequently traveled by farmers and their SLOW-MOVING FARM VEHICLES and EQUIPMENT.
3. That farm neighbors very often SPRAY THEIR CROPS with pesticides in accordance with ACCEPTED PRACTICES REGULATED by the New York State Department of Environmental Conservation.
4. That existing agricultural operations may CREATE BOTH UNAVOIDABLE ODORS and UNSIGHTLINESS commonly associated with farming operations in this area.

5. That there are DANGERS of letting CHILDREN and PETS roam into any adjacent field which is private property.
6. That residences for seasonal farm laborers are an accessory use to farming activities in the agricultural zones.
7. BE ADVISED of the possible nuisance of blowing dust and black dirt caused by windstorms in the area.”

This disclosure shall be required as a note on a subdivision plat or site plan, and may also be required to be made through other means reasonably calculated to inform a prospective purchaser, such as by posting or letter of notification. This section may also be applied to any commercial development within the jurisdiction of the Planning Board which abuts agricultural land, at the discretion of the Planning Board.

6.2-2 Agricultural Buffers

This section shall apply to all parcels having a portion of the parcel within the Prime Agricultural Overlay District. Wherever agricultural uses and other new uses unrelated to the agricultural operations abut, buffers shall be provided to reduce the exposure of these abutting uses to odors, noise, and other potential nuisances related to the agricultural operation. As set forth in Article 4, section 4.1-3(D) of this Law, the minimum size of the buffer shall be 200 feet from all dwellings, wells and septic systems. Provision of buffers shall be the responsibility of the proponent of the non-agricultural use, unless such use predates the agricultural use. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features and should be considered and utilized by the Planning Board when lots are created or subdivided nearby agricultural properties or uses and by the lot owner for the location of a new dwelling on a lot.

6.2-3 Agricultural Data Statement

Any application for a Special Permit, use variance, or subdivision approval requiring review and approval by the Planning Board or Zoning Board of Appeals that would occur on property within an agricultural district (designated by the County pursuant to the Agriculture and Markets Law) containing a farm operation, or on property with boundaries within five hundred feet of a farm operation located in such agricultural district, shall include an agricultural data statement as defined in Article 12. The Planning Board or Zoning Board of Appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

6.2-4 Limited Exception to Minimum Road Frontage – Residential Lots

This section shall apply to all parcels having a portion of the parcel within the Prime Agricultural Overlay District. It is the policy of the Town of Hamilton to encourage maximum flexibility for development for purposes of protecting farmland, prime agricultural soils and enhancing rural character. Accordingly, in certain locations and with certain design it may be desirable to locate residences on rear lots without requiring compliance with otherwise applicable road frontage requirements. As such, the Prime Agricultural Overlay District is hereby declared an "Open Development Area" under Section 280-a(4) of the Town Law. Building permits may be issued for structures on lots that have no public road frontage and gain access by limited road frontage, private road, right-of-way or easement over other lands, under the conditions contained below. Notwithstanding the road frontage requirements of Section 4.1-3(D), rear lots with or without access strips running to public roads may be created where they will not endanger public health and safety, and will help preserve natural, historic, and scenic resources.

1. Flag Lots. A flag lot is defined for purposes of this Section as a lot so shaped and designed that the main portion of the lot is set back from the public street or road on which it fronts, is

situated behind one or more lots and is connected to such frontage road or street only by means of a relatively narrow strip of land. The following requirements apply to flag lots:

- A. Each flag lot must have a minimum frontage of 25 feet on an improved public road that provides adequate and physically practical access from the lot to the public road.
- B. Except for the allowable reduction of minimum road frontage requirements as set forth in section 4.1-3(c) above, flag lots must meet all other dimensional requirements for a lot in the Prime Agricultural Overlay District. For purposes of determining front yard setbacks, the front yard shall be the yard area lying between the principal structure and the street from which access is obtained and the setback shall be measured from the closest rear yard property line of the abutting parcel or parcels.
- C. There shall be a maximum of one flag lot for every two frontage lots and the total road frontage combining the flag lots and frontage lots must equal the minimum road frontage required in the Prime Agricultural Overlay District.
- D. All flag lots must have safe access for fire, police, and emergency vehicles.
- E. The Planning Board may require the applicant to implement a conservation easement or deed restriction enforceable by the Town that limits the area within which the house and driveway may be constructed on the rear lot.

2 Lots With Access By Private Road. A subdivision of property, in certain limited instances, may provide for access via a shared private road and create lots with minimum road frontage requirements to be satisfied by frontage on such private road. This is provided as an option to owners of farm parcels of property to allow some development on such parcels while maintaining the integrity of the parent parcel for continued agricultural use or as open space. The following requirements shall apply in such cases:

- A. A maximum of 4 lots, not including the parent parcel, shall be allowed and each shall meet the minimum road frontage and other area requirements for the Zoning District in which they are located.
- B. The parent parcel must be at least 50 acres prior to subdivision.
- C. The combined acreage of lots to be subdivided from the parent parcel shall not equal more than one-quarter of the acreage of the parent parcel prior to subdivision.
- D. The subdivision plat shall contain a note that prohibits any further subdivision of the parent parcel for a minimum of 10 years from the date of the final approval of the subdivision and shall also contain a note that prohibits any further subdivision of the subdivided lots at any time in the future. The deed to each subdivided lot shall also contain a deed covenant and/or restriction that prohibits any further subdivision of such lot in perpetuity.
- E. The private road or shared driveway shall meet the following requirements:
 - A. the right-of-way shall be 50 feet wide;
 - B. the improved road area shall be a minimum of 20 feet wide;
 - C. safe access for fire, police and emergency vehicles must be provided with a suitable turn-around area;
 - D. the road need not be paved with asphalt but shall be improved

pursuant to the general requirements of the Town's road regarding street specifications and drainage facilities as would be applicable for a non-paved road with limited traffic: and

- E. a written road maintenance and usage agreement shall be made binding on each subdivided parcel and shall include terms for usage, utilities, repairs, maintenance and snow clearing. Such agreement shall be submitted to the Planning Board for its review and approval prior to final subdivision approval and shall be in such form as to enable it to be recorded against the deed for each subdivided parcel. Such recording shall be a condition of the final subdivision approval.

6.2-5 Conservation Subdivision Requirements:

In order to protect agricultural uses, to preserve the agricultural value of land, to provide for the retention of tracts of sufficient size to be used reasonably for agricultural purposes, and to preserve the open space qualities of the Town, creation of non-farm lots and the subdivision of farm parcels from parent tracts shall be limited in the Prime Agricultural Overlay District. Accordingly, and notwithstanding the minimum lot sizes set forth in section 4.1-3(D) above, the following additional requirements shall apply to land within a Prime Agricultural Overlay District:

Conservation subdivision design where lots are arranged and/or clustered to maximize the conservation of prime agricultural soils and other important resources may be required by the Planning Board as a condition to granting any subdivision approval. In determining the design of the subdivision the following criteria should be applied:

- (a) Building lots should avoid prime agricultural soils, defined as Class I and Class II by the USDA Natural Resources Conservation Service or similar or successor agency;
- (b) Other existing features, whose preservation would benefit the continuing viability of the parent parcel as farmland and the subdivision, should be avoided through sensitive design of the cluster subdivision. Such features include but are not limited to water features, such as streams, ponds, floodplains, lakes, wetlands, and steep slopes in excess of 15%.
- (c) Building lots should not interfere with natural drainage patterns; and
- (d) To the extent reasonably possible, subdivisions shall be approved in a manner that maintains the largest amount of contiguous acreage for open space or agricultural use. (For example, if reasonably possible, a 17 acre parcel would be divided into one one-acre lot and one 16 acre lot, and a twenty-four acre lot would be divided into two one acre lots and one twenty two acre lot.)
- (e) Residential structures in the Prime Agricultural Overlay District should be located according to the following guidelines, which are listed in order of significance (some of which may conflict with each other on a particular site, in which case, the Planning Board may use its discretion to resolve such conflicts and still further the purposes of this section):
 - [1] On the least fertile agricultural soils and in a manner which maximizes the usable area remaining for agricultural use;
 - [2] Away from the boundaries of any preserved farm, to reduce conflicting uses within areas where farmers have made long-term commitments to continue to farm;
 - [3] In such a manner that the boundaries between house lots and active farmland include the required 200-foot Agricultural Buffer areas (section 6.2-2) on all sides adjacent to agricultural fields and that existing vegetation, topography, roads or other buffers are

utilized in the layout of lots to minimize potential conflict between residential and agricultural uses;

[4] To avoid disturbance to the existing environmental features noted in subsection (a) and (b) above;

[5] Next to other residences or building lots on adjacent properties;

[6] To minimize the perimeter of the built area by encouraging compact development and discouraging strip development along roads;

[7] On suitable soils for subsurface sewage disposal (where applicable);

[8] Within woodlands, or along the far edges of open agricultural fields adjacent to any woodland, to reduce encroachment upon agricultural soils, provide shade in summer and shelter in winter, and to enable new residential development to be visually absorbed by the natural landscape;

[9] In locations where the greatest number of dwelling units could be designed to take advantage of solar heating and solar electric opportunities; and

[10] Any other mitigation measure imposed under SEQR.

(f) The Planning Board, as a condition of granting subdivision approval, shall require, unless good cause is shown for omission of same, the developer to encumber the larger tracts (the non-cluster lots) by deed restrictions, conservation or agricultural easements, or other mechanism satisfactory to the Planning Board, to ensure that such parcels shall remain permanently as open space or agricultural land. Land shall still be considered open space or agricultural land if used for the purposes of conservation, agriculture and/or passive recreational purposes.

(g) Notwithstanding the density limitations set forth above, any parcel of fifty acres or larger remaining after subdividing off the clustered lots and which has been encumbered in the manner set forth in the immediately preceding paragraph, may be further subdivided into separate ownership provided that all parcels so further subdivided are at least 25 acres in size, and all such parcels continue to be subject to the open space and/or agricultural easements.

(h) Development Transfer. Any proposed conservation subdivision of land located in the Overlay District meeting the requirements of this section may increase density upon a portion of the same parcel of land or an abutting parcel of land which is outside of the Overlay District by the addition of one building lot per each 3 acres of prime agricultural soils preserved over 50% of the total of prime agricultural soils on the parcel to be subdivided and located in the Overlay District.

6.2-6 Labor Housing/Mobile Homes for Farm Employees

In the Prime Agricultural Overlay and Agricultural-Residential zoning districts, additional housing including mobile homes may be allowed to house family members or employees of farms operating within such districts on the same lot or parcel as the operating farm where the employees work pursuant to the following requirements:

- A. The housing or mobile home(s) shall be placed on same lot as the farm operation in such a manner that it is compatible with and reasonably similar in orientation to the main farm house and other dwellings on adjacent properties.
- B. The housing or mobile home(s) shall be connected to an on-site water and septic system approved by the County Department of Health and/or the Town Code Enforcement Officer.
- C. Each mobile home must meet the requirements of section 6.4-1 below.

- D. The housing or mobile home must be removed within 12 months from the time that it is no longer used for agricultural labor.

6.2-7. Animal husbandry and commercial agriculture in Residential District.

To protect the unique character of the Residential district while still allowing the continued operation of diverse agricultural activities, the following additional standards must be met in conducting animal husbandry and commercial agricultural operations in the Residential District.

A. Commercial agriculture.

For purposes of this section, commercial agriculture shall mean non-animal agriculture operations, such as the raising of field, greenhouse, nursery and garden crops, sod and vineyard and orchard farming that grosses more than \$1,000 per year. Such uses shall be permitted in the Residential zoning district provided that such agricultural operation is on a parcel of land with a minimum size of 5 acres and by the issuance of a special permit by the Planning Board pursuant to Article 8. Gardens associated with a principle residential use and that are not used for commercial purposes are allowed in all zoning districts.

B. Livestock/Animals

The keeping, breeding and raising of animals or livestock for any purpose shall be permitted on lots equal to or greater than two acres subject to and provided that the following provisions are met. This section shall not prevent the keeping of ordinary household pets such as dogs and cats capable of being housed in a residence.

Species	Number of Animals Permitted
Dairy and beef cows, horses, alpacas and lamas; and other domestic animals of similar size	2 for the first 2 acres, plus 1 for each additional 1 acre up to a total maximum of 4 such animals
Sheep goats, and other domestic animals of similar size	12 for the first 2 acres, plus 3 for each additional ½ acre up to a total maximum of 24 such animals
Swine	3 for the first 2 acres. plus 1 additional for each additional ½ acre up to a total maximum of 6 such animals
Poultry, rabbits and other domestic animals of a similar size	200 for the first 2 acres, plus 50 for each additional ½ acre up to a total maximum of 400 such animals.

- (1) The storage of manure or other odor- or dust producing substances shall be adequately screened from the view of adjacent properties and located not less than 75 feet from any side or rear lot lines for lots equal to or greater than two acres but less than or equal to 10 acres. The storage of manure or other odor- or dust-producing substances in this district shall be set back 150 feet from any side or rear lot lines for lots greater than 10 acres.

(2) Any deviation of the above restrictions or requirements shall be allowed only by issuance of a special permit by the Planning Board pursuant to Article 8. In addition to the standards and requirements set forth in Article 8, the Planning Board shall require a manure management plan be prepared by a certified nutrient management planner and plans for fencing adequate to contain the animals on the property, and that said plans be adhered to by the applicant as a condition of the special permit.

C. Buffers. Wherever agricultural uses abut residential uses in non-agricultural zoning districts, buffers shall be provided to reduce the exposure of these abutting residential uses to odors, noise, and other potential nuisances related to the agricultural operation. Provision of buffers shall be the responsibility of the proponent of the non-agricultural use, unless such use predates the agricultural use. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features.

D. The keeping, breeding and raising of livestock, poultry and similar animals shall be permitted on lots greater than 35 acres and shall not be subject to the requirements of Subsection B above.

Section 6.2-8. Stables and riding academies.

A. The minimum area required for the commercial stabling of horses on any lot shall be 10 acres. There shall be no storage or use of manure or other dust producing substances within a distance of 100 feet from any lot line. Riding trails may be no closer than 50 feet to any lot line, nor shall any riding trail cross a public way, road, street or highway unless by prior approval of the Planning Board. If outdoor lighting is provided for riding areas, the applicable setbacks shall be doubled. All lighting shall be so located as not to be visible at the source from any adjoining property. The use of existing barns and structures is to be encouraged, such existing buildings will be exempt from applicable setback requirements.

B. Provisions shall be made for removal or handling of manure in such a manner that does not pollute ground or surface water or create a public nuisance. The Planning Board shall require a manure management plan be prepared by a certified nutrient management planner and that said plan be adhered to by the applicant as a condition of the special permit.

C. Public events, demonstrations, horse shows, rodeos or competitive events held in connection with riding academies or stables shall be permitted, providing that adequate sanitation facilities, sufficient parking and crowd control measures are provided as determined by the Planning Board.

D. The applicant shall be permitted to regularly maintain no more than 10 horses over six months old on the premises for the first 10 acres of contiguous property owned by the applicant. The keeping of an additional one horse over six months old shall be permitted for each additional ½ acre of contiguous property in excess of 10 acres owned by the applicant.

E. In reviewing any application for a stable or riding academy, the Planning Board shall consider the drainage, percolation and topography of the proposed site and its proximity to public or private water supplies.

F. In granting any special use permit pursuant to this section, the Planning Board shall consider the frequency of events, hours during which events may be permitted, the maximum number of people that may be expected to attend such events, provisions for crowd and traffic

control and intrusiveness of noise upon neighboring residences, including the nature of and decibel level of sound amplifications systems.

G. The location of commercial stables and riding academies pursuant to this section shall be permitted pursuant to a special permit in all zoning districts except the Commercial zoning district.

SECTION 6.3 CONCENTRATED ANIMAL FEED OPERATION (CAFO)

Concentrated Animal Feedlot Operations or CAFOs are high intensity animal raising operations that are defined in section 6.3-2 below and must meet the requirements of section 6.3-1 below.

6.3-1 CAFO Requirements

In any zoning district where CAFO's are allowed pursuant to the Schedule of Uses they are allowed only upon review and issuance of a special permit and site plan approval and must meet the following requirements:

- A. The required buffer between any livestock housing, feed and/or manure storage of a CAFO and the parcel boundary line shall be 400 feet;
- B. CAFO's must comply with the NYSDEC regulations for discharge permits;
- C. A Comprehensive Nutrient Management Plan must be submitted as part of the special permit or site plan application.

6.3-2 CAFO Definition

A Concentrated Animal Feed Operation or CAFO is an animal feeding operation which meets the following requirements:

- 1. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period, more than the numbers of animals specified in any of the following categories:
 - a. 1,000 slaughter or feeder cattle;
 - b. 700 mature dairy cattle (whether milkers or dry cows);
 - c. 2,500 swine weighing over 55 pounds;
 - d. 500 horses;
 - e. 10,000 sheep or lambs;
 - f. 55,000 turkeys;
 - g. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
 - h. 30,000 laying hens or broilers when facility has liquid manure handling system;
 - i. 5,000 ducks;
 - j. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.
- 2. New and existing operations that discharge into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into surface waters of the State of New York, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period, more than the numbers of animals specified in any of the following categories:
 - a. 300 slaughter or feeder cattle;
 - b. 200 mature dairy cattle (whether milkers or dry cows);

- c. 750 swine weighing over 55 pounds;
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,000 turkeys;
- g. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
- h. 9,000 laying hens or broilers when facility has liquid manure handling system;
- i. 150 ducks;
- j. 300 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

SECTION 6.4 MOBILE HOMES/MOBILE HOME PARKS

Mobile homes are allowed in the Town of Hamilton in mobile home parks approved pursuant to section 6.4-2 below, the Schedule of Uses and as housing for farm workers on an established, working farm pursuant to section 6.2-6 above. All mobile homes must meet the criteria in section 6.4-1 no matter where located.

6.4-1 Mobile Home Design Criteria

Mobile homes shall comply with the following criteria (except as provided in Subsection I):

- A. Mobile homes, and any deck or other addition, shall be mounted on a permanent concrete slab base or footing at least four inches thick, with skirting provided.
- B. The mobile home shall be placed on the lot in such a manner that is compatible with and reasonably similar in orientation to the site-built housing in adjacent or nearby locations.
- C. Two off-street parking spaces shall be provided for each mobile home in accordance with the requirements of Section 5.1-1.
- D. Mobile homes shall comply with currently applicable federal and state building standards. The home must be permanently installed in accordance with the Manufacturer's Installation Manual. In the event that the Manufacturer's Installation Manual is not provided, the home must be installed according to ANSI A225.1 (1994), Manufactured Home Minimum Installation Standards. If located in a flood hazard area, the home must also be installed in accordance with the Town of Hamilton Flood Damage Protection Law.
- E. Mobile homes shall have a minimum size of 700 square feet of enclosed living area and a minimum width of 12 feet.
- F. No evidence of a mobile home's trailer hitch or wheels shall be visible once it has been installed. Skirting or a curtain wall, un-pierced except for required ventilation and an access door must be installed and may consist of brick masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation.
- G. Permanent landings and steps with handrails are required at each exterior doorway. The structure must include steps, which lead to the ground level.

- H. The home(s) must be connected to the water and sewer system or well and an on-site septic system, whichever is applicable, approved by the Town of Hamilton Code Enforcement Officer.
- I. One or more of the criteria in this Section 6.4-1 may be waived where the applicant demonstrates that:
 - a. The mobile home will be effectively screened year-round, or
 - b. The installation of the proposed mobile home will not detract from the existing visual character of the neighborhood.

6.4-2 Mobile Home Park Criteria

Mobile home parks (also known as courts) are allowed in the Agricultural-Residential zoning district upon issuance of a special permit and site plan approval pursuant to the following requirements:

- A. Sites for /mobile home parks shall be a contiguous parcel with a minimum of two (2) acres. The location of the park shall be one suitable for such use as determined by the Planning Board, considering reports offered by the Board's consultants, with proper drainage and provisions for stormwater control such that the peak flow rate of water leaving the site after development shall not be greater than prior to development.
- B. There shall be documentation of the availability and adequate capacity of all utility providers to service the park. Off-site public or centralized public water and sewer facilities shall be provided. All sanitary and health regulations, state and local, shall be met.
- C. The park shall be designed to provide open space and offer buffering of individual mobile homes from each other and from adjoining lot owners. It shall be landscaped so as to develop and maintain an attractive environment and neighborhood character for prospective new and existing residents.
- D. Adequate provisions shall be made for outside storage space and these shall not in any way interfere with emergency access.
- E. Adequate provisions shall be made to control potential nuisance situations such as accumulation of unused materials or vehicles.
- F. There shall be adequate groundwater supplies to support the proposed water system without causing a detrimental impact on adjoining water supplies and evidence of this shall be provided and professionally reviewed.
- G. Sewage disposal. An adequate and safe sewerage system shall be provided in all manufactured/mobile home parks for conveying and disposing of all sewage. Such systems shall be designed, constructed, and maintained in accordance with local and state health laws.
- H. Boundaries of mobile home sites shall be well-defined and permanently marked and mobile home lots or sites shall meet the following requirements:
 - 1. The private area associated with each site shall be a minimum of five thousand (5,000) square feet with a minimum lot width of fifty (50) feet.

2. In no case shall a /mobile home occupy more than twenty percent (20%) of the site area.
3. All mobile homes larger than fourteen by seventy (14 x 70) feet shall have sites designed and laid out to conform to all yard and coverage requirements.
4. One and one-half (1 ½) car parking spaces shall be provided for each manufactured/mobile home site and their guests without interference with normal movement of traffic. At least one (1) parking space shall be situated on a side yard of each site, and the remainder shall be located in adjacent parking bays along the park streets. Each parking space shall have dimensions of at least ten by twenty (10 x 20) feet.
5. Yard provisions. /mobile homes shall be located on park sites in conformance with the following minimum yard requirements:
 - a. Front yard: fifteen (15) feet (from pavement edge);
 - b. Rear yard: ten (10) feet;
 - c. Side yard: ten (10) feet;
 - d. Thirty (30) feet from any park perimeter.

I. Entrances and streets. Streets shall be provided on the site where necessary to furnish principle traffic convenient access to the /mobile home stands and other important facilities on the property. Streets shall be privately owned with right-of-way widths of not less than thirty (30) feet. All streets within the /mobile home park shall be hard-surfaced, not less than twenty-four (24) feet in width, and shall be adequately lighted for safety of pedestrians and vehicular traffic. Individual /mobile home sites shall only exit onto interior park streets.

J. Service buildings. Each park shall provide community service buildings to house laundry facilities and other sanitary facilities, as required by the New York State Department of Health.

K. Private storage building. One (1) accessory building, factory-built, not to exceed one hundred forty-four (144) square feet in dimension, may be located on each lot. This building must be of a material that will be approved by the Code Enforcement Officer and placed on a permanent foundation.

L. Drainage facilities. The/mobile home park shall comply NYSDEC Stormwater regulations.

M. Skirts. Each mobile homeowner shall be required to enclose the bottom portion of the /mobile home with either a metal, wood or vinyl skirt, properly ventilated, within fifteen (15) days of arrival in the park.

N. Recreation facilities. Recreation areas and facilities, such as playgrounds, swimming pools, and community buildings, shall be provided to meet the anticipated needs of the park residents. Not less than ten percent (10%) of the gross site area or one-half acre, whichever is less, shall be devoted to recreation areas and facilities, generally provided in a location or locations convenient to all. Recreational facilities must be completed prior to occupancy and shall be sufficient to accommodate the number of dwellings proposed.

O. Utilities. All electrical, telephone, and television cable conduits shall be installed underground and maintained in accordance with applicable codes and regulations governing such systems.

P. Lighting. The minimum requirements for such shall be a streetlight at the end of each street, at any street intersection, and near recreation areas.

Q. Water supply. An adequate supply of water must be available to all occupants of manufactured/mobile homes in the park, and the quality must be satisfactory to the New York State Health Department.

R. Refuse disposal. The storage, collection, and disposal of refuse in the /mobile home park shall be conducted so as to create no health hazards, rodent harborage, insect breeding areas, accidental fire hazards, or air pollution. All refuse shall be stored in fly-tight, water-tight, rodent-proof containers, which shall be located not more than one hundred fifty (150) feet from any manufactured/mobile home site. Containers shall be provided in sufficient number and capacity to properly store refuse. The Park Owner shall be responsible for the proper removal of all refuse from the park.

S. The management and operations plan for the park shall provide for maintenance of all common facilities and ensure the purposes and requirements of this chapter are met. It shall also provide for limitation of occupancy to mobile homes meeting U.S. Department of Housing and Urban Development regulations under the Manufactured Housing Act.

SECTION 6.5 MINING AND EXCAVATION

Mining and excavation, as each term is defined in Article 12, are only allowed in the Commercial and Agricultural-Residential zoning districts upon issuance of a special permit and site plan approval in accordance with the following requirements.

6.5-1 Mining

A. Special permit criteria: Mining shall meet all of the following special permit criteria and requirements:

1. Minimum lot area shall be 20 acres including all required buffers, access roads, truck parking and employee parking.
2. All lands to be covered by special permit and site plan must be owned, leased, or otherwise under control by applicant for duration of the special permit.
3. The property on which the mining is proposed must have road frontage on a Town, State or County highway or private road access onto a Town, State or County highway for purposes of ingress and egress.
4. The mining site must have only one entrance and one exit, each of which must be at least 100 feet from intersections, other driveways, and said exit and entrance must be in conformance with AASHTO-Geometric Design of Highways and Streets – Stopping Sight Distance requirements.
5. The boundaries of the area of the site proposed for mining must be a minimum linear distance of 1000 feet from the closest residences, businesses, schools, and public gathering places.
6. The boundaries of the area of the site proposed for mining must be set back a minimum linear distance of 200 feet from property lines (unless the adjoining use

is “Mining” or “Excavation” in which case the setback shall be 100 feet), roads, rights-of-way, wetlands, and watercourses.

7. All structures, parking areas, loading areas, and truck staging areas must be set back a minimum linear distance of 300 feet from property lines (unless the adjoining use is “Mining” or “Excavation” in which case the setback shall be 150 feet), roads, rights-of-way, wetlands, and watercourses.
8. If the Mining uses propose to include blasting or processing of materials, the areas where such activities will take place must be a minimum linear distance of 2,000 feet from property lines and off-site roads.
9. The uses shall not endanger stability of adjacent structures, or adversely affect wetlands, watercourses, residential, commercial, or municipal water supply or sewage disposal systems, and existing drainage flow patterns or systems.
10. The uses shall not adversely affect any environmental, cultural, or historic features of significance to the community., as determined by the relevant SHPO and SEQR review.
11. All uses must be screened from existing residences, business, schools, and public gathering places located on adjoining properties, from public roads view and from significant view-sheds.
12. No phases of uses shall cause dust or other airborne particles, vibrations, odors, or glare beyond the property lines of the site.
13. The site must be able to sustain appropriate roadside landscaping, berms, and/or fencing.
14. Appropriate truck routes and transportation facilities must be available for the volume and type of truck traffic involved. (How specific can we be in setting the routes?)
15. Noise from any phase of the use shall not interfere with the quiet enjoyment of neighboring properties.
16. The use shall not adversely alter the prevailing character of the surrounding neighborhood or area or depress the property values in the surrounding area and shall not create traffic hazards or nuisances.
17. Location and terrain shall be reasonably suitable for development of allowed uses in zoning districts where property is located once the operations have terminated.

B. Mining Site Plan Requirements: The site plan that is required for mining along with the special permit shall show and the Planning Board shall review the following:

1. The entrance to and exit from the excavation on Town roads.
2. The location, construction, and maintenance of haul roads on the site.
3. Setbacks from property lines and streams.
4. The locations of natural or manmade barriers to restrict access to the site.
5. Dust control measures.
6. Hours of operation.

7. The Planning Board may set the requirements for the above on a site-by-site basis in order to protect the character of the surrounding land uses and neighborhoods, to control traffic impacts, and to protect the natural environment.

C. Should the State fail in its duty to enforce reclamation requirements in the DEC mining permit as described in Environmental Conservation Law §23-2703 (2) (b) and (c), the Town of Hamilton is authorized to enforce these requirements.

6.5-2 Excavation

A. Special permit criteria: Excavation (as defined in Article 12) shall meet all of the following special permit criteria and requirements:

1. Minimum lot area is 10 acres.
2. All lands to be covered by special permit must be owned, leased, or otherwise under control by applicant for duration of the special permit.
3. The property on which the excavation is proposed must have road frontage on a Town, State or County highway or private road access onto a Town, State or County highway for purposes of ingress and egress.
4. Site must have only one entrance and one exit, each of which must be at least 100 feet from intersections, other driveways, and said exit and entrance must be in conformance with AASHTO-Geometric Design of Highways and Streets – Stopping Sight Distance requirements.
5. The boundaries of the area of the site proposed for excavation must be a minimum linear distance of 400 feet from the closest residences, businesses, schools, and public gathering places.
6. The boundaries of the area of the site proposed for excavation must be set back a minimum linear distance of 200 feet from property lines (unless adjoining use is “Mining” or “Excavation” in which case the setback shall be 100 feet), roads, rights-of-way, wetlands, and watercourses.
7. All structures, parking areas, loading areas, and truck staging areas must be set back a minimum linear distance of 300 feet from property lines (unless adjoining use is “Mining” or “Excavation” in which case the setback shall be 150 feet), roads, rights-of-way, wetlands, and watercourses.
8. If the excavation uses propose to include blasting or processing of materials, the areas where such activities will take place must be a minimum linear distance of 2,000 feet from property lines and off-site roads.
9. The uses shall not endanger stability of adjacent structures, or adversely affect wetlands, watercourses, residential, commercial, or municipal water supply or sewage disposal systems, and existing drainage flow patterns or systems.
10. The excavation shall not adversely affect any environmental, cultural, or historic features of significance to the community, as determined by the relevant SHPO and SEQR review.
11. All uses must be able to be screened from public view.

12. No phases of uses shall cause dust or other airborne particles, vibrations, odors, or glare beyond the property lines of the site.
13. The site must be able to sustain appropriate roadside landscaping, berms, and/or fencing.
14. Appropriate truck routes and transportation facilities must be available for the volume and type of truck traffic involved.
15. Noise from any phase of the use shall not interfere with the quiet enjoyment of neighboring properties.
16. The use shall not adversely alter the prevailing character of the surrounding neighborhood or area or depress the property values in the surrounding area and shall not create traffic hazards or nuisances.
17. Upon completion of the excavation, the disturbed site shall be reasonably suitable for development of allowed uses in zoning districts where property is located once the operations have terminated.

B. Excavation Site Plan Requirements: The site plan that is required for excavation along with the special permit shall show and the Planning Board shall review the following:

1. The entrance to and exit from the excavation on Town roads.
2. The location, construction, and maintenance of haul roads on the site.
3. Setbacks from property lines and streams.
4. The locations of natural or manmade barriers to restrict access to the site.
5. Dust control measures.
6. Hours of operation.
7. A Reclamation Plan that identifies how the site could be suitable for a future productive use once excavation is complete. Such future uses could include but not be limited to: industrial, commercial, and recreation.
8. The Planning Board may set the requirements for the above on a site-by-site basis in order to protect the character of the surrounding land uses and neighborhoods, to control traffic impacts, and to protect the natural environment.

SECTION 6.6 JUNKYARDS

A junkyard as defined in Article 12 shall meet the following special permit requirements and conditions:

- A. No junkyard items shall be located so as to be visible from public roads or adjoining residential properties.
- B. No junk storage areas shall be located within:
 1. Three hundred (300) feet of any public park, church, educational facility, nursing home, public building or other place of public gathering;
 2. Three hundred (300) feet of any stream, lake, pond, wetland or other body of water;
 3. Three hundred (300) feet of any well used as a drinking water source;
 4. One hundred (100) feet of the right-of-way of any state, county or town road; or

5. Fifteen (15) feet of any fence or screening.
- C. Screening. Where a junkyard is or would be visible from a public highway or from neighboring properties, an eight (8) foot high opaque fence shall be provided to totally screen the junkyard from view. As an alternative, the Planning Board may permit screening of the junkyard by adequate planting of evergreen trees or shrubs. The Planning Board may waive the requirement of screening where the site cannot be effectively screened due to topography or where the existing topography of the site would effectively screen junk storage areas and provided that other measures are taken to adequately address the visual impact.
- D. Burning. No materials shall be burned in a junkyard.
- E. Burying. No junkyard items shall be buried in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see 6 NYCRR Part 360).
- F. If dismantling is part of the junkyard operation, the reports regarding the control and disposal of vehicular fluids that must be submitted to the Department of Environmental Conservation shall also be submitted to the Planning Board. Disposal of any waste products must comply with all applicable federal and state regulations.
- G. Lighting. Exterior lighting proposed for the site shall be planned, erected, and maintained in such a manner that it will not cast direct light or glare upon adjacent properties or upon any public right-of-way. No light source shall be higher than twenty (20) feet.
- H. Prior Existing Junkyards. Any person maintaining a junkyard prior to the effective date of this law shall apply for a special permit within 6 months days of the effective date of this law. Such application shall include a schedule indicating anticipated dates of compliance with the requirements set forth in paragraphs A, B and C of this Section. A special permit shall be issued conditioned upon the following: Within three (3) years of the effective date of this law, all junkyard items shall be arranged so as to comply with the requirements of paragraphs A, B and C of this Section. If at the end of such period the junkyard does not meet said requirements, such special permit shall be revoked, such junkyard operator shall be ordered to cease and desist from maintaining a junkyard, and all junkyard items shall be removed from the premises.

SECTION 6.7 SLAUGHTERHOUSES

A slaughterhouse as defined in Article 12 shall meet the following special permit requirements and conditions:

- A. Setback. No slaughterhouse shall be set back less than one hundred (100) feet from any side or rear lot line.
- B. Screening. Such operation shall be screened by hedges, trees, other plant materials, or fences, so as not to be visible from adjacent residential properties.
- C. Lighting. Exterior lighting proposed for the site shall be planned, erected, and maintained in

such a manner that it will not cast direct light or glare upon adjacent properties or upon any public right-of-way. No light source shall be higher than twenty (20) feet.

D. Disposal of any waste products must comply with all applicable federal and state regulations.

SECTION 6.8 ADULT USES

6.8-1 Legislative Intent.

In the development and execution of this chapter, it is recognized that Adult Use Establishments, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances and in close proximity of one another, thereby having a deleterious effect upon surrounding uses.. Special regulations of such uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood, thereby have a direct deleterious affect on the health, safety and general welfare of the Town and its inhabitants. The primary control or regulation is for the purpose of preventing a concentration of this use in any one area.

6.8-2 Adult entertainment uses, including but not limited to adult video or bookstores, adult theaters, adult entertainment clubs, are allowed in the Commercial District but require a special permit and are restricted as to location in the following manner in addition to any other requirements of this Law:

- A) Any of the above uses shall not be located within a radius of 500 feet of any residence.
- B) Any of the above uses shall not be located within a radius of 500 feet of another such use.
- C) Any of the above uses shall not be located within a radius of 500 feet of any school, church or other place of religious worship, park, playground or playing field.
- D) No more than one (1) of the above uses as defined in Article 12 herein shall be located on any lot.
- E) The five-hundred-foot radius herein shall be measured from the property line of the premises or zoning district boundary line, as the same shall be appropriate for such purposes herein.
- F) Signage shall only include the name of the establishment.

SECTION 6.9 COMMUNICATION FACILITIES

No communications facility, as defined in Article 12 (not including satellite dish less than 39”), shall hereafter be erected, moved, or modified except after the granting of a special permit by the Planning Board in conformity with the provisions of this section. No existing structure shall be modified or used to serve as a communications tower unless in conformity with this section.

6.9-1 Legislative Intent. The legislative intent of this section is:

- A. To establish clear standards for the siting of wireless communication facilities, buildings and structures, equipment, communication towers, antenna towers and monopoles.
- B. To promote the health, safety, and general welfare of the residents of the Town of Hamilton through the establishment of minimum standards to reduce the adverse visual

effects of communication facilities, including but not limited to, transmission towers and antennas, through the use of advanced technology, careful design, siting, and screening and buffering.

- C. To protect residential areas and land uses and property values from potential adverse impacts of towers and antennas.
- D. To minimize the total number of communication facilities and communication towers throughout the community.
- E. To encourage the joint use of new and existing communication tower sites as a primary option rather than construction of additional single-use communication towers while recognizing that collocation on higher towers is not always preferable to less visible, less obtrusive towers; thereby minimizing the use of existing communication towers or alternative antenna host sites, while not unreasonably limiting competition among communication providers or unreasonably limiting reception of receive-only antenna.
- F. To require users of communication towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is shown to be minimal.
- G. To require users of communication towers and antennas to configure them in a way that minimizes adverse visual, aesthetic and community character intrusion impacts caused by the installation and view of communication towers and antennas, through careful design, siting, landscape screening and buffering, sufficient setbacks to reduce visual impacts to adjacent properties, and innovative camouflaging techniques such as alternative tower structures, thereby protecting the physical appearance of the community and preserving its scenic and natural beauty.
- H. To avoid potential damage to adjacent properties from communication towers through careful engineering and appropriate siting of communication towers.
- I. To enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently by facilitating the siting of personal wireless communication facilities.

6.9-2 Definitions. Terms used in this section are defined in Article 12.

6.9-3 Compliance with SEQRA. The Planning Board shall comply with the provisions of the SEQRA. An application for approval of a major wireless communications facility shall constitute a Type 1 action under SEQRA.

6.9-4 Restrictions on use. No wireless communications facilities except those approved prior to the effective date of these regulations, shall be used, located, constructed or maintained on any lot, structure or land area unless in conformity with these regulations. No wireless communications facilities may hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a wireless communications facility unless in conformity with these regulations.

- A. All communication facilities shall at all times be in conformance with the rules and regulations of any governmental entity having jurisdiction over such communication facilities and uses, antenna and/or supporting structures and towers, including, without limitation, the Federal Communications Commission and Federal Aviation Administration (hereinafter referred to as “FCC” and “FAA”).
- B. All communication facilities shall be operated and maintained by FCC licensee only.
- C. All communication facilities shall be shown to be necessary to provide coverage to an area of Town which currently lacks adequate coverage and that any related

communication tower or antenna is proposed at the minimum height and aesthetic intrusion possible to provide adequate coverage. The applicant seeking to locate a communication facility in the Town of Hamilton shall demonstrate the need for new or additional antennas or communication towers.

- D. All communication facilities, proposed for placement on a lot that is within or abuts a residential district, shall prove that adequate coverage cannot be achieved by siting the facility on a lot which is not within, or does not abut, a residential district.
- E. All communication facilities shall be constructed and maintained in conformance with all building, electrical, fire prevention and other applicable codes.

6.9-5 Major wireless communications facilities.

A. Approved zoning districts. Major wireless communications facilities shall be permitted in the Agricultural-Residential and Commercial zoning districts requiring a special permit and site plan approval from the Planning Board. If it can be demonstrated by the applicant that there is not a site in the above-referenced zoning districts which would provide wireless communications capacity consistent with federal regulations, the Planning Board may determine that a major wireless communications facility may be permitted as a special permit use in another zoning district in accordance with the provisions hereinafter set forth.

B. Conditions precedent to granting site plan or special permit approval. The following items must be submitted as part of the communications facility application and no special permit shall be issued without such documentation having been submitted.

1. A service coverage map and report shall be provided. The service coverage map shall show and describe all existing and proposed areas of service coverage relating to the proposed communications facility. The service coverage map shall locate all existing sites in the Town and in bordering communities that contain communications towers or related facilities. A detailed report shall accompany the service coverage map and shall indicate why the proposed communications tower, equipment and facility are necessary. The report shall identify locations within the proposed project site service coverage area that are not, and could not be, served by either existing facilities, by collocation, utilization of alternative technology or an alternative tower structure.

2. A long-range communications facilities plan shall be provided, evidencing that the proposed location of the communication facility and supporting buildings and equipment has been planned to the result in the fewest number of communications transmissions tower locations within the Town. The Plan shall indicate how the applicant intends to provide service throughout the Town, and how the applicant plans to coordinate with all other providers of wireless communication services in the Town. The Plan shall address the applicant's planned and possible location of additional tower sites, additional antennas, related service area coverage, and alternative long-range plan scenarios that illustrate the potential effects of multiple towers and tower height, community intrusion impacts and visual and aesthetic impacts.

3. Documentation, sufficient to demonstrate that the proposed communication tower height and bulk are the minimum height and bulk necessary, to provide licensed communication services to locations within the Town which the applicant is not able to serve with existing facilities in the project site area, shall be provided, including evidence that visual, aesthetic and community character intrusion impacts have been minimized to the greatest extent practicable.

4. Demonstration that shared use is impracticable. At all times, the shared use within existing tall structures (for example, multistory buildings, church steeples, farm silos, etc.) and upon existing approved towers shall be preferred to the construction of major wireless communications facilities including new wireless communications towers and/or monopoles. The Planning Board may issue a permit for a major wireless communications facility only when the applicant demonstrates that shared use of an existing structure or site is impractical. An applicant shall be required to present a report inventorying all existing structures within one-half mile of the proposed site that are at an elevation which renders them potential sites. The report shall describe opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate that the applicant used its best efforts to secure permission for shared use from the owner of each existing facility as well as documentation of the physical, technical and/or financial reason why shared usage is not practical in each case. The applicant's written request and the property owner's written responses for shared use shall be provided.

5. Commitment for future shared use. New wireless communications towers shall be designed to accommodate future shared demand for reception and transmitting facilities. The applicant shall submit to the Planning Board an irrevocable letter of intent committing to the owner of the proposed new tower and its successors in interest, to permit shared uses of the proposed tower by other telecommunications providers in the future. This letter shall also be filed with the Building Inspector prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the site plan approval following a hearing and opportunity to be heard. The letter shall commit the new tower owner and its successors in interest to the following:

- a. To notify all carriers licensed to provide telecommunications services within the Town of its application and that it will entertain requests for collocation.
 - b. To respond within 90 days to a request for information from a potential shared-use applicant.
 - c. To use best efforts and negotiate in good faith concerning future requests for shared use of the tower by other telecommunications providers.
 - d. To allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all of the costs of adapting the tower of equipment to accommodate a shared user without causing electromagnetic interference.
6. A written certification shall be submitted, prepared by a qualified engineer

and/or health physicist which calculates the maximum amount of nonionizing electromagnetic radiation (NIER) which will be emitted from the proposed wireless communications facility and demonstrates that any such emissions from the facility will be within the threshold levels adopted by the Federal Communications Commission, as of the day of application and as part of certification required herein.

C. Additional required information. The following information shall also be required in order to complete a communications facility application:

1. Visual impact assessment:
 - a. A viewshed analysis in order to determine locations where the tower and appurtenant facilities may be visible.
 - b. Graphic representation of before and after views from key viewpoints located inside and outside of the Town including, but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public residential developments and from any other location where the site is visible to a large number of visitors or travelers.
 - c. Assessment of alternative tower designs and color schemes, as described in Subsection C(2), below.
 - d. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
2. Tower design. A report regarding alternative tower designs which includes lattice and monopole structures and other designs to minimize visual impacts. The Board may request a review of the tower design by a qualified engineer in order to evaluate the need for, and the design of, any new and potential alternatives. All designs to be considered shall be required to include, at a minimum, the following characteristics:
 - a. Towers shall be designed to accommodate future shared use by other wireless communications providers;
 - b. Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its degree of impact;
 - c. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners and streamers;
 - d. Any new tower shall be securely mounted to withstand damage from earthquakes and the wind and ice loads for the place of installation in accordance with New York State Uniform Fire Prevention and Building Code; and
 - e. The height of any new tower shall be the minimum height necessary, considering shared use, to meet the minimum requirements of the Federal Communications Commission for coverage of the service area encompassing the Town of Hamilton;

3. Fully engineered site plan. A site plan showing, at a minimum, all existing roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.

4. Engineer's report. A report by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities and, if a monopole or tower is required or the electrical engineer is not qualified to certify the structural soundness of the installation, a New York State licensed engineer specializing in structural engineering. The report shall contain the following information:
 - [a] Name(s) and address(es) of person(s) preparing the report;
 - [b] Name(s) and address(es) of the property owner, operator and applicant;
 - [c] Postal address and section, block and lot number of the property;
 - [d] Zoning district in which the property is situated;
 - [e] Approximate size of the property and the approximate location of all lot lines;
 - [f] Approximate location of nearest residential structure;
 - [g] Approximate location of nearest occupiable structure;
 - [h] Approximate location of nearest day care center, school, camp or recreational park;
 - [i] Approximate location of all structures on the property which is the subject of the application;
 - [j] Approximate location, size and height of all proposed and existing antennae and all appurtenant structures;
 - [k] Type, size and location of all proposed and existing landscaping;
 - [l] The number, type and design of the antenna(e) proposed and the basis for calculations of capacity;
 - [m] The make, model and manufacture of the antenna(e);
 - [n] A description of the proposed antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color, grounding and lighting;
 - [o] The frequency, modulation and class of service of radio equipment;
 - [p] Transmission and maximum effective radiated power of the antenna(e);
 - [q] Certification that the proposed antenna(e) will not cause interference with existing communication devices;
 - [r] Elevation drawings depicting the front, side and rear of the property, illustrating the proposed antenna, mounting device and structure, if any, on which the antenna(e) is mounted;
 - [s] A map depicting and listing all existing sites in the Town and

bordering communities containing transmitting antenna(e) used by the operator, owner of applicant; and

[t] All applications, communications and permits submitted to and issued by the Federal Aviation Administration.

5. The Planning Board may, in a proper case, waive one or more of the forgoing requirements set forth in this section and may require additional reports or evidence that it deems necessary to ensure the health, safety and welfare of the community are adequately addressed.

6. Intermunicipal notification. In order to keep neighboring municipalities informed, and to facilitate the consideration of shared use of existing tall structures in a neighboring municipality, and to assist the continued development of communication for emergency services, the applicant shall provide the following additional notice of the application:

a. Notification in writing to the municipal clerk of any adjoining municipality within one mile of a proposed site or a greater distance if determined by the Board to be impacted by a proposed new telecommunications tower.

b. Notification in writing by certified mail of all landowners within 1,000 feet of the property line of the parcel on which a new tower is proposed.

7. Location, lot size and setbacks. Any proposed wireless communications towers and its accessory structures shall be located on a single parcel and shall comply with setback requirements as identified below.

a. Distance from public facilities. In order to protect the health, safety and welfare of children who may be injured by falling ice or debris, all wireless communication towers shall be a distance of not less than 1,000 feet from the nearest school, day-care center, camp, public park or playground, or residence and/or dwelling unit.

b. Lot size of major wireless communications facilities sites shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased, the entire area required shall be leased from a single parcel.

c. Wireless communications towers shall be located with a minimum setback from any property line equal to the height of the tower in any zoning district, except, however, if the applicant can demonstrate that the fall zone for the structure can be safely accommodated on a smaller size parcel or with reduced setbacks to no less than the minimum bulk requirements in the underlying Zoning District, the Planning Board shall have the discretion to reduce the size accordingly. The applicant must demonstrate that there is adequate protection to adjoining properties from the dangers of falling ice or debris through either an easement or other safeguards. The Planning Board shall make findings of fact justifying a reduction and shall impose such additional conditions that the Board may deem appropriate to protect the health, safety and welfare. Accessory structures shall comply with the minimum setback requirements in the underlying district.

d. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice fall or debris from tower failure and preserve the privacy of any adjoining residential and public properties.

8. Vegetative screening and fencing.
 - a. Landscaping. All communication facilities shall provide landscaping as follows:
 1. All communications towers shall be located and designed to have the least possible adverse visual and aesthetic effect on the environment.
 2. The area surrounding the installation, other than the area necessary to maintain a clear line of sight to the signal source, shall be landscaped and maintained with trees, shrubs, and ground cover to maximize screening and visual buffer with meets or exceeds the above requirements may be substituted or enhanced for said requirements.
 3. Screening and buffering, utilizing trees of a height and density established by the Planning Board that will, over time, reduce visual impacts resulting from the installation of said facility, shall be provided.
 4. The outside security fencing shall be screened with evergreen shrubs, trees or climbing evergreen material on the fencing.
 5. The base of any communication tower and any accessory structure shall be effectively screened using primarily vegetative screening, including a continuous evergreen screen planted in a natural setting and consisting of native plant species. Existing vegetation shall be preserved to the maximum extent practicable. Additional planting shall be required, as necessary, to screen and buffer all structures from nearby properties or important viewsheds of scenic areas. All landscaping shall be properly maintained to ensure continued screening and buffering.
 - b. Security and safety fencing. Security and safety fencing shall be located around all communication towers, equipment and related facilities to restrict unauthorized access. Access to all structures shall be through a locked gate or principal building. Fencing shall be designed to minimize visual and aesthetic impacts and shall be equipped with appropriate anticleimbing devices. Failure to maintain said security and safety fencing in an appropriate manner shall be grounds for immediate revocation of all permits and certificates of use by the Building Inspector. In addition:
 1. All communication towers, antenna towers or monopoles, and other supporting structures shall be made inaccessible to nonauthorized persons, particularly children, and shall be constructed or shielded in such a manner that they cannot be climbed.
 2. All transmitter controls that could cause the transmitter to deviate from its authorized operating parameters shall be designed and installed in such a manner that they are readily accessible only to persons authorized by the licensee to operate or service them.
 3. All transmitters used with in-building radiation systems shall be designed in such a manner that, in the event an unauthorized person does gain access, that person cannot cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other stations.
 4. All transmitters (other than hand-carried or pack-carried mobile

transmitters) and control points shall be equipped with a visual means of indicating when the control circuitry has been put in a condition that should cause the transmitter to radiate.

5. All transmitters shall be designed in such a manner that they can be turned off independently of any remote control circuits.
- c. Coloring and marking. Unless otherwise required by the FAA or FCC, all communication facilities, including antenna and communication towers, shall be colored, camouflaged and/or shielded to blend with surrounding areas, provided such coloring, camouflage and/or shielding do not inhibit their effectiveness. The painting or marking of such facilities shall have a finish or coloring which will minimize visual and aesthetic impacts. Towers and all appendages shall generally have a galvanized finish and shall be painted gray or blue gray, or some other finish or color that is shown to be visually unobtrusive.
- d. Signals and lights. No communication tower, antenna tower or monopole shall include any signals, lights or illumination unless required by the FAA or other applicable authority. The applicant shall provide evidence mandating any requirement for lighting. If lighting is required, said lighting shall be shown to cause the least disturbance to surrounding properties and views. Any lighting necessary for accessory structures or buildings shall be minimized and shall be properly shielded to prevent light emission and glare onto adjacent properties.
- e. Signage. No signs, including advertising signs, shall be permitted on any antenna, communication tower, antenna tower or monopole, or antenna support structure except as follows:
 - [1] Signs specifically required by a federal, state, or local agency.
 - [2] Each site shall include a sign containing the name of the owner and operator of any antenna present, including an emergency phone number. In addition, any door having access to a roof-mounted antenna and all entrances to the fenced enclosure shall be similarly signed.
 - [3] Any signage permitted above shall comply with the sign regulations of the Town Code.
- f. Undergrounding of electrical power and noise suppression. All electrical power supply to service the on-site buildings and appurtenances supporting the tower antenna operations shall be installed underground. Noise suppression shall be utilized in the structural design and construction of the tower support buildings and appurtenances.
- g. Access parking:
 1. Access. Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the top of the fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
 2. Parking. Parking shall be provided on-site in an amount determined by

the Board based upon recommendation from the applicant. No parking shall be located in any required front yard.

6.9-6 Minor wireless communications facilities.

Minor wireless communications facilities as defined in Article 12 are a permitted use in all zoning districts within the Town of Hamilton.

- A. Minor wireless communications facilities permitted upon issuing of a building permit only. An application to collocate a wire communications facility upon an existing wireless communications facility designed for collocation, may be approved by the Building Inspector after referral and consultation with the Town Engineer by issuance of a building permit incorporating the regulatory requirements of this Law.
- B. Minor wireless communications facilities permitted upon site plan approval. An application for any other minor wireless communications facility shall be subject to site plan review by the Planning Board. The Planning Board may require the applicant to submit any of the items required for submission in major wireless communications facilities applications as part of the site plan review process.
 - 1. An application for site plan approval of a minor telecommunications facility shall include the following:
 - [a] A completed site plan application form;
 - [b] Consent from the owner of the existing facility to allow shared use;
 - [c] A site plan. The site plan shall show all existing and proposed structures and improvements including antennae, road, buildings, guy wires and anchors, parking and landscaping and shall include grading plans for new facilities and roads. Any methods used to conceal the modification to the existing facility, shall be indicated on the site plan;
 - [d] An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure, will not hamper existing emergency networks and explaining what modifications, if any, will be required in order to certify the above.
 - [e] A copy of the applicant's Federal Communications Commission (FCC) license.
 - [f] The Planning Board may waive any of the above requirements if it is demonstrated by the applicant that under the facts and circumstances the submission of such documentation would cause an unnecessary and undue hardship.
 - 2. The Planning Board may add any other documentation, reports or evidence that it deems necessary to ensure the health, safety, and welfare of the community is adequately addressed.

6.9-7 Required to be imposed on all approvals.

A. Removal. Any antenna, communication facility, communication tower, antenna tower or monopole, including any supporting structure and related appurtenances, or part thereof, that is not used for a period of six months in any twelve-month period, shall be removed and the site

restored by, and at the expense of, the owner of the property or the operator of said facility. An extension of an additional six months may be granted by the Building Inspector upon a written request, including proof as determined reasonable by the Building Inspector that the owner is actively engaged in the marketing of the property for sale or rent. In the event the tower is not removed and the site restored as herein required, the Town, after notice and opportunity to be heard, may cause the same to be removed and the site restored as the expense of the property owner collectible in the same manner as a real property tax.

B. Operational certification. Within 45 days of initial operation or modification of a wireless communication facility, the owner or operator shall submit to the Code Enforcement Officer a written certification by a professional engineer that the operation facility is in compliance with the application submitted, any conditions imposed, and all other provisions of this chapter as a condition to continue operating past the forty-five-day period. The Town may confirm and periodically reconfirm compliance as necessary to insure that the provisions of this chapter, including NIER level thresholds, as set forth by the FCC are in compliance. The owner/operator of the facility shall supply all necessary documentation to permit the Town to make such a determination regarding compliance is restored.

C. Reimbursement of review expenses. All costs and expenses incurred by the Planning Board in connection with its review and approval of an application for a wireless communication facility shall be reimbursed to the Town by the applicant prior to final approval.

D. Existing installations. The current operator of any communication facility or communication tower, antenna or monopole, existing at the time that these regulations take effect, shall be permitted to remain in operation, provided the operator submits proof within six months of the enactment of these regulations that a valid building permit was issued for the facility and that the facility complies with current emission standards as recommended by the FCC. Any legal nonconforming communication facility or communication tower shall be permitted to remain until such time as said use and facility is altered, at which time the compliance herein shall be brought in. Any facility for which emission and security compliance documentation is not received shall cease operation within six months of the enactment of these regulations and shall be immediately removed thereafter

SECTION 6.10 COMMERCIAL WINDPOWER FACILITIES

6.10-1 APPLICABILITY AND APPLICATION MATERIAL

- A. Windpower facilities located in the Town of Hamilton that produce electrical power for commercial sale or for use in a commercial enterprise require a special permit from the Planning Board. The objective of the application is to have all pertinent information collected and available for review by relevant parties. The Owner shall submit all application materials to the Town Clerk pursuant to the requirements of Article 8. The application for a special permit requires documentation of relevant information pursuant to section 6.10-2, below, and compliance with the requirements, standards and procedures of Article 8 as well as the following information:
 - 1. The application will include a project summary providing (a) a general description of the project including its approximate generating capacity, potential equipment manufacturers, types and numbers of windpower facilities, maximum height of wind power towers, maximum diameter of rotor(s), general location of the project; and (b) a description of the

Applicant, Owner and Operator, including their respective business relationship;

2. The name(s), address(es) and telephone numbers of the Applicant, Owner and operators and all owners of land upon which the windpower facilities are planned;
 3. A site plan or plans, drawn to specified scales for the installation of the windpower facilities, including the location of each tower, guy lines and anchor bases, service drives, fencing and grating, soil protection/restoration locations and permanent meteorological towers. The plan or plans must include any properties, setback lines, public access roads and turnout locations, substations, electrical cabling from the tower(s) to the substation(s), ancillary equipment, third party transmission lines and layout of all structures within the geographic boundaries of any applicable setback;
 4. The required studies, reports, certifications and approvals demonstrating compliance with the regulations of Section 6.10-2, below.
 5. Any other information normally required by the Planning Board pursuant to Article 8.
 6. A completed SEQR Long Form Part 1.
- B. The applicant will notify the Planning Board of any changes in the information provided that occur while the special permit approval is pending. Additions of new windpower facilities to an existing or permitted project require issuance of a new special permit from the Planning Board.
- C. Permit Timetable. When a Windpower Special Permit application is approved, construction must begin within 12 months of the approval date, and the Owner has a total of 18 months to make a Windpower Facility operational.
- D. Resale of the Windpower Facility and/or Windpower Project. Any new owners or operators shall be subject to all Town regulations and requirements enabling the issuance of the special permit and permit terms, conditions and requirements.

6.10 – 2 REGULATIONS AND REQUIREMENTS:

A. Design and Construction:

1. Windpower facilities shall conform to applicable industry standards including those of the American National Institute (“ANSI”). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories or an equivalent third party.
2. A professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the windpower facilities

are within accepted professional standards, given local soil and climate conditions.

3. During construction the Applicant shall secure the services of a certified electrical engineer to inspect and oversee the entire project delivery system for safety and quality assurance and report findings to the Code Enforcement Officer.
 4. All service roads should meet specifications of Town Hamilton Highway Superintendent and Town Board.
- B. Controls and Brakes: All windpower facilities shall be equipped with a redundant braking system including aerodynamic over speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.
- C. Electrical components: All electrical components of windpower facilities shall conform to local, state and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission). All power transmission lines from any windpower facility to on-site substations shall be underground.
- D. Color: Towers and blades shall be painted a non-reflective, unobtrusive color that should be selected to blend in with the surrounding environment. No advertising or commercial logos or insignias shall be visible on the structures.
- E. Compliance with FAA regulations: The applicant for the windpower project must demonstrate compliance with all applicable FAA requirements. A full description of the warning light plan must be provided with the application.
- F. Warnings: A reasonable warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. Visible, reflective objects such as flags, reflectors or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 15 feet from the ground.
- G. Climb protection: All windpower facilities must be protected by anti-climbing devices such as fences with locking portals at least 6 feet high or anti-climbing devices 12 feet vertically from the base of the tower.
- H. Setbacks:
1. All towers shall be set back at least 1,000 feet from any primary structure and from property lines. The distance for the above setback shall be measured from the point of the primary structure foundation or property line to the center of the closest windpower facility tower foundation. The Planning Board may waive the setback requirement, but only where the waiver furthers the mitigation of impacts and in no case shall a tower used for commercial power generation be located closer to a primary structure or property line less than two times the windpower tower height.

2. The minimum height of the end of rotor blades above ground surface shall be 30 feet.
3. All towers shall be set back a distance of 1,000 feet from the right-of-way line of public roads. In circumstances where a Windpower Project is proposed to be on both sides of a public road, the Planning Board may waive this setback requirement but only where the waiver furthers the mitigation of impacts and in no case shall towers be located closer than two times the windpower tower height from public roads.
4. All towers shall be set back at least 1,000 feet from third party transmission lines and communication towers.
5. Underground cables related to wind power facilities shall run no closer than 300 feet to the nearest primary structure foundation, livestock barn or stable.
6. All towers shall be set back a distance of at least 1.5 times the windpower tower height from any other windpower tower.
7. No wind turbines shall be located within eight (8) rotor hub heights (of the model of turbine used) of an existing residence, unless either:
 - a. Documentation based on accepted software designed for the purpose is presented demonstrating that the residences would not be affected by seasonal flicker (the casting of moving shadows by rotor blades at certain predictable times of the day and year) or;
 - b. Applicant submits a legally binding agreement requiring the shutting down of turbines casting the shadow flicker during the identified time periods of the identified days, for each year of operation, when shadow flicker would fall on a Primary Structure.
8. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

I. Viewscape impacts:

1. The arrangement of windpower facilities within a project and relative to adjacent projects should minimally impact the viewscape of primary structures within the project viewshed. Clustering of windpower facilities within a project should be done so as to limit the horizontal angular viewshed to 20 degrees as viewed one mile from the closest facility. Projects which exceed this will be considered to have significant viewscape impact. [note: typical view is 140-150 degrees]
2. The Planning Board shall assess the viewscape impact with regard to the number of properties and primary structures impacted (historic sites or structures nearby, imported scenic views and viewsheds), and the potential for future development. Projects with significant viewscape impact may be denied permits on that basis alone.

3. The Applicant shall provide a digital elevation model visibility map showing the impact of the project on the viewscape. The scale used shall permit display of a minimum five-mile radius from the proposed site with a scale no smaller than 1 inch per mile using a base map locating all roads and primary structures within the five-mile radius.
4. The Applicant shall provide 3x5" color photographs showing the view from the proposed project site in a 360 degree arc, and similar photographs from all primary structures located within one mile of the project site that illustrate the possible viewscape impact on those structures (digitally enhanced simulation photos illustrating proposed facilities on the project site are preferred and may be required by the Planning Board).

J. Use of public roads:

1. An applicant, owner or operator proposing to use any town road from the purpose of transporting any and all materials related to windpower facility development (construction, operation, maintenance) shall:
 - a. Identify such public roads and contact the Town Superintendent of Highways, Madison County Public Works or NYS Department of Transportation (NYSDOT) (whichever has jurisdiction over the subject roads) to obtain permission regarding weight and size limits for use of all truck routes prior to construction. The applicant must include documentation of this contact and permission.
 - b. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Town of Hamilton or Madison County highway superintendent must approve this survey for Town or County roads, respectively.
 - c. If applicable, secure financial assurance in an appropriate amount and form as agreed upon by the Town for the purpose of modifying or repairing any damage to Town of Hamilton roads caused by constructing windpower facilities. The County or NYSDOT may also require such financial assurance for roads under their jurisdiction.

K. Emergency Agencies and Hazardous Material:

1. The Operator of a Windpower Facility will provide local fire departments and emergency service agencies with documentation of appropriate actions in case of emergency circumstance at the projects. Such documentation shall include the locations of all emergency shutdown controls, location of any potentially hazardous materials, and site maps showing access routes.
2. The Operator will provide emergency plan updates to the Town of Hamilton should any changes in operation or facility occur.

3. All solid and liquid wastes related to the construction, operation and maintenance of a windpower facility shall be removed from the site and disposed of in accordance with applicable laws. Handling, transport and storage of wastes shall likewise be done in accordance with applicable laws.
- L. Interference with communications systems: The Applicant shall provide evidence in the form of test results or engineering studies that the windpower facilities proposed will not interfere with microwave, cellular or television/radio transmission/reception to or from existing primary structures and fixed broadcast, retransmission or reception antennas. If after construction the Owner or Operator receives a written complaint related to such interference, the Owner or Operator shall take reasonable steps, including provision of alternative communications, to respond to, and resolve, the complaint. The Owner or Operator shall provide the Planning Board with a report on the complaint; steps taken to respond to the complaint; steps taken to resolve the complaint and current status. Such report shall be submitted to the Planning Board within 30 days of the date that the complaint was received by the Owner or Operator. The Planning Board shall have the authority to temporarily suspend or revoke the special permit if a meritorious complaint is not satisfactorily resolved until such time that the complaint is satisfactorily resolved. The Owner or Operator shall be provided with an adequate opportunity to be heard before the Planning Board renders a final decision on the matter.
- M. Noise Levels: The Applicant shall provide documentation that the minimum noise level generated by wind power facilities shall be no more than 50 dba as measured at the property lines. The Owner or Operator will provide results of annual noise testing demonstrating compliance with the minimum noise level. Failure to meet minimum noise level may result in revocation to the special permit for the facility.
- N. Wildlife Impacts:
1. The Applicant shall demonstrate the Project proposed will not infringe upon any designated wetlands and that appropriate measures will be taken to minimize soil erosion and watershed impacts. Appropriate State/Federal wetland permits need to be filed and approved and submitted with the application.
 2. The Applicant shall provide the results of a survey covering one full year by a qualified professional such as an ornithologist or biologist to determine if the Project will have a substantial adverse impact on birds and/or bats. Such surveys, including radar and acoustic monitoring should be done in accordance with the latest guidelines from NYSDEC or USF&WS.
 3. To minimize collisions with wildlife the lighting system for the site shall be designed in accordance with latest USF&WS guidelines.
- O. Liability Insurance: The Owner or Operator of wind power facilities shall maintain a current general liability policy covering bodily injury and property damage with limits agreed upon by the Town.

- P. Decommissioning plans: Prior to the granting of a special permit for project development, the Owner or Operator shall formulate a decommissioning plan for review and approval by the Planning Board.

The Decommissioning Plan shall include:

1. Provisions describing the triggering events for decommissioning of wind power facilities;
 2. Provisions for the removal of structures, debris and cabling, including those below the soil surface;
 3. Provisions for the restoration of the soil and vegetation;
 4. A timetable approved by the Planning Board for site restoration;
 5. An estimate of the decommissioning costs certified by a Professional Engineer.
 6. Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to the Professional Engineer's certified estimate of decommissioning costs;
 7. Identification of and procedures for Town of Hamilton access to Financial Assurances;
 8. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator or any of their successors, assigns, or heirs;
 9. A provision that the Town of Hamilton shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning;
 10. Removal of machinery, equipment, tower, and all other materials related to the project is to be completed within one year of decommissioning.
- Q. Annual Operating Report: The Owner or Operator shall submit an annual operating report to the Town of Hamilton by January 30 that summarizes yearly operations including total electrical power generation in the previous 12 months, changes in technical aspects of operations on the site, status of all individual Windpower Facilities including information on noise levels, and changes in business arrangements of the Owner or Operator. In addition the report shall include proof of an annual insurance liability policy and proof of financial assurance.

SECTION 6.11 PRIVATE WINDPOWER FACILITIES

6.11-1 APPLICABILITY AND APPLICATION MATERIAL

Windpower facilities located in the Town of Hamilton that produces electrical power for private residential power consumption on the property where the windpower facility is to be located require a site plan approval from the Planning Board. The objective of the application is to have all pertinent information collected and available for review by relevant parties. The Owner shall submit all application materials to the Town Clerk pursuant to Article 9 and this section.

1. The application will include a project summary providing a general description of the project including its approximate generating capacity, potential equipment manufacturers, of windpower facility, maximum height of wind power tower, maximum diameter of rotor(s), general location of the project;
 2. The name(s), address(es) and telephone numbers of the applicant and all owner of land upon which the windpower facilities are planned;
 3. A site plan or plans, drawn to specified scales for the installation of the windpower facility, including the location of the tower, guy lines and anchor bases, service drives, fencing and other appurtenances;
 4. Any other information normally required by the Planning Board pursuant to Article 8.
 5. A completed SEQR Short Form Part 1.
- E. The applicant will notify the Planning Board of any changes in the information provided that occur while the site plan approval is pending.
- F. Permit Timetable. When a Windpower site plan application is approved, construction must begin within 12 months of the approval date, and the Owner has a total of 18 months to make a Windpower Facility operational.
- G. Resale of the Windpower Facility. There shall be no resale of the windpower facility except as part of the conveyance of the parcel on which it is located.

6.11–2 REGULATIONS AND REQUIREMENTS:

A. Design and Construction:

1. Windpower facilities shall conform to applicable industry standards including those of the American National Institute (“ANSI”). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories or an equivalent third party.
2. A professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the windpower facilities are within accepted professional standards, given local soil and climate conditions.

3. During construction the Applicant shall secure the services of a certified electrical engineer to inspect and oversee the entire project delivery system for safety and quality assurance and report findings to the Code Enforcement Officer.
- B. Controls and Brakes: All windpower facilities shall be equipped with a redundant braking system including aerodynamic over speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.
 - C. Electrical components: All electrical components of windpower facilities shall conform to local, state and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission). All power transmission lines from any windpower facility to on-site substations shall be underground.
 - D. Color: Towers and blades shall be painted a non-reflective, unobtrusive color that should be selected to blend in with the surrounding environment. No advertising or commercial logos or insignias shall be visible on the structures.
 - E. Climb protection: All windpower facilities must be protected by anti-climbing devices such as fences with locking portals at least 6 feet high or anti-climbing devices 12 feet vertically from the base of the tower.
 - F. Setbacks:
 - a. All towers shall be set back at least two times the windpower tower height.
 - b. The minimum height of the end of rotor blades above ground surface shall be 20 feet.
 - c. All towers shall be set back a distance of two times the windpower tower height from public roads.
 - d. All towers shall be set back at least two times the windpower tower height from public roads.
 - G. Viewscape impacts: The location of windpower facilities within a parcel and relative to adjacent properties should minimally impact the viewscape of primary structures located on adjacent properties.
 - H. Interference with communications systems: The windpower facility shall not interfere with microwave, cellular or television/radio transmission/reception to or from existing primary structures and fixed broadcast, retransmission or reception antennas on adjacent or nearby properties. If after construction the Owner receives a written complaint related to such interference, the Owner shall take reasonable steps, including provision of alternative communications, to respond to, and resolve, the complaint. The Owner shall provide the Planning Board with a report on the complaint; steps taken to respond to the complaint; steps taken to resolve the complaint and current status. Such report shall be submitted to the Planning Board within 30 days of the date that the complaint was received by the Owner. The

Planning Board shall have the authority to temporarily suspend or revoke the special permit if a meritorious complaint is not satisfactorily resolved until such time that the complaint is satisfactorily resolved. The Owner shall be provided with an adequate opportunity to be heard before the Planning Board renders a final decision on the matter.

- I. Noise Levels: The Applicant shall provide documentation that the minimum noise level generated by wind power facilities shall be no more than 50 dba as measured at the property lines.
- J. Wildlife Impacts:
 - a. The Applicant shall demonstrate the Project proposed will not infringe upon any designated wetlands and that appropriate measures will be taken to minimize soil erosion and watershed impacts. Appropriate State/Federal wetland permits need to be filed and approved and submitted with the application.
 - b. To minimize collisions with wildlife the lighting system for the site shall be designed in accordance with latest USF&WS guidelines.
 - c. Removal: As a condition of the site plan approval, the Owner shall agree to the removal of structures, debris and cabling, if the windpower facility is no longer in use for a period of greater than one (1) year.

ARTICLE 7 SPECIAL FLOOD HAZARD AREA REGULATIONS

The following regulations are enacted to protect the health, safety, and welfare of the inhabitants of the Town of Hamilton from hazards due to periodic flooding. Such regulations shall apply to the construction or significant alteration or installation of any principal building or structure located or to be located in Special Flood Hazard Areas as designated and mapped by the Federal government (These maps are maintained in the office of the Town Clerk and the Code Enforcement Officer). All uses and construction of new structures within the Special Flood Hazard Areas shall be subject to the issuance of a special permit by the Planning Board.

SECTION 7.1 Regulations

- 7.1-1** No structure (temporary or permanent), fill for any purpose, deposit, obstruction, storage of materials or equipment, or other uses shall be permitted which, acting alone or in combination with existing or future uses, will unduly affect the efficiency or the capacity of the floodway or unduly increase flood heights, cause increased velocities, or obstruct flow under flood conditions.
- 7.1-2** Structures shall have a low flood damage potential, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters (i.e., longitudinal axis parallel to the direction of flood flow, and placement approximately on the same flood flow lines as those of adjoining structures), and shall be firmly anchored to prevent flotation which may result in damage to other structures, restrictions of bridge openings and other narrowing of the stream or river. Service facilities such as electrical

and heating equipment shall be constructed at or above the flood protection elevation of the particular area or shall be flood-proofed.

7.1-3 The Planning Board shall require that the applicant submit a plan certified by a registered professional engineer that the flood-proofing measures are consistent with the flood protection elevation and associated flood factors for the particular area. Flood-proofing measures may be required for all buildings and structures, other than those which have a low flood damage potential. Such measures may include the following where appropriate:

- A. Anchorage to resist flotation and lateral movement;
- B. Reinforcement of walls to resist water pressures;
- C. Installation of watertight doors, bulkheads and shutters;
- D. Use of paints, membranes or mortars to reduce seepage of water through walls;
- E. Addition of mass or weight to resist flotation;
- F. Installation of pumps to lower water levels in structures;
- G. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters;
- H. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors;
- I. Elimination of gravity flow drains;
- J. Construction to resist rupture or collapse caused by water pressure or floating debris;
- K. Elevation of structures to or above the necessary flood protection elevation.

7.1-4 New or replacement water supply systems shall be so designed as to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

7.1-5 On-site waste disposal systems shall be located so as to avoid impairment or contamination from the systems during flooding.

7.1-6 Residential structures shall have the lowest habitable floor elevated to at least one foot above the 100-year flood.

SECTION 7.2 ADDITIONAL REQUIREMENTS

In addition to the above, any such use shall meet the following requirements:

7.2-1 Such use shall include flood-proofing measures consistent with the flood protection elevation and associated flood factors for the particular area in which construction is to take place; or

7.2-2 Any structure built on pilings shall be constructed with the lowest floor elevated to at least one foot above the 100-year flood level; or

7.2-3 Any structure built on solid fill shall be constructed at an elevation of the 100-year flood level with the lowest floor elevated to at least one foot above the 100-year flood level.

SECTION 7.3 SUBDIVISION REVIEW

All proposed subdivisions (including mobile dwelling parks) shall be planned so as to:

Minimize flood damage;

Locate and construct new utilities to minimize or eliminate flood damage; and

Provide adequate drainage.

SECTION 7.4 PROCEDURE

It shall be the responsibility of the applicant to illustrate the manner in which all of the preceding requirements are to be met. The code enforcement officer shall not issue a zoning or building permit until all requirements are accommodated in the plan of the applicant and a special permit has been authorized by the Planning Board.

These Special Flood Hazard Area regulations shall take precedence over other conflicting or less stringent laws and regulations.

ARTICLE 8 SPECIAL PERMITS

SECTION 8.1 PURPOSE AND APPLICABILITY

8.1-1 Purpose

Pursuant to the land use policies and goals of the Town of Hamilton, it is the policy of the Town of Hamilton to balance the allowance and encouragement of a variety of uses of land and to foster economic opportunities within the municipal boundaries of the Town, provided that such uses do not unreasonably and adversely affect neighboring properties, the natural environment, the rural and agricultural character of the Town or the long-term development of the Town. Many uses are, therefore, permitted only upon issuance of a Special Permit by the Planning Board in order to ensure that these uses are appropriate to their surroundings and satisfy performance criteria on a case by case basis. In some instance, approval of a site plan by the Planning Board is also required. In such cases, the applicant may request that the procedures for the special permit and site plan approval be run concurrently and such request will not be unreasonably denied.

8.1-2 Applicability

Uses requiring Special Permits are listed for each Land Use District in Article 4 of this Zoning Law. Accessory uses or structures used in connection with a Special Permit use shall be subject to the same Special Permit approval requirements as the principal structure or use.

SECTION 8.2 REQUIRED PLANS & SUBMITTALS

Because the impact of Special Permit uses varies greatly, the information required to be submitted for a Special Permit may vary depending upon the scale, intensity, nature of the proposed use and its proposed location. An applicant for a Special Permit shall submit at least one original and four copies of the following together with whatever other information the Planning Board deems appropriate:

- A. A Town of Hamilton Special Permit application form.

- B. A plot plan drawn to scale with accurate dimensions providing information sufficient to enable the Board to make an informed decision, and an agricultural data statement as defined in section 8.3-6 below.
- C. A narrative describing the proposed use and operation.
- D. A short-form or long-form SEQRA Environmental Assessment Form (EAF) with Part 1 fully completed by the applicant (a long-form EAF is required for all SEQRA Type I actions, but the Zoning Board of Appeals may require a long-form EAF for unlisted actions if the Board deems that the additional information contained on the long-form would be helpful and appropriate under the circumstances of the project proposal).
- E. The application fee as established by the Town Board, and an escrow deposit for reimbursement of cost of Town consultants (if required).
- F. The Planning Board may waive or add any requirements for an application submission if it deems appropriate in order to accomplish the purposes set forth herein.

SECTION 8.3 PROCEDURE

8.3-1 Application

- A. If an application is for a parcel or parcels on which more than one use requiring a Special Permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of reviewing an application (and for SEQRA compliance) all proposed uses on a single parcel or on contiguous parcels shall be considered together.
- B. In order for a Special Permit application to be placed on the Planning Board’s meeting agenda, the required application materials shall be submitted to the Town Clerk at least 7 days prior to the date of the Planning Board’s meeting. The application submittal shall include one original and eight (8) copies of all documents and plans. In order for a pre-application conference, as described in 8.3-2 below, to be scheduled, a request for such conference shall be in writing identifying the subject property, its owner and the proposed use, and shall be submitted 7 days prior to the meeting at which the conference is requested to be scheduled.
- C. At the first meeting at which an application is first presented as an agenda item, the Planning Board shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Planning Board shall notify the Applicant in writing as to what aspects of the application submittal are lacking or are otherwise insufficient to start the process. The time-frames for Planning Board action during the review process shall not commence until the submission of a fully complete application with supporting documents and materials and the determination by the Planning Board that the application is complete.

8.3-2 Pre-application Conference

It is recommended that before filing an application, the applicant should attend a Planning Board meeting to discuss the nature of the proposed use and to determine the information that will need to be submitted. The purpose of this meeting is for the Applicant and the Board to informally discuss the proposal and the relevant issues involved before the Applicant expends significant time or money in application submittals.

8.3-3 Application for Area Variance

Where a proposed Special Permit application contains one or more features which do not comply with the dimensional regulations of this local law, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to Article 10 without a decision or determination by the Code Enforcement Officer. The Planning Board shall decide whether such area variance application and Zoning Board of Appeals decision on same must occur as a condition to the issuance of the special permit, as a prerequisite for a complete special permit application, or in conjunction with the Special Permit process.

8.3-4 SEQRA Compliance

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days of its acceptance of a completed application, EAF and other supporting materials. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this Zoning Law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

8.3-5 Referral to County Planning Board

- A. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Madison County Planning Department or Board any application for a Special Permit affecting real property within 500 feet of the boundary of the Town of Hamilton, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239-l and 239-m, as amended.
- B. No action shall be taken on applications referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Department's review.
- C. County Disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the

County Planning Department because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

8.3-6 Agriculture Data Statement

- A. An agriculture data statement is required where the proposed use is located in, or within 500 feet of, the boundaries of an agricultural district.
- B. If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

8.3-7 Notice and Hearing

- A. The Planning Board shall hold a public hearing on a complete Special Permit application within 62 days from the determination of the Planning Board that the application is complete. The time in which a public hearing must be held may be lengthened only upon consent of the Applicant and Planning Board.
- B. At least five days prior to the date of such hearing, the Planning Board shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to all adjoining property owners and to any other property owners in the affected area that the Planning Board may require to be notified.

8.3-8 Criteria

In considering and acting on Special Uses, the Planning Board shall consider the public health, safety, and general welfare. The Board shall also consider potential environmental impacts and the comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area. The Board may prescribe such appropriate conditions and safeguards as may be necessary in order that the results of its action shall, to the maximum extent possible, further the accomplishment of the following objectives:

- A. **Compatibility.** That the proposed use is of a character compatible with the surrounding neighborhood, incorporates a site design which is consistent with the rural character of the town, and is in harmony with the land use policies and goals as officially adopted and/or Comprehensive Plan for the Town is one exists.
- B. **Vehicular Access.** That proposed access points are adequate in width, grade, alignment, and visibility; are not excessive in number; are located at appropriate distances from intersections or places of public assembly; and satisfy other similar safety considerations.
- C. **Circulation and Parking.** That adequate off-road parking and loading spaces are provided to minimize, or, where required, to eliminate the need for parking of vehicles on public highways by any persons connected with or visiting the site of the use; that the interior circulation system is adequate to provide safe accessibility to all required parking spaces; and that adequate separation of pedestrian and vehicular movements is provided.
- D. **Landscaping and Screening.** That all parking, storage, loading, and service areas are

reasonably screened at all seasons of the year from the view of adjacent residential areas and that the general landscaping of the site is in character with the surrounding areas. Such screening shall be maintained as a condition of the special permit.

- E. Natural Features. That the proposed use, together with its sanitary and water service facilities, are compatible with geologic, hydrologic, and soil conditions of the site and of adjacent areas and that existing natural and scenic features are preserved, and aquifers and watersheds are protected, to the maximum extent possible.

8.3-9 Action

- A. The Planning Board shall grant, deny, or grant subject to conditions the application for a Special Permit within 62 days after the hearing. Any decision by the Planning Board shall contain written findings explaining the rationale for the decision in light of the criteria contained in Section 8.3-8 and any other applicable provisions of this Law.
- B. In granting a Special Permit, the Planning Board may impose conditions that it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in this law and the Town of Hamilton Zoning Law. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

8.3-10 Expiration, Change of Use, Revocation, and Enforcement

- A. A Special Permit shall expire if the Special Permit use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary Certificate of Compliance or fails to comply with the conditions of the Special Permit within 18 months of its issuance, or if its time limit expires without renewal.
- B. A Special Permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Permit (as determined by the Code Enforcement Officer in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Special Permit shall require the granting of a new Special Permit or a Special Permit amendment.
- C. A Special Permit may be revoked by the Planning Board if the permittee violates the conditions of the Special Permit or engages in any construction or alteration not authorized by the Special Permit.

- D. Any violation of the conditions of a Special Permit shall be deemed a violation of this local law, and shall be subject to enforcement action as provided herein.

SECTION 8.4 FINDINGS REQUIRED

In granting or denying Special Permits, the Planning Board shall take into consideration the type, scale and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses, the requirements and purposes of this law and the policies and goals of the Comprehensive Plan. The Planning Board shall set forth its findings in writing as part of its decision-making process.

SECTION 8.5 AMENDMENTS

The terms and conditions of any Special Permit may be amended in the same manner as required to grant a Special Permit, following the criteria and procedures in this Section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a Special Permit amendment.

ARTICLE 9 SITE PLANS

SECTION 9.1 PURPOSE: Pursuant to the land use policies and goals of the Town of Hamilton, it is the policy of the Town of Hamilton to balance the allowance and encouragement of a variety of uses of land and to foster economic opportunities within the municipal boundaries of the Town, provided that such uses do not unreasonably and adversely affect neighboring properties, the natural environment, the rural and historic character of the Town or the long-term development of the Town. Many uses, therefore, require review and approval of a Site Plan by the Planning Board before such uses and site development is permitted. The purpose of Site Plan review and approval is to ensure that the site can accommodate the proposed use without unduly affecting neighboring properties or the environment and that the site appropriately designed.

SECTION 9.2 APPLICABILITY: Site Plan approval is required for certain uses where Site Plan approval is required as part of the criteria for a Special Permit or where Site Plan approval is required standing alone as indicated on the Schedule of Uses.

SECTION 9.3 PROCEDURES.

9.3-1 Application.

A. If an application is for a parcel or parcels on which more than one use requiring Site Plan approval is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others. For purposes of reviewing an application (and for SEQRA compliance) all proposed uses on a single parcel or on contiguous parcels shall be considered together.

D. In order for a Site Plan matter to be placed on the Planning Board's meeting agenda, the required application materials shall be submitted to the Town Clerk at least 7 days prior to the date of the Planning Board's meeting. The application submittal shall

include one original and eight (8) copies of all documents and plans. In order for a sketch plan conference, as described in 9.3-2 below, to be scheduled, a request for such conference shall be in writing identifying the subject property, its owner and the proposed use, and shall be submitted 7 days prior to the meeting at which the conference is requested to be scheduled.

- E. At the first meeting at which a Site Plan application is first presented as an agenda item, the Planning Board shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Planning Board shall notify the Applicant in writing as to what aspects of the application submittal are lacking or are otherwise insufficient to start the process. The time-frames for Planning Board action during the review process shall not commence until the submission of a fully complete application with supporting documents and materials and the determination by the Planning Board that the application is complete. As such, the scheduling of a sketch plan conference may resolve confusion and thereby save time by allowing an opportunity for the applicant and the Planning Board to identify what documentation will be expected in order to constitute a complete application.

9.3-2 Sketch Plan. A sketch plan conference should be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The use of the sketch plan conference is strongly encouraged since it may provide for a more efficient and predictable review process and save unnecessary costs. The intent of such a conference is to enable the applicant to inform the Planning Board of his proposal prior to the preparation of a detailed site plan, and for the planning board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. As such, an applicant is encouraged to schedule and attend the sketch plan conference. In order to accomplish these objectives, the applicant should provide the Planning Board with as much information as is practicable; the following is suggested:

- A. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measurements and features to comply with flood hazard and flood insurance regulations;
- B. A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features; and
- C. A topographic or contour map of adequate scale and detail to show site topography.
- D. All site plans are required to comply with the State Environmental Quality Review Act (SEQRA), and a long or short Environmental Assessment Form will be required.

Within 31 days after the sketch conference has been held, the Planning Board shall provide the applicant with a list of information to be submitted with the site plan application as well as any recommendations that the planning board may have with respect to the proposed application.

Section 9.3-3 Application for Site Plan Approval. An application for site plan approval shall be made in writing to the chairperson of the Planning Board and shall be accompanied by information contained on the following checklist. The application submittal shall include one original and eight (8) copies of all documents and plans. Where the sketch plan conference was

held, the accompanying information shall be drawn from the following checklist as determined necessary by the planning board at said sketch plan conference.

Site Plan Checklist.

- A. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
- B. North arrow, scale and date;
- C. Boundaries of the property plotted to scale;
- D. Existing watercourses;
- E. Grading and drainage plan, showing existing and proposed contours;
- F. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- G. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- H. Provision for pedestrian access if applicable;
- I. Location of outdoor storage, if any;
- J. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- K. Description of the method of sewage disposal and location, design and construction materials of such facilities;
- L. Description of the method of securing public water and location, design and construction materials of such facilities;
- M. Location of fire and other emergency zones, including the location of fire hydrants;
- N. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- O. Location, size and design and type of construction of all proposed signs;
- P. Location and proposed development of all buffer areas, including existing vegetative cover;
- Q. Location and design of outdoor lighting facilities;
- R. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
- S. General landscaping plan and planting schedule;
- T. An estimated project construction schedule.
- U. Record of application for and approval status of all necessary permits from state and county officials.
- V. Identification of any state or county permits required for the project's execution;
- W. A description of the proposed use or uses, including hours of operation, number of employees, expected volume of business, and type and volume of traffic expected to be generated.
- X. A Stormwater Pollution Prevention Plan (SWPPP) for all land development activities (excluding agricultural activities) on the site that results in land disturbance of 1-acre or more. An SWPPP shall comply with the requirements of the DEC SPDES MS-4 General Permit. It shall be at the discretion of the Planning Board as to whether an SWPPP or an erosion and control plan shall be required for land disturbance of less than 1-acre.
- Y. Other elements integral to the proposed development as considered necessary by the planning board.

9.3-4 Waivers: If the Planning Board finds that any of the information requirements as set forth above are not necessary to conduct an informed review, it may waive such information requirements as it deems appropriate. Any such waiver shall be made in writing, and shall

contain statements of the reasons why the waived information requirements are not necessary for an informed review under the circumstances. The Planning Board may grant such waivers on its own initiative or at the written request (that sets forth the specific requirements that are requested to be waived and the reasons for the requested waiver) of an applicant.

9.3-5 Review of site plan. The Planning Board's review of the site plan shall include, as appropriate, but is not limited to, consideration of criteria or requirements set forth this Zoning Law, the guidelines set forth in section 9.4 below, as well as the following general considerations:

- A. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. Signs and lights will be compatible and in scale with building elements and will not dominate the overall visual impact of the project and neighborhood.
- B. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- C. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- D. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- E. Adequacy of storm water and drainage facilities.
- F. Adequacy of water supply and sewage disposal facilities.
- G. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of the existing vegetation.
- H. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- I. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

9.3-6 Planning Board Action On Site Plan. Within sixty-two (62) days of the acceptance of a complete application for site plan approval, the Planning Board shall render a decision, file said decision with the Town Clerk, and mail such decision to the applicant with a copy to the Code Enforcement Officer. The Planning Board also has the discretion to hold a public hearing on the application if the Planning Board determines that there are factors involved (such as but not limited to potential public controversy, the desirability of input from adjoining property owners or the public at large) that warrant a public hearing. If the Planning Board determines to hold a hearing, it must be held within 62 days of the receipt of a complete application and the decision on the site plan must be made within 62-days from the close of the public hearing. The time within which a decision must be rendered may be extended by mutual consent of the applicant and Planning Board.

- A. Upon approval of the site plan, the Code Enforcement Officer has the authority to issue a Certificate of Compliance upon completion of the development of the site in strict accordance with the approved site plan and any conditions attached thereto.
- B. Upon disapproval of a site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a zoning permit to the applicant. The Planning Board shall also notify the applicant in writing, within seven (7) business days, of its decision and its reasons for disapproval. Such disapproval shall be filed with the Town Clerk.

9.3-7 Reimbursable costs. Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan as well as its implementation and inspection shall be charged to the applicant.

9.3-8 Performance guarantee. No certificate of compliance shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance guarantee shall be determined by the Town Board after consultations with the Planning Board, Code Enforcement Officer, Town Attorney and other appropriate parties.

9.3-9 Inspection of improvements. The Code Enforcement Officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate. If the site is not being developed in strict compliance with the approved site plan and any conditions attached thereto, the Code Enforcement Officer shall issue a stop work order and demand compliance with the approved site plan and any conditions attached thereto. An approved site plan may not be modified except by the Planning Board upon application for such modification from the applicant.

9.3-10 Integration of procedures. Whenever the particular circumstances of proposed development require compliance with either the special permit procedure in this Zoning Law or other requirements of the town, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

9.3-11 Application for Area Variance

Where a proposed Site Plan contains one or more features that do not comply with the dimensional regulations of this local law, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to Article 10 without a decision or determination by the Code Enforcement Officer. The Planning Board shall decide whether such area variance application and Zoning Board of Appeals decision on same must occur as a condition to the issuance of the special permit, as a prerequisite for a complete special permit application, or in conjunction with the Special Permit process.

9.3-12 SEQRA Compliance

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process (unless the process has been already commenced pursuant to the special permit process for the same project) by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within 20 days of its acceptance of a completed application, EAF and other supporting materials. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this local law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

9.3-13 Referral to County Planning Board

Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Madison County Planning Department any application for a Site Plan affecting real property

within 500 feet of the boundary of the Town of Hamilton, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239-1 and 239-m, as amended.

9.3-13.1 No action shall be taken on applications referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Department's review.

9.3-13.2 County Disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the County Planning Department because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

9.3-13.3 In the case of a project proposal which also requires a Special Permit, every effort shall be made by the Planning Board to avoid duplication of the County referral process. However, such determination shall be made by the Planning Board in cooperation with the Madison County Planning Department, since the Site Plan application may contain issues not addressed in the Special Permit process.

Section 9.3-14 Agriculture Data Statement

- A. An agriculture data statement is required where the proposed use is located in, or within 500 feet of, the boundaries of an agricultural district.
- B. If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Site Plan application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

SECTION 9.4 GUIDELINES

The Planning Board, in reviewing non-residential site plans, shall consider the guidelines set forth below.

- A. Layout and Design
 - 1. All structures in the plan shall be integrated with each other and with adjacent structures, shall have convenient pedestrian and vehicular access to and from adjacent properties, and shall, wherever possible, be laid out in a pattern consistent with the traditional forms found in the Town of Hamilton.

2. Individual structures on the site should be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, and placement.
3. Where feasible, setbacks shall maintain and continue the existing setback pattern of surrounding properties.
4. The Planning Board shall encourage the creation of landscaped parks or plazas easily accessible by pedestrians.

B. Landscaping

1. Landscaping shall be an integral part of the entire project area, and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.
2. Primary landscape treatment shall consist of shrubs, ground cover, and shade trees, and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape plants selected should be appropriate to the growing conditions of the Town's environment.
3. Where feasible, existing trees and other vegetation shall be conserved and integrated into the landscape design plan.
4. If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall shall be planted and maintained at 25- to 50-foot intervals along roads, at a setback distance acceptable to the Town Highway Superintendent.

C. Parking, Circulation, and Loading

1. Roads, driveways, sidewalks, off-street parking, and loading space shall be safe, and shall encourage pedestrian movement.
2. Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of service roads and new public streets to connect adjoining properties shall be required by the Planning Board, where appropriate.
3. Off-street parking and loading requirements of the Town of Hamilton Zoning Law shall be complied with, and parking areas shall be located behind buildings wherever possible.
4. Access from and egress to public highways shall be approved by the appropriate Highway Department, including Town, County, State, and Federal, to the extent that said Highway Department or Departments have jurisdiction over such access.
5. All structures shall be accessible by emergency vehicles.

D. Miscellaneous

1. Materials and design of paving, light fixtures, retaining walls, fences, curbs, benches, etc., shall be attractive and easily maintained.
2. The site lighting shall limit glare on adjacent roads and properties.
3. Drainage of the site shall recharge ground water to the extent practical. Surface waters flowing off-site shall not degrade any streams or adversely affect drainage on adjacent properties or public roads.
4. Dispersal of construction and demolition wastes shall meet all applicable local, county, state, and federal requirements.

- E. Reservation of Parkland
 - 1. For any site plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to Town Law, Section 274-a(6).

SECTION 9.5 ACTION

- A. The Planning Board shall approve, approve with modifications, or disapprove the Site Plan within 62 days after the determination by the Planning Board that the Site Plan and accompanying application is complete, or if a public hearing has been held, within 62 days after the close of the public hearing. Any decision by the Planning Board shall contain written findings explaining the rationale for the decision in light of the standards contained in this Zoning Law.
- B. In approving a Site Plan, with or without modifications, the Planning Board may impose conditions which it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in this Zoning Law. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

SECTION 9.6 EXPIRATION, CHANGE OF USE, REVOCATION, AND ENFORCEMENT

- A. A Site Plan shall expire if the Site Plan use or uses cease for more than 24 consecutive months for any reason, if the applicant fails to obtain the necessary building permit or Certificate of Compliance or fails to comply with the conditions of the Site Plan, or if its time limit expires without renewal.
- B. A Site Plan shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Site Plan (as determined by the Code Enforcement Officer in issuing a Zoning Permit or Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Site Plan shall require the granting of a new Site Plan or an amendment.
- C. A Site Plan approval may be revoked by the Planning Board if the applicant or the applicant's successor or assign violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
- D. Any violation of the conditions of a Site Plan shall be deemed a violation of this local law, and shall be subject to enforcement action as provided herein.

SECTION 9.7 FINDINGS REQUIRED

In approving or disapproving Site Plans, the Planning Board shall take into consideration the type, scale and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses, the requirements and purposes of this law and the policies and goals of the Comprehensive Plan. The Planning Board shall set forth its findings in writing as part of its decision-making process.

SECTION 9.8 AMENDMENTS

The terms and conditions of any Site Plan approval may be amended in the same manner as required to approve a site plan, following the criteria and procedures in this Article. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a site plan amendment.

ARTICLE 10 APPEALS AND VARIANCES

SECTION 10.1 ZONING BOARD OF APPEALS

10.1-1 General Rules – Interpretations and Variances

A. Appeals from Orders, Decisions, Requirements, Interpretations, Determinations of Code Enforcement Officer: The Zoning Board of Appeals is vested with the authority to interpret the provisions of the Zoning Law on an appeal from a written decision, determination, order, requirement or interpretation made by the Code Enforcement Officer. As such, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the written decision, determination, order, requirement or interpretation appealed from, and shall make such decision, determination, order, requirement or interpretation as in its opinion ought to have been made in the matter by the Code Enforcement Officer. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose written decision, determination, order, requirement or interpretation the appeal is taken.

B. Authorization for Zoning Board of Appeals to Grant Variances: In accordance with Section 267-b of the Town Law of the State of New York, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Code Enforcement Officer or by referral from the Planning Board (limited to area variances) and after public notice and hearing, to vary or modify the application of any of the provisions of this law relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this law is observed, public safety and welfare secured, and substantial justice done. The specific standards for the grant of use and area variances are set forth below.

C. General Application Requirements for Variances: All applications for variances shall be accompanied by one original and five (5) copies of a plot plan, drawn to scale with accurate dimensions, showing the location of existing and proposed structures on the lot. An application for a use variance may require submission of an Agricultural Data Statement. The Zoning Board of Appeals may also request that the plan show the location of other improvements and/or natural features.

D. Termination or Lapse of Variance: Any variance that is not exercised within one (1) year of the date it is issued shall lapse without further hearing by the Zoning Board of Appeals.

10.1-2 Use Variances

A. The Zoning Board of Appeals, on appeal from a decision or determination of Code Enforcement Officer, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this law.

B. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the land use area or neighborhood;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

C. The Zoning Board of Appeals shall consider any Agricultural Data Statement and whether the variance would have an undue adverse impact on the farm operations identified by the Agricultural Data Statement.

D. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

10.1-3 Area Variances

A. The Zoning Board of Appeals shall have the power, upon an appeal from a determination of the Code Enforcement Officer that the applicant's proposal can not be approved by reason of its failure to meet the dimensional or area regulations of this law, to grant area variances from the area or dimensional requirements of this law

B. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making this determination the Board shall also consider:

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or land use area or overlay area; and
- (5) Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance.

C. The Zoning Board of Appeals, in granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

D. Imposition of Conditions: The Zoning Board of Appeals shall, in granting area variances, impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

SECTION 10.2 PROCEDURE FOR APPEALS

A. Meetings, Minutes, Records : Meetings of the Zoning Board of Appeals shall be open to the public as required in Article Seven of the Public Officers Law of the State of New York. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

B. Filing Requirements: Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the Town or Clerk's Office as the case may be, within ten (10) business days and shall be a public record.

C. Hearing Appeals: The Zoning Board of Appeals' jurisdiction shall be appellate only (except in the case of a referral from the Planning Board for an area variance) and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.

D. Time of Appeal: Such appeal shall be taken within sixty (60) days after the filing in the Town Clerk's office of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer. The appeal shall be taken by filing with the Code Enforcement Officer and with the Town Clerk a notice of appeal, specifying the grounds thereof and the relief sought. One original and five copies of the appeal or application form and all supporting documentation must be filed with the Town Clerk at least 7 days prior to a Zoning Board of Appeals meeting in order to be on that meeting agenda. The Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The Zoning Board of Appeals, in its discretion, may request the Planning Board to make a recommendation on such matter and such recommendation shall become part of the record but shall not be binding upon the Zoning Board of Appeals.

E. Stay Upon Appeal: An appeal shall stop all proceedings relating to the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a Court of competent jurisdiction. The application for a stay shall be on notice to the Code Enforcement Officer and with due cause shown.

F. Hearing on Appeal: The Zoning Board of Appeals shall schedule and hold a public hearing on the appeal or other matter referred to it within 62 days of the date that the application for the appeal is considered complete by the Zoning Board of Appeals and give public notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Zoning Board of Appeals prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The time within which the Zoning Board of Appeals must hold a public hearing may be extended by mutual consent of the applicant and the Zoning Board of Appeals.

G. Time of Decision: The Zoning Board of Appeals shall decide the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the board.

H. Filing of Decision and Notice: The decision or draft minutes of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within ten (10) business days after the day such decision is rendered, and a copy thereof mailed to the applicant. The minutes, as approved by the Zoning Board of Appeals, shall be filed in the Town Clerk's office within ten (10) business days of the meeting at which the minutes were approved.

I. Notice to Park Commission and County Planning Board or Agency or Regional Planning Council.

At least five days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal; and to the county Planning Board or agency or regional planning council, as required by Section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of Section 239-m of the General Municipal Law.

J. Compliance with State Environmental Quality Review Act: The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act. The following actions of the Zoning Board of Appeals do not require review under the State Environmental Quality Review Act: Granting of individual setback and lot line variances; granting of an area variance(s) for a single-family and a two-family dwelling; and appeals involving only interpretations of the Zoning Law and not variances other than those area variances previously mentioned.

K. Rehearing: A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

SECTION 10.3 CONDUCT OF BUSINESS

- A. The Zoning Board of Appeals may employ such clerical or other staff or consulting assistance as may be necessary, provided that it shall not incur expenses beyond the amount of appropriations made available by the Town Board for such purposes.
- B. The Zoning Board of Appeals shall have the power to promulgate written rules of procedure, by-laws, and forms in order to fulfill its responsibilities under this Local Law.
- C. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The concurring vote of a majority of all members shall be necessary to take action on any matter before it.
- D. The Zoning Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every decision. If a member is absent or fails to vote, the minutes

shall so indicate. Every rule and regulation, every amendment or repeal thereof, and every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

SECTION 10.4 EXPIRATION OF APPEAL DECISION

Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building or other permit or approval within six months of the date of such decision.

SECTION 10.5 STAY OF PROCEEDINGS

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in his or her opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Officer for due cause shown.

SECTION 10.6 GRANT OF VARIANCE

The grant of a variance shall serve as authorization for the Code Enforcement Officer to issue a building and/or zoning permit, provided that the project complies with all applicable provisions of this Zoning Law and other applicable regulations.

ARTICLE 11 AMENDMENTS

SECTION 11.1 INITIATION

The Town Board, from time to time, may amend this Zoning Law, including the official Zoning Map, as provided in this Article upon its own motion or petition by one or more property owners, or by resolution of the Planning Board or Zoning Board of Appeals that requests a specific amendment of this Law. A property owner may apply for amendment to this Zoning Law with respect to changing the zoning classification of his property or the schedule of uses as applied to his or her property by filing one original and seven complete copies of an application with the Town Clerk. The application shall include a petition requesting the Town Board to amend a particular provision or provisions of this Zoning Law and/or the Zoning Map, a description of requested amendment, identification and description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee. In the case of a requested amendment that does not apply to an amendment of the Zoning Map or otherwise affecting specific properties, no properties need be identified as affected.

SECTION 11.2 REVIEW BY PLANNING AGENCIES

As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town and County planning agencies as required by this Article and by the laws of New York State.

11.2-1 Referral to Town Planning Board

The Town Board shall refer each requested amendment, no matter how initiated, to the Planning Board for a recommendation. No action shall be taken on the requested amendment referred to the Planning Board until its recommendation has been received by the Town Board, or 30 days have elapsed after such referral has been made, unless the Planning Board and Town Board agree to an extension beyond the 30-day requirement for the Planning Board's review and recommendation. The Town Board shall consider the Planning Board's recommendation but need not follow it.

11.2-2 Referral to County Planning Board

- A. Any proposed amendment affecting real property within 500 feet of the boundary of the Town of Hamilton, the boundary of any existing or proposed County or State park or other recreational area, the right-of-way of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, or the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated shall be referred to the Madison County Planning Department before final action is taken pursuant to section 239-m of the General Municipal Law.
- B. No action shall be taken on proposals referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the County Planning Department and the Town Board agree to an extension beyond the 30-day requirement for the County Planning Department's review.

SECTION 11.3 SEQRA COMPLIANCE

A proposed amendment to this Zoning Law shall constitute a Type I action under SEQRA. Upon receipt of the petition and application materials that the Town Board deems complete (or upon the formal introduction of a proposed amendment made upon the Town Board's own initiative), the Town Board shall initiate the SEQRA process by either circulating the application and full Environmental Assessment Form ("EAF") to all involved agencies, if any, or by issuing its determination of significance within 20 days of its formal introduction of a proposed amendment made upon the Town Board's own initiative or within 20 days of its acceptance of a completed petition and application, EAF and other supporting materials. Where the proposed action may have a significant effect on the environment, the Town Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this local law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

SECTION 11.4 PUBLIC HEARING AND NOTICE

No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard on the proposed amendment. The Town Board shall set, by resolution at a duly called meeting, the time and place for a public hearing on proposed amendments, and shall cause public notice to be published, posted and circulated as set forth below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for the costs of publication and circulation of notice.

11.4-1 Publication of Notice in Newspaper

Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.

11.4-2 Notice to Adjacent Municipalities

Written notice of any proposed amendment affecting property lying within 500 feet of an adjacent town shall be served in person or by mail upon the Clerk of such municipality at least 10 days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon, but shall not have the right to review by a court.

11.4-3 Notice to Adjacent Property Owners

Where a proposed amendment involves a rezoning of a particular parcel or parcels of property, written notice of any proposed amendment affecting such property shall be mailed to the owners of parcels of property adjacent to the property that is subject of the proposed rezoning.

SECTION 11.5 ADOPTION

The Town Board may adopt amendments to this Zoning Law by a majority vote of its membership, except in the case of local protest or disapproval by the County Planning Board as noted below.

11.5-1 Local Protest

The favorable vote of three-fourths (i.e., four) of the Town Board members shall be required for passage of any amendment which is subject to a written protest signed and acknowledged by 20% or more of the owners of land in any of the following areas:

- A. The land area included in the proposed amendment.
- B. The land area immediately adjacent to the area proposed to be changed and extending 100 feet therefrom.
- C. The land area directly opposite the area proposed to be changed and extending 100 feet from the road frontage of such opposite land.

11.5-2 County Disapproval

A majority-plus-one vote of all Town Board members shall be required to pass any proposal which receives a recommendation of disapproval from the County Planning Board because of the referral process specified in section 11.2-2 above, along with a resolution setting forth the reasons for such contrary action.

11.5-3 Consideration of Town Comprehensive Plan

The Town Board in deliberating on whether to adopt a proposed amendment to this Zoning Law, including but not limited to, a proposed rezoning of a parcel or parcels of

property or any modification to the Zoning Map, shall consider the proposed amendment in relation to the Comprehensive Plan and shall only adopt the proposed amendment if it is consistent and in accordance with the Comprehensive Plan.

SECTION 11.6 EFFECTIVE DATE

Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

SECTION 11.7 RIGHT TO COMPLETE PROJECT INCONSISTENT WITH AMENDMENT

Where a project for which a permit or approval has been lawfully issued, but no certificate of compliance has been awarded, would be rendered nonconforming by an amendment of this Zoning Law, such project shall have the right to be completed and to be awarded a certificate of compliance pursuant to the provisions in effect when the project permit was issued only if, in the case of a project primarily involving a building, the foundation has been completed prior to the effective date of the amendment, and, in the case of a project not primarily involving a building, a substantial amount of construction has been completed prior to the effective date of the amendment.

ARTICLE 12 DEFINITIONS

When used in this local law, the following terms shall have meanings set out below. Any term used in this Zoning Law which is not defined in this Zoning Law shall carry its customary meaning as defined in a generally accepted dictionary.

ACCESSORY USE : A structure or use that: (1) is subordinate in area, extent, and purpose to the principal use; (2) contributes to the comfort, convenience, or necessity of the principal use; and (3) is located on the same lot and in the same zoning district as the principal use.

ADULT USE: A use of a building or land for a business having as a significant portion of its stock-in-trade any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, photograph, figure, image, motion picture, sound recording, article, instrument, or any other written or recorded matter which is distinguished or relating to specified sexual activities or specified anatomical areas.

AGRICULTURE: An enterprise in which activities include the cultivation of food, fiber or horticultural crops or the raising of livestock or poultry, in accordance with the New York State Agriculture and Markets Law. Accessory uses such as the on-site retail sale of agricultural-type products, such as produce, food items, goods manufactured on the farm, shall be considered part of such agricultural use.

AGRICULTURAL DATA STATEMENT: An identification of farm operations within an agricultural district located within five hundred (500) feet of the boundary of property upon

which a subdivision is proposed, as provided in Section 305-a of the Agriculture and Markets Law of the State of New York. An "Agricultural Data Statement" shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred (500) feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.

AGRICULTURAL DISTRICT: A district created under Section 305 of the Agriculture and Markets Law with the intent to provide for the protection and enhancement of agricultural land as a viable segment of the local economy and environmental resource of major importance.

AGRICULTURAL RELATED BUSINESSES: Include the following:

AGRICULTURE, EQUIPMENT REPAIR: Land whose primary purpose is the storage, maintenance, and repair of machinery related to agricultural uses.

AGRICULTURE, LABOR HOUSING: Housing provided for and agricultural operation that meets the current definition for agriculture provided in the New York State Agricultural & Markets Law and that provides housing for laborers (and their families) working on the farm where the housing is provided. Such housing must be removed within 12-months from the time that it is no longer used for agricultural labor.

AGRICULTURE, NURSERIES AND GREENHOUSES (WITHOUT RETAIL): Land used for the cultivation of trees, shrubs and/or other plants are propagated for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before transplanting. This use does not include retail.

AGRICULTURE RESEARCH/DEVELOPMENT LABORATORIES: Land and/or structures used for experimentation in pure or applied research, design, development and production of prototype machines or of new products specifically related to agricultural uses, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

AGRICULTURE, ON-FARM FOOD PROCESSING ACTIVITIES WITH WHOLESALE AND RETAIL TRADE AREAS: A facility used for the cooking, dehydrating, refining, bottling, canning, or other treatment of agricultural products which prepares the naturally grown product for consumer use. May include wholesale and retail as secondary uses.

AGRICULTURE, RETAIL SALE OF FARM, NURSERY, AND RELATED PRODUCTS: An establishment whose primary purpose is the retail sale of farm, nursery, and related products, including but not limited to fruits, vegetables, and plants (includes farmers markets and farm stands not in conjunction with a working farm).

AGRICULTURE, TOURISM ACTIVITIES ON ONGOING FARM OPERATION: Land and/or structures utilized for agriculture-related tourism for visitors or residents, with the purpose of providing additional revenue to the primary establishment. This includes but is not limited to pick-your-own operations and special seasonal events.

AGRICULTURE, WAREHOUSING/WHOLESALE FARM/NURSERY PRODUCTS: Land and/or structures utilized for the storage of agricultural goods, wares, and merchandise whether for the owner or for others, and/or an establishment or place of business primarily engaged in selling and/or distributing agriculture-related merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

AGRICULTURAL STRUCTURES: Structures originally intended primarily or exclusively for support of an agricultural function, and exemplified by, but not restricted to, barns, silos, water towers, windmills, and greenhouses.

AGRICULTURAL STRUCTURES, RE-USE: In an effort to preserve agricultural structures and provide income to the owner when farming may no longer be enough to provide income to sustain the farm, such structures may be utilized to house compatible non-agricultural uses pursuant to review and issuance of a special permit.

ALTERATION: In regards to a structure, a change to or rearrangement of the structural parts or exterior appearance, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

APPLICANT: Any person, corporation or other entity applying for a building permit, certificate of occupancy, special permit, site plan, sign permit or subdivision approval, variance or zoning amendment.

BED AND BREAKFAST: An owner-occupied dwelling used for renting accommodations to transient, fee-paying guests and providing not more than one meal (breakfast) daily to lodging guests only.

BUILDING: A structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING HEIGHT: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof, excluding any appurtenances. When a lot fronts on two (2) or more streets of different levels, the lower street level shall be taken as the base for measuring the height of the building.

BUILDING PERMIT: An official document or certification that is issued by the building official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure.

BUILDING, PRINCIPAL: A building or structure in which is conducted the main or principal use of the lot on which it is located.

BUILDING SIZE: The total size of a building measured in square footage of the interior space (interior wall to interior wall) of all floors of the building.

BUFFER: A strip of land, fence, or border of trees, etc., between one use and another, which may or may not have trees and shrubs planted for screening purposes, designed to set apart one use area from another. An appropriate buffer may vary depending on uses, districts, size, etc., and shall be determined by the board with approval jurisdiction over the application.

CAFO: Acronym for Concentrated Animal Feed Operation. See definition below and at section 6.3-2 above.

CAMPSITE-COMMERCIAL: Any use of land area to be used for transient occupancy by camping in tents, camp trailers, travel trailers, motor homes, or similar movable or temporary sleeping quarters of any kind for a rental or fee.

CERTIFICATE OF COMPLIANCE: A statement, signed by the Code Enforcement Officer, setting forth that a building, structure, or use complies with the zoning ordinance and building codes and that the same may be used for the purposes stated on the permit.

CERTIFICATE OF OCCUPANCY: A document issued by the Code Enforcement Officer allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all the applicable Town approvals, laws and building codes.

CHANGE OF USE: When there is a change of use from one use category to another use category described in the table of uses of this law; when a use has exceeded the scope of its original permit; or when a use requires a new permit from any governmental agency. A change of

ownership or tenancy shall not be considered a change of use. When a change of use occurs, a new approval is required (e.g.: zoning permit, site plan approval or special permit) and compliance with all applicable provisions of this law and other regulations will be required.

CHURCHES/PLACE OF WORSHIP: A building, structure or use of land used for nonprofit purposes by a recognized and legally established religious sect wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

CODE ENFORCEMENT OFFICER: The individual who is appointed by the Town Board and authorized by this Chapter for purposes of administering and enforcing the provisions of this Chapter. The Code Enforcement Officer may also be the Building Inspector.

COLLEGE (HIGHER EDUCATION INSTITUTION): A post-secondary institution for higher learning that grants associate or bachelor degrees and may also have research facilities and/or professional schools that grant master and doctoral degrees. This may also include community colleges that grant associate or bachelor degrees or certificates of completion in business or technical fields.

COMMON LAND UNIT: An area of land consisting of whole fields that are currently being tilled, or have been tilled in recent years and are suitable for crop production at the present time.

COMMUNICATION FACILITIES (or COMMUNICATIONS TOWERS): Any site containing equipment used in connection with the commercial operation of wireless communications services, as defined herein, and as the term “personal wireless services facility” is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (c)(7)(C), or as hereafter amended to transmit and/or receive frequencies, including, but not limited to, antennas, monopoles, equipment, appurtenances and structures.

COMMUNICATION FACILITIES – CO-LOCATION: Any communication facility that is attached to, utilizes or co-locates on, an existing tower, structure or building.

COMPREHENSIVE NUTRIENT MANAGEMENT PLAN: A plan that addresses the management of animal waste products. (Required as part of application submission for a CAFO – Concentrated Animal Feedlot.)

CONCENTRATED ANIMAL FEED OPERATION (a/k/a CAFO or feedlot) – A lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate, or where the concentration of animals is such that a vegetative cover cannot be maintained within the enclosure. Open lots used for feeding and rearing of poultry (poultry

ranges) and barns, dairy farms, swine facilities, beef lots ad barns, horse stalls, mink ranches and zoos, shall be considered by be animal feedlots. Pastures shall not be considered animal feedlots. See section 6.3-2 for detailed definition.

CONSERVATION SUBDIVISION – (a/k/a Cluster Development) - A development design technique that concentrates buildings in specific areas on a site to allow remaining land to be used for agriculture, recreation, common open space, or the preservation of historically or environmentally sensitive features.

CONTRACTOR’S YARD: Storage yards operated by, or on behalf of, a contractor for storage of large equipment, vehicles, or other materials commonly used in the individual contractor’s type of business; storage of scrap materials used for repair and maintenance of contractor’s own equipment; and buildings or structures fro uses such as offices and repair facilities.

CUSTOMARY ACCESSORY STRUCTURE: A subordinate structure detached from but located on the same lot as a principal building. The use of an accessory structure must be identical and accessory to the use of the principal building. Accessory structures include but are not limited to private garages, sheds, decks, fences, tool-house, greenhouse not to exceed 750 square feet.

DAY CARE CENTER: A place other than an occupied dwelling that provides for the care of children. Those receiving care are not all related to each other by blood or marriage and are not legal wards or foster children of the attendant adults, and for which care a payment, fee, or grant is made. Of those receiving care, only dependents of a large care home operator may reside on the site.

DWELLING: A building or structure or portion thereof designed for occupancy by one family for residential purposes as a single housekeeping unit. In no case shall a motor home, trailer coach, automobile chassis, tent or portable building be considered a dwelling.

DWELLING UNIT: A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrances, or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. The rental units/rooms in a boardinghouse, dormitory, motel, inn, nursing home or other similar building shall not be deemed to constitute dwelling units.

EXCAVATION: Extraction of minerals from the earth in an amount less than 1000 tons or 750 cubic yards of earth material during a period of twelve (12) successive months, (the threshold above which a permit is required pursuant to the New York State Mined Land Reclamation Law [Environmental Conservation Law Article 23, Title 27]), for commercial purposes such as gravel pits, rock quarrying, stripping of topsoil, subsoil removal, and/or removal of such materials for

sale, other than what may be required for the erection of buildings. This definition shall not apply to:

- A. The excavation or grading of an area necessary to prepare a site for construction in accordance with an approved building permit, site plan or subdivision plan, provided that the excavation takes place within the project site, does not involve the sale or exchange of mineral resources to off-site locations and is an integral part of the involved project activities.
- B. Excavations or grading undertaken to enhance the agricultural use of lands or to provide for structures or other improvements that benefit or are necessary for ongoing or imminent agricultural activities. This exemption applies only to excavations where the mineral removal and subsequent reclamation enhances the agricultural usability or productivity of the land.

FAMILY: One or more persons occupying a premises and living as a single housekeeping.

FINANCIAL ASSURANCE: The reasonable assurance from a credit worthy party, examples of which include a surety bond, trust instrument, cash escrow or irrevocable line of credit.

FISHING/HUNTING FOR FEE: The use of land for hunting and fishing where a fee is charged by the land owner or operator to allow individuals to hunt or fish. The use of land for hunting or fishing where no fee or other compensation is provided is not included in this term and does not need any permit or approval under this law.

FLOOD HAZARD AREA (also referred to as Special Flood Hazard Area): The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. Such areas are designated by the letter A or V on the Flood Insurance, Rate Map (FIRM).

FOOD AND BEVERAGE SERVICE WITH DRIVE-THRU: A business enterprise primarily engaged in the sale of quickly prepared food and beverages selected by patrons from a limited line of prepared specialized items such as hamburgers, chicken, pizza, tacos, ice cream and hot dogs, for takeout and/or on-premises consumption (in the latter case, where orders are placed at a counter as opposed to table service via a waiter/waitress, in a facility where the floor area available for dining is less than ½ of the gross floor area, and a major portion of the sales to the public is at a drive-in or stand-up type counter). This term shall not include bakeries, delicatessens, or similar types of retail establishments.

FOOD AND BEVERAGE SERVICE WITHOUT DRIVE-THRU: Any premises where food and/or beverages are commercially sold for on-premises consumption to patrons seated at tables or counters and where table service is provided. Any facility without table service providing parking lot service to cars where the food is to be eaten outside of the structure and/or off the premises shall not be considered included in this term for the purposes of this law and shall be deemed to be a food and beverage service with drive-thru.

FUNERAL HOME: A building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services used in the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; and (e) facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.

GROUP HOME: A residential structure that is licensed to provide room, board, and supervised care, but not continuous nursing care, for unrelated adults over the age of 17.

HEIGHT: The vertical distance measured from the average finished grade along the wall of the building to the highest point of the roof for flat roofs, and to the mean height between the eaves and ridge for gable, hip and gambrel roofs. When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is on an antenna.

HOME OCCUPATION, MINIMAL IMPACT: An activity carried out for gain by a resident and conducted as an accessory use in the resident's dwelling unit or on the site of the residence. Minimal impact shall mean:

1. No employees working on the premises other than family members residing thereon;
2. No outside storage of equipment, vehicles, or materials used in the business other than an automobile for transportation;
3. No regular traffic to the site for other than mail service and occasional (e.g. semiweekly) deliveries and client/customer visits.

HOME OCCUPATION, NONMINIMAL IMPACT: An activity carried out for gain by a resident and conducted as an accessory use in the resident's dwelling unit or on the site of the residence. This use category contains all home occupations that do not qualify as minimal impact.

HOSPITAL/MEDICAL CLINIC: A facility or institution principally engaged in providing services for human health maintenance, including a hospital, nursing home, physical rehabilitation center, medical clinic or medical laboratory.

HOTEL: A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and with access to units primarily from interior lobbies, courts, or halls.

INDOOR RECREATION/ENTERTAINMENT: Any building or structure that provides recreational or entertainment that is housed indoors. This term includes but is not limited to movie theaters, stage theaters, concert halls, gyms, bowling alleys, indoor basketball or tennis courts, indoor public pools.

JUNKYARD: An area of land with or without buildings used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as waste paper, rags, or scrap metal, or used building materials, house furnishings machinery or parts thereof, or more than two (2) indoor household appliances or more than three (3) unregistered vehicles with or without dismantling, processing, salvage, sale, or use or disposition of same.

KENNEL: A use of property or structure which involves the housing of dogs in excess of five (5) dogs. A kennel that is used solely for the keeping of dogs for the residents located on the same property or for breeding purposes where no more than one dog is bred at any one time is considered a private kennel. A kennel that is used for the keeping or housing of dogs for a fee or for non-profit humane purposes (with or without attendant commercial services such as grooming, breeding or veterinary care or adoption services) is considered a commercial kennel.

LANDOWNER: The owner of the land upon which a use, building or facility is located.

LAND USE DISTRICT (a/k/a ZONING DISTRICT): An area or areas within the limits of the city for which the regulations and requirements governing use, lot, and size of building and premises are uniform.

LAW (also referred to as Local Law or Zoning Law): The Town of Hamilton Zoning Law as amended from time to time.

LARGE PRODUCT RETAIL: Establishments where goods are sold primarily at retail, but are large-scale, where the display of such merchandise cannot necessarily be displayed within a structure, and which requires a large amount of floor space. This includes equipment/heavy equipment, boats, machinery and farm machinery, and motor vehicle sales.

LOCAL LAW (also referred to as Law or Zoning Law): The Town of Hamilton Zoning Law as amended from time to time.

LOT: A parcel of land occupied or capable of being occupied by one or more buildings and the accessory uses or buildings customarily incident to it, including such open spaces as are required by this law.

LOT AREA: An area of land, the size of which is determined by the limits of the lot lines bounding said area and is usually expressed in terms of square feet or acres.

LOT OF RECORD: Any lot which has been duly established as such by plat, survey record or deed prior to the date of this law and filed in the office of the Madison County Clerk. Any lot created subsequent to the establishment of the Town of Hamilton subdivision regulations must have been approved by the Town of Hamilton Planning Board in order to be considered a lot of record.

MINING: Extraction of minerals from the ground for sale, exchange or for commercial, industrial, or municipal use in an amount equal to or more than 1000 tons or 750 cubic yards of earth material during a period of twelve (12) successive months, (the threshold above which a permit is required pursuant to the New York State Mined Land Reclamation Law [Environmental Conservation Law Article 23, Title 27]), for commercial purposes such as gravel pits, rock quarrying, stripping of topsoil, subsoil removal, and/or removal of such materials for sale, other than what may be required for the erection of buildings. This definition shall not apply to:

- A. The excavation or grading of an area necessary to prepare a site for construction in accordance with an approved building permit, site plan or subdivision plan, provided that the excavation takes place within the project site, does not involve the sale or exchange of mineral resources to off-site locations and is an integral part of the involved project activities.
- B. Excavations or grading undertaken to enhance the agricultural use of lands or to provide for structures or other improvements that benefit or are necessary for ongoing or imminent agricultural activities. This exemption applies only to excavations where the mineral removal and subsequent reclamation enhances the agricultural usability or productivity of the land.

MOBILE HOME: A structure, transportable in one or more sections, that is built on a permanent chassis and designed to be used as a dwelling unit when affixed to a permanent foundation or placed on a concrete slab and connected to the required utilities. This definition does not include a modular home.

MIXED USE: A lot and/or building which contains more than one use, each of which must be a permissible use in the land use district where the lot is located.

MOBILE HOME DWELLING PARK: A parcel of land that has been planned and improved for the placement of two or more mobile homes for dwelling purposes.

MODULAR HOME: Factory-manufactured housing, subject to the requirements and regulations of the New York State Uniform Fire Prevention and Building Code, in which prefabricated components assembled at the plant are sent to a housing site in two or more pieces, depending on the size and style of said housing, to be joined together to form a complete house on a permanent foundation. A Modular Home is deemed to be a one-family, two-family or multiple-family residential building as the case may be.

MOTEL: A building or series of buildings in which lodging is offered for compensation, and which is distinguished from a hotel primarily by reason of providing direct independent access to, and adjoining parking for, each rental unit.

MOTOR VEHICLE SERVICE: Any establishment involving automotive repair, services, or operations; this includes automotive service stations, auto body shops, bus and truck terminals, and car washes.

MULTI-FAMILY DWELLING: A building containing three or more individual dwellings with separate cooking and toilet facilities for each dwelling. This term includes apartments or cooperative or condominium ownership.

NONCONFORMING LOT: A lot of record that does not comply with the area, frontage, shape or other dimensional requirements of this law for the land use area in which it is located but was not in violation of the applicable requirements when it was created and that said lot was lawfully created. Any lot created subsequent to the establishment of the Town of Hamilton subdivision regulations must have been approved by the Town of Hamilton Planning Board in order to be considered a lot of record.

NONCONFORMING STRUCTURE: A structure that does not satisfy the dimensional or use requirements of this law for the area in which it is located, but which was not in violation of applicable requirements when constructed and was lawfully erected pursuant to applicable permits and approvals.

NONCONFORMING USE: Any use lawfully existing prior to and at the time of the adoption or amendment of this chapter or any preceding zoning law or ordinance, which use is not permitted by or does not conform to the permitted use provisions for the area in which it is located. A preexisting lawful use which is allowed only by special permit under this law shall be considered a "nonconforming use" until such time as a special permit is granted for it.

OFFICE: Establishment used for the organizational or administrative aspects of a trade, or used in the conduct of a profession or business, and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of sales representatives, architects, engineers, physicians, dentists, attorneys, insurance brokers, real estate brokers and persons with similar occupations.

ONE-FAMILY DWELLING: A detached building designed or occupied exclusively by one family and having two side yards, with at least 960 square feet of living area, erected on a permanent foundation, with/without basement and equipped for year-round occupancy.

OPERATOR: The entity responsible for the day-to-day operation and maintenance of the a use, building or facility, including any third party subcontractors.

OUTDOOR RECREATION/ENTERTAINMENT: Any use of land, with or without buildings, structures or facilities that provides recreation or entertainment opportunities or activities outdoors to the public for a fee. This term includes, but is not limited to, such use as golf courses, driving ranges, ski runs, cross country ski trails, go-cart tracks, outdoor stages, miniature golf courses, and batting cages.

OUTDOOR STORAGE: The storage of building supplies, raw materials, finished products, machinery and equipment outside the principal building and as permitted within certain nonresidential districts.

OWNER: The entity or entities with equity interest in the use, building or facility located on land in the Town of Hamilton, including their respective successors or designees.

PARCEL: An area of land with definite boundaries, all parts of which are owned by the same person(s) or entities, the boundaries of which were established by the filing of a deed in the Madison County Clerk's office.

PERMITTED USE: A use that is allowed via issuance of a zoning permit without any other approval required under this law such as site plan approval, special permit or variance.

PERSONAL SERVICE: Any use of land, structure or building which provides a service to persons for a fee in a non-office setting. This term includes but is not limited to barber shops, salons, day spas, dry-cleaners, laundromats, and banks.

PLANNING BOARD: The duly created and appointed Planning Board of the Town of Hamilton with jurisdiction and authority provided in this Zoning Law and the Town of Hamilton Subdivision Regulations.

PLOT PLAN: A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions and submitted with an application for a special permit or a variance.

PRIVATE UTILITY: Any facility, equipment, service, structure or use of land that provides a utility service to the general public. This term does not include utility service to local homes, businesses and properties.

PRIMARY STRUCTURE: The structure that one or more persons occupy for the majority of time for personal or business reasons. Primary structures include residences and commercial buildings, for example.

PROFESSIONAL ENGINEER: A qualified individual who is licensed as a professional engineer in any state in the United States.

PUBLIC BUILDINGS: Any building or structure principally of an institutional nature and serving a public need, such as governmental offices, churches, hospitals, schools, libraries, museums, post offices, police and fire stations, public utilities, and other public services, but not including the operation of a commercial enterprise.

PUBLIC PARK, PLAYGROUNDS, PLAYFIELDS: A land use or developed recreation area designed principally to offer recreation, passive or active, to the public. Such areas may contain a playground, picnic area, as well as fields for competitive sports such as baseball, football, or soccer. Bleachers or grandstands, restrooms and other accommodations may be provided.

RESEARCH FACILITY: A building for experimentation in pure or applied research, design, development and production of prototype machines or of new products, and uses accessory thereto, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

RETAIL, LARGE-PRODUCT: Establishments where goods are sold primarily at retail, but are large-scale, where the display of such merchandise cannot necessarily be displayed within a structure, and which requires a large amount of floor space. This includes equipment/heavy equipment, boats, machinery and farm machinery, and motor vehicle sales.

RETAIL (GENERAL): Stores and shops where goods are sold primarily at retail. Such sales are primarily made directly to the consumer and include, but are not limited to, goods such as food and beverages; florists; shoes and clothing; hardware; paint and wallpaper; carpeting; hobby and crafts; books; furniture; antiques; art supplies; music; pharmacies; jewelry; photographic supplies; pets; gifts; stationery; sporting goods; fabrics; optical goods; launderette/Laundromat and appliances, but excluding lumber yards, restaurants, and fast-food restaurants. Outside storage or display of goods for such is permitted only with site plan approval by the Planning Board. General retail in the over 30,000 square feet category also includes shopping centers.

SATELLITE DISH (or Antenna): A device incorporating a reflective surface that is solid, open mesh, or bar configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit or receive radio or electromagnetic waves between terrestrially or

orbitally based uses. This definition is meant to include but not be limited to what are commonly referred to as satellite earth stations, TVROs (television reception only satellite dish antennas), and satellite microwave antennas. A satellite dish greater than 39 inches in diameter requires a special permit but a satellite dish less than 39 inches does not require any permit.

SEASONAL ACCOMMODATIONS: This term includes the use of any land, facilities or structures for the transient housing of guests other than group homes, hotels and motels, and includes such uses as camps, guest or vacation homes for pay and private clubs that offer overnight accommodations.

SENIOR HOUSING: A building, facility or complex consisting of three or more dwelling units, the occupancy of which is limited to persons 60 years of age or older. The facility may include medical facilities or care. Senior housing shall typically consist of multiple-household attached dwellings, but may include detached dwelling units as part of a wholly owned and managed senior project. Such term shall include assisted living, residential care or congregate care facilities, retirement housing, or combination thereof.

SETBACK: The minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

SEQRA: The State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and its implementing regulations codified in 6 NYCRR Part 617.

SIGN: A communication device, structure, or fixture that incorporates graphics, symbols, or written copy intended to promote the sale of a product, commodity, or service, or to provide direction or identification for the premises or facility.

SIGN PERMIT: A permit required for a sign to be erected pursuant to section 5.10 of this law.

SITE PLAN: A plan, rendering, drawing, or map prepared to the specifications and containing necessary elements, as set forth in Article 9 of this law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan including, but not limited to, building locations, roads, parking areas, and other site features.

SKETCH PLAN: A map, drawing or plan, at least drawn to approximate scale showing the boundaries of the parcel or site proposed to be subdivided or developed and the general proposal including lot layout, building locations, parking areas, roads and significant existing features.

SKETCH PLAN CONFERENCE: A meeting between the applicant and Planning Board, held at an open meeting of the Planning Board, for the purpose of discussing a proposal based upon a sketch plan prior to the submission of a formal application and the preparation of detailed plans.

SLAUGHTERHOUSE: A building used for the slaughtering of animals that are either raised or transported to the building and the processing and storage of animal products and waste that results from slaughtering process.

SOLAR EQUIPMENT (freestanding): Any solar collector, solar energy device or structure not attached to a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, cooling, water heating, or for power generation.

SPECIAL PERMIT: The permit required for all special uses pursuant to the standards and procedures set forth in Article 8 of this law.

SPECIAL USE: A use that, because of its unique characteristics, requires individual consideration through a review process and issuance of a special permit by the Planning Board as established by Article 8 of this law and § 274-b of the Town Law of the State of New York. Such a use may require the meeting of certain conditions and safeguards as well as site plan approval before being permitted.

STABLE: A structure or land use in or on which horses or ponies are kept for sale or sheltered, fed or kept for hire to the public. Breeding, boarding, training, riding lessons or riding may also be conducted.

STRUCTURE: Anything constructed, erected or placed that requires location on the ground or attached to something having location on the ground.

SUBSTANTIALLY COMMENCED: In the context of site plan review and special permits: The owner has lawfully begun construction pursuant to a validly issued building permit and installed foundations and all site plan infrastructure (e.g. roads, parking areas, drainage and septic systems).

SWIMMING POOL – PRIVATE: A swimming pool built accessory to a dwelling unit and used for the enjoyment of the family living therein. A swimming pool may serve a single-family dwelling(s), two-family dwellings, or multifamily dwellings, or combinations thereof, including pools owned or controlled by a neighborhood club or similar organization as long as the swimming pool and its location was part of the approval of the principal use.

TOWN BOARD: The duly elected legislative body of the Town of Hamilton.

TWO-FAMILY DWELLING: A building designed as a single structure, containing two separate living units, each of which is designed to be occupied as a separate permanent residence for one family.

USE: The purpose for which any premises may be arranged, designed, intended, maintained or occupied, or any occupation, activity or operation conducted or intended to be conducted on a premises.

USE, ACCESSORY: A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

VARIANCE: Written authority provided by the Zoning Board of Appeals to deviate from any regulations of this law pursuant to the requirements and procedures of Article 10 of this law.

VARIANCE, AREA: Written authority provided by the Zoning Board of Appeals to deviate from any dimensional requirements, restrictions or regulations of this law pursuant to the requirements and procedures of Article 10 of this law.

VARIANCE, USE: Written authority provided by the Zoning Board of Appeals to allow a use of land or buildings that would otherwise be prohibited by this law pursuant to the requirements and procedures of Article 10 of this law.

VETERINARIAN OFFICE/ANIMAL HOSPITAL: A facility for the medical or surgical care and treatment of animals, including veterinary clinics.

VIEWSCAPE: The range of view from a point toward the horizon including natural and man-made components.

VIOLATION: Non-compliance with any provision of this law or the terms and conditions of any permit, variance or approval issued under this law

WETLAND: Those areas that are inundated and saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas that are under the jurisdiction of either the New York State Department of Environmental Conservation or the Army Corps of Engineers, whether or not such jurisdiction is indicated on an official map.

WINDPOWER FACILITY, COMMERCIAL: Any wind-driven system that produces electrical power for commercial sale or for use in a commercial enterprise.

WINDPOWER FACILITY, PRIVATE: Single turbines designed solely for on-site power consumption and no sale of electrical power except what unused or excess power is resold to an electrical utility company with a generating capacity of less than 100kW.

WINDPOWER PROJECT: The collection of windpower structures and related facilities including substations for which a single permit may be sought.

WINDPOWER TOWER: The support structure to which the nacelle and rotor blade are attached.

WINDPOWER TOWER HEIGHT: The distance from the rotor blade at its highest point to the top surface of the tower foundation.

WOODLANDS; An area of land with the predominant feature being characterized by a more or less dense and extensive tree cover and includes both timberland and second-growth stands on areas that have at one time been cultivated.

YARD: An open space on the same lot with a structure.

YARD, FRONT: An open space extending across the full width of the lot between the front building line and the street line.

YARD, REAR: An open space extending across the full width of the lot between the rear lot line and the rear of the principal building nearest the rear lot line.

YARD, REQUIRED: That portion of any yard required to satisfy minimum yard setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

YARD, SIDE: An open space on the same lot with a principal building between the principal building and side line of the lot and extending from the front yard to the rear yard.

ZONING LAW: The local law, or laws, adopted by the Town Board which set forth the zoning regulations of the Town, as amended from time to time.

ZONING MAP: A map that graphically shows all zoning district boundaries and classifications within the city, as contained within the zoning code, which is signed by the community development director and on file in the planning department.

ZONING BOARD OF APPEALS: The duly created and appointed Zoning Board Appeals of the Town of Hamilton with jurisdiction and authority provided in this Zoning Law to hear appeals from decisions of the Code Enforcement Officer, make interpretations of provisions of the Zoning Law or grant variances.

ZONING PERMIT: A permit issued by the Code Enforcement Officer which verifies that a particular use and/or structure meets the requirements of the Zoning Law.