

**Town of Newfane, N.Y.**

**ZONING  
ORDINANCE**

**June 1, 1999**

## **TABLE OF CONTENTS**

### **ARTICLE I TITLE AND SHORT TITLE**

	<u>Page</u>
Section 1-1 Title	1
Section 1-2 Short Title	1
Section 1-3 Declaration of Purpose	1

### **ARTICLE II DEFINITIONS**

Section 2-1 Scope and Meaning of Certain Words and Terms	3
Section 2-2 Definition of Words and Terms	3

### **ARTICLE III APPLICATION OF REGULATIONS**

Section 3-1 General	13
Section 3-2 Use Regulations	13
Section 3-3 Dimensional Regulations	13

### **ARTICLE IV CLASSES OF DISTRICTS AND BOUNDARIES**

Section 4-1 Classes of Districts	14
Section 4-2 Boundaries of Districts on Zoning Map	14
Section 4-3 Purpose and Intent of the Districts	15
Section 4-4 Table of Uses and Standards	17
Section 4-5 Non-Listed Uses	18

### **ARTICLE V AGRICULTURAL AND RESIDENCE DISTRICT REGULATIONS**

Section 5-1 General	19
Section 5-2 Agricultural, Residence and Community Facility Districts - Table of Use Regulations	20
Section 5-3 Agricultural, Residence and Community Facility Districts - Table of Dimensional Regulations	25

**ARTICLE VI  
BUSINESS DISTRICT REGULATIONS**

	<u>Page</u>
Section 6-1 General	27
Section 6-2 Business Districts-Table of Use Regulations	28
Section 6-3 Business Districts-Table of Dimensional Regulations	32

**ARTICLE VII  
INDUSTRIAL DISTRICT REGULATIONS**

Section 7-1 General	33
Section 7-2 Industrial Districts-Table of Use Regulations	34
Section 7-3 Industrial Districts -Table of Dimensional Regulations	38

**ARTICLE VIII  
SPECIAL EXCEPTION USES**

Section 8-1 Delegation of Authority	39
Section 8-2 General Procedure and Conditions	39
Section 8-3 General Standards	40
Section 8-4 Special Conditions and Safeguards for Certain Special Exception Uses	41

**ARTICLE IX  
SUPPLEMENTAL USE AND DIMENSIONAL REGULATIONS**

Section 9-1 Placement of Accessory Buildings and Uses Including Garages and Offstreet Parking and Truck Loading Spaces	47
Section 9-2 Lot Area, Lot Coverage and Lot Width	48
Section 9-3 Height	48
Section 9-4 Yards	48
Section 9-5 Courts	49
Section 9-6 Spacing Between Buildings	50
Section 9-7 Corner Clearance	50
Section 9-8 Minimum Residential Floor Area	50
Section 9-9 Permitted Fences and Walls	51
Section 9-10 Waterfront and Stream Setbacks	52
Section 9-11 Minimum First Floor Elevations of Building	52
Section 9-12 Required Transitional Yards and Screening	52
Section 9-13 Produce Stands	52
Section 9-14 Regulation of Automobile Junk Yards	53
Section 9-15 Regulation of Cluster Development	54
Section 9-16 Regulation of Townhouses	55
Section 9-17 Supplemental Regulation of Mobile Home Parks	57

**ARTICLE X  
OFFSTREET PARKING AND TRUCK LOADING  
SPACE REQUIREMENTS**

	<u>Page</u>
Section 10-1 General	61
Section 10-2 Method of Determining Offstreet Parking Space Requirements	61
Section 10-3 Schedule of Offstreet Parking Space Requirements for Residential Uses	61
Section 10-4 Schedule of Offstreet Parking Space Requirements for Nonresidential Uses	62
Section 10-5 Offstreet Truck Loading Space Requirements	63
Section 10-6 Private Garages or Offstreet Parking Areas in Residence Districts - Supplemental Regulations	64
Section 10-7 Access Driveway Requirements	64
Section 10-8 Design Requirements for Offstreet Parking and Truck Loading Areas	64
Section 10-9 Exemptions and Waivers	65

**ARTICLE XI  
SIGN REGULATIONS**

Section 11-1 Schedule of Permitted Signs	66
Section 11-2 Professional Signs and Announcement Signs-Supplemental Regulations	67
Section 11-3 Business District Identification Signs - Supplemental Regulations	67
Section 11-4 Industrial District Identification Signs - Supplemental Regulations	68
Section 11-5 Real Estate and Construction Signs	68
Section 11-6 General Provisions	69

**ARTICLE XII  
NONCONFORMING USES AND NONCONFORMING  
BUILDING OR STRUCTURES**

Section 12-1 Application of Regulations	70
Section 12-2 Unlawful Buildings, Structures, or Uses	70
Section 12-3 Continuance	70
Section 12-4 Extension	71
Section 12-5 Change	71
Section 12-6 Abandonment	71
Section 12-7 Compulsory Termination	71

**ARTICLE XIII  
BOARD OF APPEALS**

	<u>Page</u>
Section 13-1 Organization and General Procedure	72
Section 13-2 Application and Public Hearing Procedures	72
Section 13-3 Appeals on Interpretation of the Zoning Ordinance and Map	74
Section 13-4 Variances	74
Section 13-4-4 Specific Types of Variances	75

**ARTICLE XIV  
ADMINISTRATION AND ENFORCEMENT**

Section 14-1 Interpretation	78
Section 14-2 Relation of Zoning Ordinance to Other Provisions of Law, and to Private Covenants and Agreements	78
Section 14-3 Enforcement	79
Section 14-4 Building Permits - General Procedure	79
Section 14-5 Building Permits for Single or Two Family Dwellings and Residential Accessory Structures	79
Section 14-6 All Other Building Permits - Site Plan Procedure and Standards	80
Section 14-7 Completion of Building for Which Permits Have Been Issued	85
Section 14-8 Certificates of Occupancy	86
Section 14-9 Fees	86
Section 14-10 Violations, Penalties and Remedies	86
Section 14-11 Procedures for Amendment	87

**ARTICLE XV  
VALIDITY**

Section 15-1 General	89
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**ARTICLE XVI  
WHEN EFFECTIVE**

Section 16-1 General	89
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**AN ORDINANCE PROVIDING  
FOR THE  
ZONING OF THE TOWN OF NEWFANE  
NIAGARA COUNTY, NEW YORK**

The Town Board of the Town of Newfane, pursuant to the Town Law, Chapter 62 of the Consolidated Laws, Article 16, Sections 261 to 269 inclusive, and the amendments thereof and supplements thereto, does hereby ordain and enact the following ordinance.

**ARTICLE I  
TITLE AND SHORT TITLE**

**1-1            Title**

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT, NUMBER OF STORIES AND SIZE OF BUILDING AND OTHER STRUCTURES, THE PERCENTAGE OF LOT THAT MAY BE OCCUPIES, THE SIZE OF YARDS, COURTS, AND OTHER OPEN SPACES, THE DENSITY OF POPULATION AND THE LOCATION AND USE OF BUILDINGS, STRUCTURES AND LAND FOR TRADE, INDUSTRY, RESIDENCE OR OTHER PURPOSE, IN THE TOWN OF NEWFANE; AND FOR SAID PURPOSES DIVIDING THE TOWN INTO DISTRICTS; AND PROVIDING FINES AND PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

**1-2            Short Title**

This ordinance shall be known and may be cited as "The Town of Newfane Zoning Ordinance of 1970, as amended 5/26/99."

**1-3            Declaration of Purpose**

1-3-1            This ordinance is adopted for the purpose of promoting the health, safety, or the general welfare of the community, and in furtherance of the following related and more specific objectives:

1-3-2            To guide and regulate the orderly growth, development, and redevelopment of the municipality in accordance with a comprehensive plan with long-term objectives, principles, and standards deemed beneficial to the interests and welfare of the people.

1-3-3            To protect the established character and the social and economic well-being of both private and public property.

1-3-4            To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate.

1-3-5            To secure safety from fire, panic, and other dangers, and to provide adequate light, air and convenience of access.

- 1-3-5 To secure safety from fire, panic, and other dangers, and to provide adequate light, air and convenience of access.
- 1-3-6 To prevent overcrowding of land or buildings, and to avoid undue concentration of population.
- 1-3-7 To lessen, and where possible, to prevent traffic congestion on public streets and highways.
- 1-3-8 To eliminate nonconforming uses gradually.
- 1-3-9 To conserve the value of buildings and to enhance the value of land throughout the municipality.
- 1-3-10 To conserve the value of buildings and to enhance the value of land throughout the municipality.
- 1-3-11 To conserve and reasonably to protect the natural scenic beauty of the municipality and its environs.

**ARTICLE II  
DEFINITIONS**

**2-1            Scope and Meaning of Certain Words, and Terms**

- 2-1-1            Unless the context clearly indicates the contrary, words used in the present tense include the future, the singular number includes the plural, and the plural the singular.
- 2-1-2            The word "PERSON" includes a profit or nonprofit corporation, company, partnership or individual.
- 2-1-3            The word "SHALL" is mandatory, and not discretionary; the word "MAY" is permissive.
- 2-1-4            The word "LOT" includes the word "PLOT" and the word "LAND."
- 2-1-5            The word "STRUCTURE" includes the word "BUILDING."
- 2-1-6            The word "USE" refers to any purpose for which a lot or land or part thereof is arranged, intended or designed to be used, occupied, maintained, made available or offered for use, erected, reconstructed, altered, enlarged, moved or rebuilt with the intention or design of using the same.
- 2-1-7            The word "USED" refers to the actual fact that a lot or land, building or structure, or part thereof, is being occupied or maintained for a particular "USE."

**2-2            Definition of Words and Terms**

- 2-2-1            **ACCESSORY USE, BUILDING OR STRUCTURE.**            A subordinate use, building or structure customarily incidental to and located on the same lot occupied by the main use, building or structure. The term accessory structure may include a private garage, garden shed, a private playhouse, and a private greenhouse.
- 2-2-2            **ALTERATION.**            As applied to a building or structure, a change or re-arrangement in the structural parts or in the exit facilities; or an enlargement, whether by extending on a side or by increasing in height; the term "alter" in its various modes and tenses and its principal form, refers to the making of an alteration.
- 2-2-3            **APARTMENT, IN-LAW.**            A portion of an existing single family dwelling, with or without separate entry, intended for occupancy of no more than two (2) family members who are infirm, elderly or handicapped and which does not constitute a separate unit under the Building Code. Such apartment shall not



exceed 500 square feet in living area and shall not alter the existing character of the building as a single family dwelling. (Amend. 5/26/99)

- 2-2-4 **BASEMENT.** A story partly underground but **HAVING LESS THAN HALF OF ITS CLEAR** height below finished grade, A basement shall be counted in determining the permissible number of **STORIES** of a **BUILDING**.
- 2-2-5 **BED and BREAKFAST.** A building for short-term accommodations of no more than ten (10) rooms and family-style meals are provided as part of the service; the operator shall reside on premises. (Amend. 5/26/99)
- 2-2-6 **BILLBOARD.** A sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed, or only incidentally sold, offered or existing upon such lot.
- 2-2-7 **BUILDING.** A structure with a roof supported by columns of walls affording shelter for persons, animals or property.
- 2-2-8 **BUILDING, PRINCIPAL.** The main structure or building on the site or the structure or building housing the principal use on the site. (Amend. 5/26/99)
- 2-2-9 **BUILDING INSPECTOR.** The official building inspector of the municipality.
- 2-2-10 **CAMPGROUND.** A recreation area containing five (5) acres or more developed to accommodate paying guests for stays of a short duration in tents, recreation vehicles or travel trailers occupied by such guests and the ancillary facilities necessary for sanitation and support of the guests. (Amend. 5/26/99)
- 2-2-11 **CAR WASH.** A structure or building designed for the washing, waxing, simonizing, or similar treatment of automotive vehicles as its principal function. A **FILLING STATION** having portable washing equipment shall not be deemed to be car wash where such use is an accessory service to the principal service of the **FILLING STATION**. (Amend. 5/26/99)
- 2-2-12 **CELLAR.** A story partly underground and having one-half or more of its clear height below finished grade. A cellar shall not be counted in determining the permissible number of **STORIES**.
- 2-2-13 **CLUB, COUNTRY.** A club for golfing, tennis, hunting, fishing, horseback riding or similar sports.
- 2-2-14 **CLUB, MEMBERSHIP, NON-PROFIT,** The premises and buildings used by a local chapter holding a valid charter from an international, national or state organization or by a bonafide local civic association catering exclusively to members and their guests primarily for a patriotic, fraternal, benevolent, social,

education, religious or political purpose. The club shall not be used in whole or in part for the conduct of any business or enterprise for profit, but this shall not be construed as preventing the utilization of a club for benefits or performances for a recognized charity; nor for the meeting of other organizations, nor for educational and cultural purposes.

- 2-2-15 CONVENIENCE STORE. An intense retail facility for the sale of fresh and packaged foods, household items, gasoline and similar goods and having a floor area of no more than 5000 square feet. (Amend. 5/26/99)
- 2-2-16 CONVERSION, SINGLE FAMILY. The alteration of an existing single family residence to accommodate no more than one (1) additional dwelling unit with no appreciable change in the appearance of the existing dwelling. The new dwelling so created shall contain at least 500 square feet of living space in each unit. (Amend. 5/26/99)
- 2-2-17 COURT. An open, unoccupied space other than a yard, on the same lot with a building or of buildings and which is bounded on three or more sides by sides by such building or buildings.
- 2-2-18 COURT DEPTH OF. The maximum horizontal dimension at right angles to the width.
- 2-2-19 COURT, HEIGHT OF. The greatest vertical distance measured from the lowest level of such court up to the roof of the building. 75% of said court shall be open to the sky in a vertical dimension.
- 2-2-20 COURT, INNER. Any court which is bounded completely by buildings and or walls in which principal means of ingress or egress is through gates, archways, or passages less than 20-wide.
- 2-2-21 COURT OUTER. A court extending to a street, line or other property line, or opening upon any front, side, or rear yard.
- 2-2-22 COURT, WIDTH OF. The horizontal dimension parallel to the principal open side in the case of an OUTER COURT; and the least horizontal dimension in the case of an INNER COURT. CUSTOM WORK, SHOP FOR. A business premises used for the making of clothing millinery, shoes or other personal articles to individual order and measure, for sale at retail on the premises only, and not including the manufacture of "ready-to-wear" or standardized products.
- 2-2-23 DANCE HALL. Any place open to the public where dancing is permitted. (Amend. 5/26/99)

- 2-2-24 DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to buildings, structures, mining, dredging, filling, grading, paving, excavation or drilling operations. (Amend. 5/26/99)
- 2-2-25 DWELLING. A building arranged, intended or designed to be occupied by one or more families living independently of each other upon the premises.
- 2-2-26 DWELLING, DOUBLE. A building or portion thereof containing two (2) dwelling units, one arranged either adjacent to or above the other, and designed for occupancy by two (2) families independent of each other. (Amend. 5/26/99)
- 2-2-27 DWELLING, MULTI-FAMILY. A building or portion thereof containing three (3) or more dwelling units and designed for occupancy by three (3) or more families living independent of each other. (Amend. 5/26/99)
- 2-2-28 DWELLING, UNIT. One or more rooms with provisions for cooking, living, sanitary, and sleeping facilities arranged for the use of one family.
- 2-2-29 FAMILY. One or more persons occupying a dwelling unit as a single non-profit housekeeping unit and not more than five persons, exclusive of domestic servants, not related by blood, marriage or adoption, shall not be considered to constitute one family.
- 2-2-30 FAMILY DAY CARE, CHILD or ADULT. The use of all or a portion of a dwelling for the care of up to ten (10) individuals unrelated to each other and providing state certified services to either children or adults, separately. (Amend. 5/26/99)
- 2-2-31 FENCE. A structure designed either to limit access to a land area or to screen such area from view, or both.
- 2-2-32 FILLING STATION. A building or lot or part thereof supplying and selling gasoline or other equivalent fuel for motor vehicles at retail direct from pumps and storage tanks. A filling station may include accessory facilities for rendering service for motor vehicles, such as lubrication, washing, and minor repairs.
- 2-2-33 FLOODPLAIN. A relatively flat or lowland area adjoining a river, stream or watercourse which is subject to periodic and partial or complete inundation of water; the area may be subject to unusual and/or rapid accumulation or runoff of surface water from any source. (Amend. 5/26/99)
- 2-2-34 FLOODWAY. The portion of the floodplain which is necessary to carry and discharge floodwaters during a periodic or unusual storm event. The floodway shall be capable of accommodating a flood of 100-year magnitude without cumulatively increasing the floodway surface more than one foot in

elevation. The floodway shall not be appreciably be reduced or restricted by development. (Amend. 5/26/99)

- 2-2-35 GARAGE, PARKING. A building, not a private garage, used for the storage of automobiles, or trucks, and not used for making repairs thereto.
- 2-2-36 GARAGE, PRIVATE. An enclosed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein.
- 2-2-37 GARAGE, REPAIR. A building, other than a private or a parking garage, used for adjustment, painting, replacement of parts or other repair of motor vehicles, or parts thereof, whether or not accessory or incidental to another use.
- 2-2-38 HEIGHT OF STRUCTURE OR BUILDING. The vertical distance measured from the average elevation of the finished grade along the side of the structure fronting on the nearest street to the highest point of such structure.
- 2-2-39 HOME PROFESSIONAL OFFICE. The office or studio of a resident physician, surgeon, dentist, or other person licensed by the State of New York to practice a healing art, lawyer, architect, artist, engineer, real estate broker or salesman, insurance broker or agent, or teacher as herein restricted; provided that not more than two persons are employed who are not members of the family, and that such office shall be in the main building and shall not occupy more than the equivalent of one-half of the area of one floor of said building. For the purposes of this paragraph, a "teacher" shall be restricted to a person giving individual instruction to a single pupil at a time. A home professional office shall not include the office of any person professionally engaged in the purchase or sale of economic goods. Tea rooms, tourist homes, beauty parlors, barber shops, hairdressing and manicuring establishments, and stores, trades, or businesses of any kind not herein excepted shall not be deemed to be home professional offices. The home professional office of a physician shall not include a biological or other medical testing laboratory.
- 2-2-40 HOME OCCUPATION. Any gainful occupation customarily conducted within a dwelling by the residents thereof that is clearly secondary to the residential use, and that does not change the character of the structure as a residence. Said activity shall not occupy more than one-half of the ground floor area of the dwelling or its equivalent elsewhere in the dwelling if so used, and further provided that there shall be no external evidence other than an announcement sign, and that no mechanical or electrical equipment is used except customary household equipment. However, home occupations shall not be construed to include such uses as the following: clinic or hospital, barber shop or beauty parlor, restaurant, breeding kennel, antique dealer, or any other use involving the keeping of a stock in trade. All home occupations shall have adequate access to a major collector, minor arterial or major arterial as identified in the Town of Newfane Master Plan and any amendments thereto. (Amend. 5/26/99)

- 2-2-41 HOSPITAL. A building or group of buildings and uses for the care of sick, aged or infirm, including the care of mental, drug addiction or alcoholic patients. The term shall include, but not be limited to sanitariums, nursing homes, convalescent homes, clinics and related assisted living facilities.
- 2-2-42 HOTEL. A building or part thereof which has a common entrance, common heating system, and general dining room, and which contains seven or more living and sleeping rooms designed to occupy by individuals or groups of individuals for compensation. A hotel shall not provide DWELLING UNITS.
- 2-2-43 JUNK YARD. Any land or structure, or part thereof, exceeding 300 square feet in area, used for collecting, storage or sale of waste paper, rags, scrap metal or other scrap or discarded material; or for the collecting, dismantling, storage or salvage of machinery or vehicles not in running condition, or for the sale of the parts thereof.
- 2-2-44 KENNEL, CATTERY. Any lot or premises on which more than five (5) domestic animals, five (5) months of age or older, are kept, boarded, housed, groomed, trained, bred or sold for compensation. Specifically excluded are farm animals or livestock which are integral to agriculture, as defined. (Amend. 5/26/99)
- 2-2-45 LOT. A parcel of land occupied or used by one main building or use with its accessory buildings and the required open spaces and having frontage on a public street or right-of-way authorized by the Planning Board.
- 2-2-46 LOT, CORNER. A lot at the junction of and fronting one two or more intersecting streets.
- 2-2-47 LOT, DEPTH. The average horizontal distance between the front and rear lot lines. (Amend. 5/26/99)
- 2-2-48 LOT, INTERIOR. Any lot other than a corner lot.
- 2-2-49 LOT, THROUGH. A lot extending from one street to another.
- 2-2-50 LOT AREA. The total horizontal area included within LOT LINES.
- 2-2-51 LOT COVERAGE. The percentage of the area of the lot covered by a building or buildings and any allowed accessory structures thereto. (Amend. 5/26/99)
- 2-2-52 LOT LINE. Any boundary of a lot. Any lot line not a rear lot line nor a front lot line shall be roughly perpendicular to it, deemed a side lot line.
- 2-2-53 LOT LINE, FRONT. The street right-of-way line at the front of a lot. On a corner lot, the owner may specify the front lot line on the plot plan.

- 2-2-54 LOT LINE, REAR. The lot line opposite to the front line.
- 2-2-55 LOT WIDTH. The dimension measured from side lot line to side lot line, along a line parallel to and following the street line at the required minimum front yard depth.
- 2-2-56 MARINE BUSINESS. Use, structures, building and their accessories that utilize or are dependent upon a location near the water or provide services to uses and activities that are water-related or water-dependent. (Amend. 5/26/99)
- 2-2-57 MOBILE HOME. A movable single family dwelling originally equipped with or having a vehicular chassis and provided with all of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration. SEE HOUSE TRAILER.
- 2-2-58 MOBILE HOME PARK. A residential land use designed for the location of one or more mobile homes in designated mobile home spaces and including appurtenant facilities and accessory services for residents only. (Amend. 5/26/99)
- 2-2-59 MOTEL. A building, or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units with direct outside access and related office, and with or without restaurant facilities, designed primarily for transient automobile travelers, and provided with accessory offstreet parking facilities. The term motel includes buildings designed as tourist courts, motor lodges, auto courts, and other similar appellations, but shall not be construed to include parking areas for HOUSE TRAILERS OR MOBILE HOMES.
- 2-2-60 NONCONFORMING LOT. An otherwise legally platted lot that does not conform to the minimum dimensional regulations of this ordinance for the district in which it is located, either at the effective date of this ordinance or as a result of subsequent amendments to the ordinance. (Amend. 5/26/99)
- 2-2-61 NONCONFORMING STRUCTURE. A structure lawfully existing at the effective date of this Ordinance or any amendment thereto affecting such structure, which does not conform to the Table of Dimensional Regulations of this Ordinance for the District in which it is situated, irrespective of the use to which such structure is put.
- 2-2-62 NONCONFORMING USE. Any use of a building, structure, lot or land, or part thereof, lawfully existing at the effective date of this Ordinance or any amendment thereto affecting such use, which does not conform to the Table of Use Regulations of this Ordinance for the District in which it is situated.
- 2-2-63 NON-NUISANCE INDUSTRY. Any industry which is not detrimental to the environment which it is located by reason of the emission of smoke, noise, odor, dust, vibration or excessive light, beyond the limits of its lot, or by reason of

generating excessive traffic the attendant hazards, and which does not include any outdoor processing of materials, or open accessory storage yard unless completely enclosed by a solid wall or closed fence not less than six feet in height.

- 2-2-64 **NURSERY SCHOOL/DAY CARE CENTER.** A building or structure together with its lot and its accessory uses, buildings and structures, used as an organized instructional facility for five or more enrolled children other than the children of the resident family, but not provided with customary commercial public recreation features such as Ferris wheels or roller coasters, and not furnishing sleeping quarters except for the resident facility.
- 2-2-65 **OPEN SPACE.** Undeveloped land or water, two (2) acres or more, left generally undisturbed or developed as a landscaped area for conservation, recreation or resource protection purposes and unoccupied by habitable buildings. The term shall include the reservation of common land for the use and recreation of residents in a cluster, townhouse or planned development. (Amend. 5/26/99)
- 2-2-66 **PARKING AREA.** A lot or part thereof used for the storage or parking of motor vehicles, with or without the payment of rent or charges in money and/or other consideration.
- 2-2-67 **PARKING SPACE.** A stall or berth which is arranged and intended for parking of one motor vehicle in a garage or parking lot.
- 2-2-68 **PERMITTED USE.** A specific principal use of a building, structure, lot or land, or part thereof, which this Ordinance provides for in a particular District as a matter of right. Any use which is not listed as a PERMITTED, SPECIAL EXCEPTION OR ACCESSORY USE shall be considered a PROHIBITED USE.
- 2-2-69 **PLANNED RESIDENTIAL DEVELOPMENT.** A residential development of land based on an overall development plan approved by the Planning Board in accordance with SPECIAL EXCEPTION USE procedure in which the dimensional regulations of this Ordinance and the type of housing may be varied as provided in this Ordinance, and where certain lands are set apart as permanent open space or common land.
- 2-2-70 **PLANNED COMMERCIAL-INDUSTRIAL PARK.** A development of land based on an overall development plan approved by the Planning Board in accordance with the SPECIAL EXCEPTIONA USE procedures for commercial and industrial uses other than retail stored, personal service establishment or other uses not indicated as permitted or special exception uses in the Commercial-Industrial Park District. Such an overall development plan may provide for variance of the dimensional regulations as provided in this Ordinance.

- 2-2-71 **PROHIBITED USE.** A use of a building, structure, lot or land, or part thereof, which is not listed as a **PERMITTED, SPECIAL EXCEPTION, OR ACCESSORY USE.**
- 2-2-72 **RESEARCH INSTITUTE OR LABORATORY.** A building for experimentation in pure of applied research design, development, and production of prototype machines or devices or of new products, and uses accessory thereto; with respect to the application of this Ordinance, such research institute or laboratory shall meet the standards of a **NON-NUSIANCE INDUSTRY.**
- 2-2-73 **SETBACK (Front Yard).** The setback is the minimum distance measured at the nearest building line, including any roof or overhang or stoop/patio, from and parallel to the road right-of-way or the property line nearest the road right-of-way. (Amend. 5/26/99)
- 2-2-74 **SIGN.** Any kind of billboard, sign-board, pennant, or other shape or device or display, used as an advertisement, announcement, or direction, including any text, symbol, lights, marks, letters, or figures painted thereon or painted on or incorporated in the composition of an exterior surface of a building or structure.
- 2-2-75 **SIGN, BUSINESS.** A temporary or permanent sign which directs attention to a business or profession conducted upon the property.
- 2-2-76 **SIGN, PROFESSIONAL OR ANNOUNCEMENT.** A temporary or permanent sign which directs attention to a resident's home, a home occupation, a home professional office, or a public or semi-public building.
- 2-2-77 **SIGN, REAL ESTATE OR CONSTRUCTION.** A sign advertising land or improvements thereto, or describing construction activity or a firm doing work related to construction on the premises on which the sign is located.
- 2-2-78 **SIGN, TEMPORARY.** A temporary sign which directs attention to a special activity or entertainment, or one which indicates the location of a real estate subdivision.
- 2-2-79 **SPECIAL EXCEPTION USE.** A use in one or more Districts, for which the Planning Board may grant a permit, pursuant to the provisions of **ARTICLE VIII.**
- 2-2-80 **STORY.** That portion of the building, other than the basement, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between the floor and the ceiling next above it. (Amend. 5/26/99)
- 2-2-81 **STREET.** Any Federal, State, County or Municipal highway or road, or any street shown upon a subdivision plat filed in the County Clerk's Office.



- 2-2-82        **STREET LINE.** The dividing line between a lot and a street right-of-way.
- 2-2-83        **STRUCTURE.** Anything constructed or erected which requires permanent location on or under the ground or attachment to another structure or building.
- 2-2-84        **SWIMMING POOL.** An artificial pool of water having a depth at any point of more than 24 inches and a surface area of greater than one hundred square feet, designed or intended for the purpose of bating or swimming and including all appurtenant equipment.
- 2-2-85        **TOWNHOUSE.**        A single family residential structure forming a group of three (3) or more attached dwelling units in which each unit has its own front and rear access to the outside and each unit is separated from one another by one or more a fire resistant walls that extend without through access from basement to the roof; no units are located over or under any other unit. (Amend. 5/26/99)
- 2-2-86        **VARIANCE.** A modification of the dimensional regulations of this Ordinance granted on grounds of practical difficulties or unnecessary hardship, not self-imposed, pursuant to the provisions of ARTICLE XIII.
- 2-2-87        **WALL.** A structure of wood, stone or other materials, or combination thereof intended for defense, security, screening, or enclosure, or for the retention of earth, stone, fill or other materials as in the case of retaining walls or bulkheads.
- 2-2-88        **YARD, FRONT.** A space on the same lot with a building, situated between the nearest roofed portion of the principal building or buildings and the front lot line of the lot, and extending from side lot line to side lot line.
- 2-2-89        **YARD, REAR.** A space on the same lot with building, situated between the nearest roofed portion of the principal building or buildings and the rear lot line of the lot, and extending from side lot line to side lot line.
- 2-2-90        **YARD, SIDE.** A space on the same lot with a building, situated between the nearest roofed portion of the principal building or buildings, and the side lot line of the lot, and extending through from the front yard or from the front lot line where no front yard exists, to the rear yard or to the rear lot line where no rear yard exists.
- 2-2-91        **ZONING MAP.**        An official map adopted by the Town of Newfane Town Board identifying the zoning districts in the town by description and symbol and their distribution. (Amend. 5/26/99)
- 2-2-92        **ZONING OFFICER.** The individual charged with administration and enforcement of the provisions of the zoning ordinance by the Town of Newfane. (Amend. 5/26/99)

**ARTICLE III  
APPLICATION OF REGULATIONS**

**3-1        General**

The provisions of this Ordinance shall be deemed to be specific. Those uses and procedures for which there are no specific provisions in this Ordinance shall be deemed to be prohibited.

**3-2        Use Regulations**

3-2-1        Except as hereinafter provided, no building or structure or part thereof and no lot or land or part thereof shall hereafter be used except for a purpose specifically permitted by the provisions of the Table of Use Regulations for the District in which such building or structure, lot or land is located on the Zoning Map.

3-2-2        Any lawful use that does not conform to the Use Regulations of this Ordinance shall be deemed a nonconforming use. (See ARTICLE XII).

3-2-3        A Special Exception Use authorized by the Planning Board shall be deemed a conforming use.

3-2-4        A use authorized by a variance from the Use Regulations of this Ordinance, granted by the Board of Appeals, shall be deemed a nonconforming use.

**3-3        Dimensional Regulations**

3-3-1        Except as hereinafter provided, no building or structure or part thereof shall hereafter be erected, structurally altered, enlarged, rebuilt, or moved except in conformity with the provisions of the Table of Dimensional Regulations for the District in which such building or structure is located on the Zoning Map.

3-3-2        Any lawful existing building or structure that does not conform to such Dimensional Regulations of this Ordinance, shall be deemed a nonconforming building or structure, irrespective of the use to which it is put. (See ARTICLE XII).

3-3-3        A building or structure or part thereof authorized as a variance from the Dimensional Regulations of this Ordinance, granted by the Board of Appeals, shall be deemed a nonconforming building or structure or part thereof.

**ARTICLE IV  
CLASSES OF DISTRICTS AND BOUNDARIES**

**4-1            Classes of Districts**

For the purposes of this Ordinance, the Town of Newfane is hereby divided into eleven classes of Districts as follows:

**4-1-1           Agricultural and Residence Districts:**

AR	Agriculture/Residence District
RR	Rural Residential District
R-1	Single Family Residential District
R-2	Multi-Family Residential District
CF	Community Facility District
MHP	Mobile Home Park District (Amend. 5/26/99)

**4-1-2           Business District**

VB	Village Business District
HC	Highway Commercial District
MB	Marine Business District (Amend. 5/26/99)

**4-1-3           Industrial Districts:**

IP	Light Industry/Industrial Park District
GI	General Industrial District (Amend. 5/26/99)

**4-2            Boundaries of Districts on Zoning Map**

**4-2-1**           The boundaries of each of the Districts listed in Section 4-1 are hereby established as shown upon the duly adopted Zoning Map which accompanies this Ordinance, and which, with all notations, references, and other matters shown thereon, is hereby declared a part of this Ordinance.

**4-2-2**           The District boundary lines, unless shown otherwise, are intended generally to follow street centerlines, railroad right-of-way boundary lines or their centerlines, other similar right-of-way lines, or lot lines or boundaries of subdivisions or municipal boundary lines, all as shown on the Zoning Map. Where a District boundary line does not follow such a line, but is shown parallel to such a line on the Zoning Map. Such dimensions shall be construed to read from the outside edge of all right-of-way rather than from their centerlines.

- 4-2-3 Where the street layout actually on the ground varies from the street layout as shown on the Zoning Map, the designation shown on the mapped streets shall be applied in such a way as to carry out the Building Inspector's judgment as to the purpose and intent of the Zoning Map for the particular area in question.
- 4-2-4 When the location of a District boundary line can not be otherwise determined, the determination thereof shall be made by the Building Inspector by scaling the distance on the Zoning Map from a line of known location to such District boundary line.
- 4-2-5 In the case of uncertainty as to the true location of a District boundary line in a particular instance, an appeal may be taken to the Board of Appeals, as provided in Section 13-3.
- 4-2-6 When a District boundary line divides a lot in a single ownership at the effective date of this ordinance or any subsequent amendment thereto, the Board of Appeals may permit an extension into one District of a lawful conforming use existing in the other District, as hereinafter provided in Section 13-4-4.2.

**4-3 Purpose and Intent of the Districts.**

In order to carry out and implement the purposes of this ordinance, the land use districts established herein shall have the following intent to identify the basis of each district and define the objective of the uses and standards for the implementation of each, respectively.

- 4-3-1 **Agricultural/Residential (AR).** The AR District is dedicated to the accommodation of traditional agricultural uses such as farming, forestry, livestock breeding and maintenance and other related uses and activities. Such uses are an essential part of the rural economy and the agrarian character of the community. The AR District includes limited, low-density residential uses (one unit per two acres) that are complimentary to the rural atmosphere, but not to the extent that they compromise agricultural activities.
- 4-3-2 **Rural Residential (RR).** The RR District is provided as a mixed transitional area between agriculture and hamlet uses. It is intended as a buffer to protect rural areas and offer the diversity of uses that epitomize the rural, open character of the Town. Single family dwellings (one per acre density) and limited agricultural uses characterize the district and are accompanied by a mix of recreational and service uses to encourage community cohesion of the rural areas through development consolidation and promote independence of the farm areas.
- 4-3-3 **Single Family Residential (R-1).** The R-1 District is composed of certain quiet, low-density residential and open space uses complimentary to residential activities that are designed to encourage and promote a suitable environment for family life and children. Development is limited to relatively low concentrations

of single family dwellings (1-3 units per acre) plus related community facility uses. No commercial, home occupations or room renting are permitted.

- 4-3-4 Multi-Family Residential (R-2). The R-2 District provides for moderate and higher urban density residential development in a suburban setting to promote the diversity of housing types and concentrations (3-5 units per acre) in the Town and its Hamlets. The R-2 District allows for single family attached and detached units, townhouses, low-rise apartments and cluster units in an individual or consolidated development. Public utilities are required to accommodate the density and the capabilities of the surrounding area.
- 4-3-5 Community Facility (CF). The CF District provides for the uses and structures that serve the residential and commercial districts with public and semi-public uses including governmental, religious, civic, educational, health, protective, utility and other facilities to insure their proper location and compatibility in relation to transportation, land use and community development. Appropriate siting and location consistent with community objectives for each Town area is required.
- 4-3-6 Mobile Home Park (MHP). The MHP District is established to provide for the development mobile homes in a park-like setting where appropriate amenities and support services can be commensurately planned to avoid detrimental effects on adjacent properties and the surrounding area. The park provides for the development of such units on permanent foundations in a year-round facility with public services, recreation and support services in a planned setting that is compatible with the residential character of the area, transportation and the objectives of this ordinance.
- 4-3-7 Village Business (VB). The VB District provides the primary focus of commercial services in the Town concentrated in the hamlets as the cultural and demographic centers for the community. The District uses offer a variety of commercial uses to consolidate economic and social activities as the heart of rural living functions. They are generally associated with the hamlets as the social centers of the Town. Uses include neighborhood businesses, convenience retail, business and personal services that represent the center of community activity.
- 4-3-8 Highway Commercial (HC). The HC District is established to provide for commercial uses that need accessibility and independent siting to serve the community. Often regional or serving a broad segment of the community, these uses include tourism related facilities, supplies, accommodations, agricultural services and related business activities. Such uses are intense activities requiring special considerations of access, buffering and land use compatibility coordination to be successfully developed.

- 4-3-9 Marine Business (MB). Uses in the MB District provide for the integration of specialized activities relating to the unique opportunities at the Lake Ontario shoreline and Eighteen Mile Creek. Recreation and marine related uses and services are accommodated in this District and are regulated consistent with the protection of access to water resources and the sensitivity of its environmental character.
- 4-3-10 Light Industry/Industrial Park (IP). The IP District provides for limited industrial, research and development and related uses in planned park setting. Related uses include office, limited retail, fabrication, assembly, warehousing, wholesale, high technology and accessory activities, which are relatively free from offensive processes or by-products and will not adversely effect adjacent residential or commercial uses. Such development shall be designed as an integrated unit rather than isolated or independent uses requiring the coordination of access, circulation, uses, phasing and infrastructure.
- 4-3-11 General Industry (GI). The GI District is intended to provide areas which are appropriate for diverse industrial activities that may not be compatible with adjacent or surrounding residential or commercial uses due to the potential for nuisance or hazard. Residential and neighborhood commercial uses are specifically prohibited in this District as a potential interference to industrial development, expansion and continuation of use. However, no building, structure or use shall be operated so as to create any dangerous, injurious, noxious or otherwise objectionable activity that may cause or create the conditions that promote fire or explosion; heat or glare; noise or vibration; smoke, dust, odor or air pollution; radioactivity or hazardous conditions; liquid or solid waste; or conditions conducive to the breeding of rodent or insects; that adversely affect the surrounding area or the spread beyond the boundaries of the site/property.  
(Amend. 5/26/99)

#### 4-4 Table of Uses and Standards.

- 4-4-1 General. Table 5.2, Agricultural, Residential and Community Facility Districts, Table 6.2, Commercial District and Table 7.2, Industrial District – Table of Use Regulations, set forth the uses for each zoning district. Table 5.3, Agricultural, Residential and Community Facility Districts, Table 6.3, Commercial District and Table 7.3, Industrial District – Table of Dimensional Regulations, set forth the standards and criteria for development in each zoning district. No land or structure shall be used, occupied or developed except in accordance with the standards and regulations set forth in these tables. (Amend. 5/26/99)

4-4-2 Special Exceptions. Uses shown as "Special Exception" in Tables 5.2, 6.2 or 7.2 shall require the approval and issuance of a special exception permit pursuant to Section 8 prior to the issuance of any building, zoning or occupancy permit for the commencement of that use. Any other requirement of this ordinance shall also be satisfied prior to issuance of a building or occupancy permit.

4-4-3 Accessory Uses. Accessory uses shall be regulated by the uses as set forth in Tables 5.2, 6.2 or 7.2 and the dimensional standards as set forth in Tables 5.3, 6.3 and 7.3. (Amend. 5/26/99)

4-5 **Non-Listed Uses.**

4-5-1 General. Any use not specifically listed in Table 5.2, Table 6.2 or Table 7.2 shall not be permitted unless or until an application is prepared and submitted to the Planning Board for determination that such use is consistent and compatible with the intent of the District, not first allowed by right in another higher zoning district and not otherwise subject to a Special Exception Permit.

(Amend. 5/26/99)

**ARTICLE V**  
**AGRICULTURAL AND RESIDENCE DISTRICT REGULATIONS**

**5.1**            **General**

Within any Agricultural, Residence or Community Facility District, a building, structure or lot shall only be used for one of the uses indicated in Section 5-2, the Table of Use Regulations, for the specific District in which it is located on the Zoning Map, and in accordance with the particular classification of that use in that District. Further, any such building, structure or lot shall only be utilized in conformance with the provisions of the section 5-3, the Table of Dimensional Regulations. In addition such use shall comply with all other applicable provisions of the Ordinance.

(Amend. 5/26/99)



**5-2 AGRICULTURAL/RESIDENTIAL DISTRICTS  
TABLE OF USE REGULATIONS**

AR Agricultural/Residential District  
 RR Rural Residential District  
 R-1 Single Family Residential District  
 R-2 Multi-family Residential District  
 MHP Mobile Home Park District

P Permitted Use  
 SE Special Exception Use  
 X Prohibited Use

USE CLASSIFICATIONS	AGRICULTURAL DISTRICTS		RESIDENTIAL DISTRICTS		
	<u>AR</u>	<u>RR</u>	<u>R-1</u>	<u>R-2</u>	<u>MHP</u>
<b>A. RESIDENTIAL USES</b>					
1. One family dwelling	P	P	P	P	X
2. Two family dwelling	X	X	P	P	X
3. Conversion – One family to Two family (min. 500 sq. ft.)	SE	SE	X	P	X
4. Multi-family dwelling	X	X	X	P	X
5. Planned Residential Development (PRD) – singles, doubles, townhouses and multiples	X	SE	X	P	X
6. Mobile home park (public sewer required)	X	X	X	X	P
7. Recreational vehicle park, campgrounds and cabins (seasonal only)	X	SE	X	X	SE
8. Assisted living residence	X	SE	SE	P	X
9. Cluster development	SE	P	P	P	X
10. Townhouse development	X	X	X	P	X

<b>B. BUSINESS USES</b>					
1. Agriculture excluding animal husbandry	P	P	X	X	X
2. Animal husbandry, stables, riding academy or kennel	P	SE	X	X	X
3. Funeral home, mortuary	X	SE	SE	SE	X
4. Greenhouse, plant nursery	P	SE	X	X	X
5. Office and exam facilities for medical professional	X	SE	SE	(P)	X
6. Veterinarian, animal hospital or clinic *	P	SE	X	X	SE
7. Marine business	X	X	X	SE	X
8. Storage building or multi-unit facility for small business, vehicle, residential or personal use (excluding warehousing, industrial or agricultural storage)	SE	SE	X	X	SE
9. Professional, small business or branch office providing administrative services limited to interior operations that require light customer and vehicle access (banking, financial, legal, insurance, real estate, utility or similar uses)	X	SE	X	X	X
<b>C. INDUSTRIAL USES</b>					
1. Mining, quarries, clay, sand and gravel excavation	SE	X	X	X	X
2. Sawmill, lumber or wood processing facility	SE	X	X	X	X
3. Dairy	P	SE	X	X	X
4. Fruit storage, packing or processing facility	SE	SE	X	X	X
5. Agricultural coop or agri-business	SE	X	X	X	X

<b>D. ACCESSORY USES</b>					
1. Accommodations, rooming and boarding in a one or two family detached, owner-occupied dwelling as an integral part of the dwelling (no separate entrance, kitchen, isolation; adequate off-street parking) No more than 2 persons 3 or 4 persons	P SE	P SE	P SE	P SE	X X
2. Usual and customary accessory structure or use (clearly subordinate to the principal structure)	P	P	P	SE	P
3. Home occupation	P	P	X	X	X
4. Resident professional office	X	SE	X	P	X
5. Home based business	SE	SE	X	X	X
6. Agricultural seasonal housing *	P	SE	X	X	SE
7. Traveler's lodging in a one or two family detached, owner-occupied dwelling	SE	SE	X	P	X
8. Auxiliary housing	SE	SE	X	X	X
9. Garage, carport, off-street parking (Article X)	P	P	P	P	P
10. Produce sales (subject to Article 9-13)	P	SE	X	X	X
11. Signs pursuant to Article XI	P	P	P	P	P
12. Ponds and excavations: at least 50 feet from any property line; minimum 5 acre lot required *	P	P	SE	SE	SE
13. Airstrip or aviation use	SE	X	X	X	X
14. Communications antenna, dish or tower detached from the primary residence or structure or using a separate foundation and support apparatus; amateur antenna up to 100 feet in height exempted	SE	SE	X	SE	X

\* Site Plan Review and Permit Required

## 5-2 COMMUNITY FACILITY DISTRICT TABLE OF USE REGULATIONS

CF Community Facility District

P Permitted Use  
SE Special Exception Use  
X Prohibited Use

USE CLASSIFICATIONS	COMMUNITY FACILITY DISTRICTS
<b>A. COMMUNITY FACILITIES</b>	<b>P</b>
1. Church or place of worship	<b>P</b>
2. Nursery School or Day Care Center	<b>P</b>
3. Park, playground or recreation area (public) *	<b>P</b>
4. Community recreation area (private)	<b>SE</b>
5. Public library, museum, community center, fire or emergency services and government office building	<b>SE</b>
6. Public and Private Schools *	<b>P</b>
7. Cemetery or mausoleum	<b>P</b>
8. College, university or educational institute (sewer required)	<b>SE</b>
9. Golf, country or athletic club	<b>P</b>
10. Hospital, medical center, health treatment and health maintenance clinic, laboratory, medical testing and technical service facilities, including auxiliary services and functions *	<b>SE</b>

11. Membership clubs – office, meeting and organizational uses excluding banquet, restaurant, and hall rental facilities *	SE
12. Nursing home, hospice and health care facilities	P
13. Public utility, treatment facilities, lines and rights-of-way and support facilities including water, sanitary sewer, gas, communications and electrical services	P
<b>B. ACCESSORY USES</b>	
1. Bus shelter or transportation access structure	P
2. Structures and uses ancillary to any principal use	P

\* Site Plan Review Required

**5-3 AGRICULTURAL/RESIDENTIAL DISTRICTS  
TABLE OF DIMENSIONAL REGULATIONS**

Area: Square Feet  
 Depth/Width/Height: Feet  
 Setbacks: Feet

<b>REGULATION CATEGORY</b>	<b><u>AR</u></b>	<b><u>RR</u></b>	<b><u>R-1</u></b>	<b><u>R-2</u></b>	<b><u>MHP</u></b>
1. Lot Area – Minimum *	80,000	40,000	20,000	10,000	200,000
2. Lot Area – Per Dwelling (min.)	80,000	40,000	20,000	5000	4000
3. Lot Coverage – Percent of total lot area occupied by all principal and accessory buildings	10	30	35	40	25
4. Lot Depth – Minimum	400	250	200	125	100
5. Lot Width – Minimum	200	150	100	80	40
6. Corner Lot Width – Minimum	250	200	100	80	50
7. Structure Height – Maximum	35	35	35	45	25
Maximum Accessory Building Height ***	35	35	22	22	25
8. Yard Setbacks – Minimums					
Front **	75	60	50	40	30
Side – Each/Combined	20	10	10	10/25	5/15
Side – Abutting side street on a corner lot		45	45	30	20
Rear	60	50	50	30	20

- \* Where public sewer is not available, no development is permitted when there is insufficient capacity for a private sanitary waste disposal system, as determined by the Niagara County Health Department.
- \*\* Setback line as measured from the right-of-way line of the road or street.
- \*\*\* By Town Board approval February 25, 2004; Public Hearing January,28, 2004.

**5-3 COMMUNITY FACILITY DISTRICT  
TABLE OF DIMENSIONAL REGULATIONS**

Area: Square Feet  
 Depth/Width/Height: Feet  
 Setbacks: Feet

REGULATION CATEGORY	<u>CF</u>
1. Lot Area – Minimum *	Adequate as required for primary and accessory structures
2. Lot Area – Per Dwelling (min.)	20,000
3. Lot Coverage – Percent of total lot area occupied by all principal and accessory buildings	40
4. Lot Depth – Minimum	200
5. Lot Width – Minimum	100
6. Corner Lot Width – Minimum	150
7. Structure Height – Maximum	65
8. Yard Setbacks – Minimums	
Front **	50
Side – Each, abutting a Residential District	25
Side – Each, abutting a non-residential district	15
Rear	50

\* Where public sewer is not available, no development is permitted when there is insufficient capacity for a private sanitary waste disposal system, as determined by the Niagara County Health Department.

\*\* Setback line as measured from the right-of-way line of the road or street.

**ARTICLE VI.  
BUSINESS DISTRICT REGULATIONS**

**6.1**

**General**

Within any Business District, a building, structure or lot shall only be used for one of the uses indicated in Section 6-2, the Table of Use Regulations, for the specific District in which it is located on the Zoning Map, and in accordance with the particular classification of that use in that District, Further, any such building, structure or lot shall only be utilized in conformance with the provisions of Section 6-3, the Table of Dimensional Regulations. In addition, such use shall comply with all other applicable provisions of the Ordinance.

(amend. 5/26/99)



**6-2 BUSINESS DISTRICTS  
TABLE OF USE REGULATIONS**

VB Village Business District  
 HC Highway Commercial District  
 MB Marine Business District

P Permitted Use  
 SE Special Exception Use  
 X Prohibited Use

USE CLASSIFICATIONS	BUSINESS DISTRICTS		
	<u>VB</u>	<u>HC</u>	<u>MB</u>
<b>A. RESIDENTIAL USES</b>			
1. Dwelling unit over first floor, non-residential use	P	X	P
<b>B. BUSINESS USES</b>			
1. Auditorium or meeting hall	P	SE	X
2. Car wash	SE	P	X
3. Bowling alley	SE	P	P
4. Dance hall, roller or ice skating facility	SE	SE	P
5. Retail gasoline sales	SE	P	P
6. Funeral home or mortuary	P	P	X
7. Greenhouse or plant nursery	X	P	X

8. Hotel, motel or travel lodge	SE	P	SE
9. Marina, boat ramp, docks, boatyard and boat storage including sales, rental, leasing, hire, accessory facilities and structures	X	SE	P
10. Motor vehicle sales, rental, hire or lease including recreational vehicles, mobile homes or boats	SE	P	P
11. Business or administration uses providing management, financial, administrative or corporate services	P	P	X
12. Professional, small business or branch office providing direct, on-site customer access and services (banking, financial, legal, insurance, real estate, utility or similar uses)	P	P	P
13. Parking garage or commercial parking lot as a primary use	SE	P	SE
14. Storage Facility, building or outdoor area	X	P	SE
15. Personal service shop	P	P	P
16. Radio and television broadcast studio	P	P	X
17. Restaurant or tavern	P	P	P
18. Restaurant, drive-in	SE	P	SE
19. Repair garage for vehicles, engines and motors	X	P	SE
20. Repair shop for household, business or personal appliances	P	P	P
21. Recreation, athletic, fitness or tanning facility	P	P	P
22. Retail shop or store	P	P	P
23. Shop or studio for custom work or for making articles to be sold at retail on premises	P	P	P
24. Shopping mall or highway retail plaza requiring dedicated parking facilities	X	SE	X

25. Retail center, mini-mall or multi-unit retail facility using village street or public parking	P	SE	SE
26. Theater or movie facility	P	P	SE
27. Veterinarian, hospital or clinic	X	SE	X
28. Vocational school or commercial training center	SE	P	X
29. Wholesale business	X	P	SE
30. Research center or laboratory	X	SE	X
<b>C. INDUSTRIAL USES</b>			
1. Non-nuisance industry	X	SE	X
2. Printing, publishing or graphics plant	SE	P	X
3. Truck terminal or transfer station	X	SE	X
4. Laundry or dry cleaning plant	X	X	X
5. Food or agricultural processing facility including dairy, storage, packing and agri-business	X	X	X
6. Manufacturing and assembly facility	X	X	X
7. Chemical processing or manufacturing	X	X	X
8. Commercial power and utility plants	X	X	X
9. Storage of fuels, chemical or other liquids in tanks	X	SE	SE
10. Outdoor storage are associated with a permitted industrial or commercial use	X	SE	SE
11. Warehouse	X	SE	SE
12. Commercial or industrial research center, institute or laboratory	X	X	X
13. Commercial or industrial park	X	X	X

14. Sawmill, lumber or wood processing	X	X	X
<b>D. ACCESSORY USES</b>			
1. Caretaker or owner-occupied dwelling unit	P	X	P
2. Usual and customary accessory structure or use (clearly subordinate to the principal structure)	P	P	P
3. Private garage or off-street parking pursuant to Article X	P	P	P
4. Signs pursuant to Article XI	P	P	P
5. Communications antenna, dish or tower detached from the primary residence or structure or using a separate foundation and support apparatus not part of the primary residence or structure	X	SE	SE

**6-3 BUSINESS DISTRICTS  
TABLE OF DIMENSIONAL REGULATIONS**

Area: Square Feet  
 Depth/Width/Height: Feet  
 Setbacks: Feet

<b>REGULATION CATEGORY</b>	<b><u>VB</u></b>	<b><u>HC</u></b>	<b><u>MB</u></b>
1. Lot Area – Minimum *	5000	20,000	10,000
2. Lot Area – Per Dwelling (min.)	1000	None	None
3. Lot Coverage – Percent of total lot area occupied by all principal and accessory buildings	60	40	75
4. Lot Depth – Minimum	60	200	60
5. Lot Width – Minimum	20	100	20
6. Corner Lot Width	None	None	None
7. Structure Height – Maximum (primary structure/accessory structure)	35	35	35
8. Yard Setbacks – Minimums			
Front **	5	75	10
Side – Each/Combined ***	None	15	None
Side – Abutting side street on a corner lot	None	50	None
Rear ***	20	30	25

- \* Where public sewer is not available, no development is permitted when there is insufficient capacity for a private sanitary waste disposal system, as determined by the Niagara County Health Department.
- \*\* Setback line as measured from the right-of-way line of the road or street.
- \*\*\* Fifty (50) feet where lot abuts an agricultural or residential zoning district.

**ARTICLE VII.  
INDUSTRIAL DISTRICT REGULATIONS**

**7-1**

**General**

Within any Industrial District, a building structure or lot shall only be used for one of the uses indicated in Section 7-2, the Table of Use Regulations, for the specific District in which it is located on the Zoning Map, and in accordance with the particular classification of that use in that District. Further, any such building, structure or lot shall only be utilized in conformance with the provisions of Section 7-3, the Table of Dimensional Regulations. In additions, such use shall comply with all other applicable provisions of the Ordinance.

(Amend. 5/26/99)

**7-2 INDUSTRIAL DISTRICTS  
TABLE OF USE REGULATIONS**

IP Light Industry/Industrial Park District  
GI General Industry District

P Permitted Use  
SE Special Exception Use  
X Prohibited Use

USE CLASSIFICATIONS	INDUSTRIAL DISTRICTS	
	<u>IP</u>	<u>GI</u>
<b>A. RESIDENTIAL USES</b>		
1. Dwelling unit over first floor, non-residential use	X	X
<b>B. BUSINESS USES</b>		
1. Auditorium or meeting hall	X	X
2. Car wash	X	X
3. Bowling alley	X	X
4. Dance hall, roller or ice skating facility	X	X
5. Retail gasoline sales	X	X
6. Funeral home or mortuary	X	X
7. Greenhouse or plant nursery	X	X
8. Hotel, motel or travel lodge	X	X
9. Marina, boat ramp, docks, boatyard and boat storage including sales, rental, leasing, hire, accessory facilities and structures	X	X

10. Motor vehicle sales, rental, hire or lease including recreational vehicles, mobile homes or boats	X	SE
11. Business or administration uses providing management, financial, administrative or corporate services	P	P
12. Professional, small business or branch office providing direct, on-site customer access and services (banking, financial, legal, insurance, real estate, utility or similar uses)	P	X
13. Parking garage or commercial parking lot as a primary use	P	P
14. Storage Facility, building or outdoor area	SE	P
15. Personal service shop	X	X
16. Radio and television broadcast studio	SE	P
17. Restaurant or tavern	X	X
18. Restaurant, drive-in	X	X
19. Repair garage for vehicles, engines and motors	X	P
20. Repair shop for household, business or personal appliances	X	X
21. Recreation, athletic, fitness or tanning facility	P	X
22. Retail shop or store	X	X
23. Shop or studio for custom work or for making articles to be sold at retail on premises	X	X
24. Shopping mall or highway retail plaza requiring dedicated parking facilities	X	X
25. Retail center, mini-mall or multi-unit retail facility using village street or public parking	X	X
26. Theater or movie facility	X	X
27. Veterinarian, hospital or clinic	X	X



28. Vocational school or commercial training center	SE	X
29. Wholesale business	P	P
30. Research center or laboratory	P	P
<b>C. INDUSTRIAL USES</b>		
1. Non-nuisance industry	P	P
2. Printing, publishing or graphics plant	P	P
3. Truck terminal or transfer station	P	P
4. Laundry or dry cleaning plant	SE	P
5. Food or agricultural processing facility including dairy, storage, packing and agri-business	SE	P
6. Manufacturing and assembly facility	P	P
7. Chemical processing or manufacturing	SE	P
8. Commercial power and utility plants	SE	P
9. Storage of fuels, chemical or other liquids in tanks	SE	P
10. Outdoor storage are associated with a permitted industrial or commercial use	SE	P
11. Warehouse	P	P
12. Commercial or industrial research center, institute or laboratory	P	X
13. Commercial or industrial park	P	X
14. Sawmill, lumber or wood processing	X	P
<b>D. ACCESSORY USES</b>		
1. Caretaker or owner-occupied dwelling unit	X	X

2. Usual and customary accessory structure or use (clearly subordinate to the principal structure)	P	P
3. Private garage or off-street parking pursuant to Article X	P	P
4. Signs pursuant to Article XI	P	P
5. Communications antenna, dish or tower detached from the primary residence or structure or using a separate foundation and support apparatus not part of the primary residence or structure	SE	SE

**7-3 INDUSTRIAL DISTRICTS  
TABLE OF DIMENSIONAL REGULATIONS**

Area: Square Feet  
Depth/Width/Height: Feet  
Setbacks: Feet

REGULATION CATEGORY	<u>IP</u>	<u>GI</u>
1. Lot Area – Minimum *	25,000	40,000
2. Lot Area – Per Dwelling (min.)	NA	NA
3. Lot Coverage – Percent of total lot area occupied by all principal and accessory buildings	25	40
4. Lot Depth – Minimum	150	200
5. Lot Width – Minimum	125	150
6. Corner Lot Width	150	150
7. Structure Height – Maximum (primary structure/accessory structure)	50/30	75/50
8. Yard Setbacks – Minimums		
Front **	50	75
Side – Each/Combined ***	25	25
Side – Abutting side street on a corner lot	50	50
Rear ***	50	75

\* Where public sewer is not available, no development is permitted when there is insufficient capacity for a private sanitary waste disposal system, as determined by the Niagara County Health Department.

\*\* Setback line as measured from the right-of-way line of the road of street.

\*\*\* Fifty (50) feet where lot abuts an agricultural or residential zoning district.

**ARTICLE VII  
SPECIAL EXCEPTION USES**

**8-1            Delegation of Authority**

The Planning Board is hereby authorized to act on proposed special exception uses which are specifically provided for in this Ordinance. Such action may include approval, conditional approval, or disapproval based on the standards set forth in this Section.

**8-2            General Procedure and Conditions**

8-2-1            The Planning Board shall adopt and file in the municipal clerk's office such Rules of Procedures as it may deem necessary to the proper exercise of its responsibilities with respect to special exception uses.

8-2-2            Prior to taking action on any special exception use, the Planning Board shall hold a public hearing after public notice as provided in the case of an application to the Board of Appeals, in Section 13-2. No action shall be taken respecting such matter until all interested parties shall have been given an opportunity to be heard.

8-2-3            All matters which are the subject of a mandatory referral or notice to other agencies, as set forth in the Enabling Statutes and in Section 239 l and m, Article 12-B of the General Municipal Law, shall be transmitted to the appropriate agencies by the Secretary of the Planning Board in accordance with the provisions of those Sections.

8-2-4            The Secretary of the Planning Board shall keep minutes of the Board's proceedings showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Secretary shall also keep records of examinations and official actions, all of which shall be immediately filed in the office of the Planning Board and shall be a public record. Each decision of the Planning Board with respect to the approval of a special exception use shall be so stated and documented as to provide a definitive authorization to the Building Inspector for issuing a building permit or certificate of occupancy.

8-2-5            A site plan for any proposed special exception use in any District where authorized, shall be submitted to the Planning Board for approval prior to authorization by the Planning Board for the issuance of a building permit.

8-2-6            A special exception authorization by the Planning Board for the issuance of a building permit shall expire within 90 days of such authorization in the event that such permit shall not be applied for within such 90 day period. Extension of such authorization may be granted by the Planning Board for additional 90 day periods.

8-2-7            A special exception use, for which a building permit is authorized by the Planning Board pursuant to the provisions of this Section, shall be construed to be a conforming use.

8-2-8 Any violation of the limitations or special conditions and safeguards established by the Planning Board with respect to a specific authorization for a special exception use shall be deemed a violation of this Ordinance, punishable under the provisions of Section 14-10.

8-2-9 The fee for special exception use applications to the Planning Board shall be as established by resolution of the Town of Newfane Town Board and filed in the Building Office. (Amend. 5/26/99)

### 8-3 General Standards

For every such special exception use the Planning Board shall determine that:

- a) Such use will be in harmony with and promote the general purposes and interest of this Ordinance as stated in Section 2.
- b) The plot area is sufficient, appropriate, and adequate for the use and the reasonably anticipated operation and expansion thereof.
- c) The proposed use will not prevent the orderly and reasonable use of adjacent properties in adjacent use Districts.
- d) The site is particularly suitable for the location of such use in the community.
- e) The characteristics of the proposed use are not such that its proposed location would unsuitably near to a church, school, theater, recreational area, or other place of public assembly.
- f) The proposed use, particularly in the case of a non-nuisance industry, conforms with the Ordinance definition of the special execution use where such definition exists, or with the generally accepted definition of such use where it does not exist in the Ordinance.
- g) Access facilities are adequate for the estimated traffic from public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and further that vehicular entrances and exit shall be clearly visible from the street and not be within 75 feet of the intersection of street lines at a street intersection except under unusual circumstances.
- h) All proposed curb cuts have been approved by the street and/or highway agency which has jurisdiction.
- i) There are offstreet parking and truck loading spaces at least in the number required by the provisions of Section 10, but in any case an adequate number for the anticipated number of occupants, both employees and patrons or visitors; further that the layout of the spaces and driveways is convenient and conducive to safe operation.
- j) Adequate buffer yards and screening are provided where necessary to protect adjacent properties and land uses.
- k) Adequate provisions will be made for the collection and disposal of stormwater runoff from the site, and of sanitary sewerage, refuse, or other wastes, whether liquid, solid, gaseous or of other character.
- l) The proposed use recognizes and provides for the further specific conditions and safeguards required for particular uses in Section 8-4, if any.

8-4

**Special Conditions and Safeguards for Certain Special Exception Uses**

No authorization for a building permit shall be granted by the Planning Board for any use listed in this Section, unless the Board shall specifically find that, in addition to meeting all the general standards set forth in Section 8-3, the proposed special exception use also meets the special conditions and safeguards required in this Section.

8-4-1

**AUDITORIUM MEETING HALL**

- a) No building or structure shall be built within 50 feet of any property line.
- b) Lot coverage shall not exceed 20 percent.
- c) The building shall be at least 200 feet distant along any bounding street from any Residence District boundary line with a 50' wide landscaped berm.

8-4-2

**ANIMAL HUSBANDRY**

- a) Adjacent properties shall be adequately protected from noise, odors and unsightly appearance.
- b) All buildings, structures, and accessory use areas except offstreet parking, shall be at least 100 feet from any property line.

8-4-3

**AUTOMOBILE LAUNDRY**

- a) The lot area shall be not less than 20,000 square feet, and shall have a minimum frontage of 150 feet along a major street or highway.
- b) No church, school, library, playground, or similar place of public assembly shall be within 500 feet of the site.
- c) Storage area for vehicles waiting for service shall be provided on site and shall not occur on a public street or highway. Not more than five motor vehicles shall be stored outdoors overnight.
- d) An automobile laundry shall not provide other than washing, waxing, simonizing, or similar treatment services.
- e) Outdoor storage and display of accessories, portable signs, and outdoor repair work shall be prohibited at all times. Premises shall not be used for the sale, rent or display of automobiles, trailers, mobile homes, boats, or other vehicles.

8-4-4

**BOATYARD, BOAT STORAGE**

- a) Street access through a residential District and into the site shall be adequate for the indicated traffic, and shall not permit trucking that might damage street improvements or deteriorate the residential character of the area.
- b) Accessory service functions of the boat yard may include the provision of fuel and boatyard supplies, repairs for recreational boating, and boat rental.
- c) In addition to any other applicable offstreet parking requirements, one offstreet parking space shall be provided for each boat berth or mooring.
- d) Particular attention shall be given to the compatibility of the appearance of the proposed facility with the natural scenery. There shall be only one sign visible from the water side that shall be limited to an area and lighting intensity sufficient to provide basic identification of the boatyard's location to passing boats. A second sign not exceeding six square feet in

area may be placed at the land entrance to the boatyard site. Intermittent or flashing lights, and moving or animated signs are prohibited.

8-4-5

**BUS PASSENGER SHELTER**

- (a) The shelter shall be so located that there is ample room to permit the bus to leave the traveled roadway conveniently for picking up or discharging passengers.
- (b) The only advertising display on such structure shall be one (1) sign not exceeding two (2) square feet in area.

8-4-6

**EATING ESTABLISHMENT, DRIVE IN, OPEN-FRONT OR CURB SERVICE**

- (a) Vehicular entrances and exits shall be controlled by curbing.
- (b) There shall be adequate offstreet parking and loading space to serve the proposed use, paved with a durable hard surface material.
- (c) There shall be adequate provision for disposal of trash and refuse left on the premises.
- (d) There shall be either a suitable fence landscape planting screen along side and rear lot lines.

8-4-7

**FILLING STATION**

- (a) The lot area shall not be less than 20,000 square feet, and shall have a minimum frontage along the principal street or highway of at least 150 feet.
- (b) No church, school, library, playground, or similar place of public assembly shall be within 500 feet of the site.
- (c) All pumps, and lubricating and other devices shall be located at least 25 feet from any building, structure, or street line.
- (d) Entrance or exit driveways shall be located at least five (5) feet from any side or rear property line. Such driveways shall be so laid out as to avoid the necessity of any vehicle backing across any right-of-way.
- (e) The area devoted to the outdoor storage of motor vehicles or parts thereof, or to purposes of dismantling, shall be screened from view of persons on adjacent streets by enclosing such area within a solid fence eight (8) feet high, or such area shall be located inside a building. Not more than five (5) motor vehicles shall be stored outdoors overnight.
- (f) Outdoor storage of other than motor vehicles shall be prohibited at all times. Premises shall not be used for the sale, rent, or display of automobiles, trailers, mobile homes, boats, or other vehicles.

8-4-8

**FUNERAL HOME**

- (a) The lot shall have a minimum frontage of 200 feet on a major street or highway.
- (b) Offstreet parking areas and similar service areas or buildings shall be set back at least 20 feet from all lot lines.
- (c) Landscape screening shall be provided to prevent headlights shining or glaring into residential use districts.

8-4-9

**HOTEL**

- (a) There shall be at least 1,000 square feet of lot area per guest room.
- (b) Parking area shall be screened from adjacent uses.

8-4-10

**MARINA OR BOAT RAMP, COMMERCIAL**

- (a) Street across through a residential District and into the site shall be adequate for the indicated traffic, and shall not permit trucking that might

damage street improvements or deteriorate the residential character of the area.

- (b) Accessory service functions of the marina may include the provision of fuel and marine supplies, repairs for recreational boating, and boat rentals.
- (c) In addition to any other applicable off-street parking requirements, one (1) offstreet parking space shall be provided for each boat berth or mooring.
- (d) Particular attention shall be given to the compatibility of the appearance of the proposed facility with the natural scenery.

There shall be only one (1) sign visible from the water side, and that shall be limited to an area and lighting intensity sufficient to provide basic identification of the marina's location to passing boats. A second sign not exceeding six (6) square feet in area may be placed at the land entrance the marina site. Intermittent or flashing lights, and moving or animated signs are prohibited.

8-4-11 MEMBERSHIP CLUB, NON-PROFIT

- (a) All buildings and structures shall be at least 50 feet from any property line.
- (b) Lot coverage shall not exceed 20 per cent.

8-4-12 MOTEL

- (a) There shall be at least 2,500 square feet of lot area for each first floor guest room and an additional 1,000 square feet of lot area for each guest room on other floors.

8-4-13 NURSERY SCHOOL

- (a) The lot area shall not be less than one (1) acre.
- (b) There shall not be less than one(1) pupil for every 1,500 square feet of lot area.
- (c) All buildings, structures, and areas of organized activity such as play areas, swimming pools, etc., shall be not less than 75 feet from any property line.
- (d) Offstreet parking areas shall be not less than 50 feet from any property line.
- (e) Only one (1) permanent family dwelling unit shall be located on the premises, and said dwelling unit shall comply with the provisions of this ordinance for the District in which the lot is located.
- (f) Outdoor floodlighting or public address systems are prohibited.
- (g) Only one(1) sign, not larger than 12 square feet in area, shall be permitted.
- (h) Landscaping and fencing shall be provided as required by the Planning Board.

8-4-14 NURSING HOME, REST HOME

- (a) The lot area shall be not less than one (1) acre, and shall have a minimum frontage of 150 feet along the principal bounding street.
- (b) All buildings and structures shall be not less than 50 feet from any property line.
- (c) Lot coverage shall not exceed 50 per cent.

8-4-15 PARKING GARAGE

- (a) There shall be adequate provisions for access to the site.
- (b) Vehicular entrances and exits shall be controlled by curbing.



- (c) Facilities for servicing, repairs, and outdoor storage for motor vehicles shall be prohibited.

8-4-16

PHILANTHROPIC, FRATERNAL OR SOCIAL ORGANIZATION OFFICE OR MEETING ROOM

- (a) All buildings and structures shall be not less than 50 feet from any property line.
- (b) Lot coverage shall not exceed 20 per cent.

8-4-17

PLANNED RESIDENTIAL DEVELOPMENT

No authorization for a building permit or permits shall be granted unless the Planning Board shall specifically find that the proposed special exception for the planned residential development is in keeping with the intent of this provision to provide for flexible planning of residential development on difficult terrain while conserving the natural scenic environment of the town of Newfane and to implement the master plan while meeting the following special conditions and safeguards.

- (a) An over all development plan shall be presented showing the use or uses proposed, including dimensions indicating the areas set aside for each use, and the locations of all structures, parking spaces, and rights-of-way or driveways, and the provision for sewer and water service facilities.
- (b) Residential dwelling units may be in single family, two family or multiple dwelling structures; provided that the total number of dwelling units shall not exceed the density allowed in the zoning district; and further provided that the minimum yard provisions, and in the case of a multiple dwelling, the minimum spacing between buildings, shall be not less than those required:
  - (1) in an R-R Residential District for a single family dwelling
  - (2) in a R-1 Residential District for a two family dwelling
  - (3) in a R-2 Residential District for a multiple family dwelling
- (c) Open space or common land resulting from the planned residential development design shall only be used for private or municipal recreation, including natural park land. Such land shall only be owned by a non-profit corporation, or shall be offered for dedication to the municipality for other public agency for the same uses; but in any case a non-profit corporation, a pre-established offer of dedication shall be filed with the municipality for acceptance if the non-profit corporation were ever discontinued or failed to maintain the private recreation use or natural parkland.
- (d) The proposed planned residential development shall comply with all other applicable requirements of the municipality with respect to land development.

8-4-18

PLANNED COMMERCIAL INDUSTRIAL PARK

- (a) The site area shall be not less than 50 acres.
- (b) Individual sites resulting from subdivision or from leasing arrangements may average 80,000 square feet each provided that no site of less than 80,000 square feet may be located within 400 feet of the park's boundary and further that no site shall be less than 20,000 square feet.
- (c) If the proposed park is not subject to the subdivision regulation as a result of common ownership, it shall be approved in a similar manner by the

Planning Board and meet the same standards for design and public improvements.

8-4-19

PROFESSIONAL OFFICE, MEDICAL ARTS BUILDING

- (a) The lot shall have frontage on a major street or highway.
- (b) Access to offstreet parking areas shall be so designed that to the site will not be encouraged to travel through the minor street system.
- (c) Offstreet parking areas shall be set back five(5) feet from all property lines shared with adjacent lots in any Residence District; further, a five (5) foot stockade-type fence, or equivalent approved screening shall be located along such property lines.

8-4-20

TRUCK TERMINAL, TRUCK TRANSFER STATION

- (a) The lot area shall be not less than 20,000 square feet and have a minimum frontage along a State or County highway of at least 150 feet.
- (b) No church, school, library, playground or similar place of public assembly shall be within 500 feet of the site.
- (c) All entrance and exit driveways shall be approved by the County Highway Engineer or the district Engineer of the State Department of Transportation depending on whose jurisdiction the highway is located in.
- (d) All fuel pumps, lubricating and other devices shall be located at least 25 feet from any building, structure, or street line.
- (e) No repair work shall be performed outdoors.
- (f) All fuel, oil, gasoline or similar substances shall be stored underground and at least ten (10) feet from any and all lot lines, and installed and maintained in accordance with the standard of the National Board of Fire Underwriters.
- (g) All dismantled automobiles, trucks, tractors, trailers and similar equipment, and parts and accessories thereof shall be stored within a building.
- (h) All parking areas for operating vehicles shall be paved, curbed and drained in accordance with municipal specifications. Such areas shall be at least 50 feet from any Residence District boundary and at least 10 feet from any property line. No vehicle shall park or stand outside such paved parking area.
- (i) Screening shall include planting of evergreen shrubs or trees in addition to a fence so that truck motor noise and the sound of overnight operation of refrigeration units will tend to be muffled.

8-4-21

VETERINARIAN, VETERINARY HOSPITAL OR CLINIC

- (a) Adjacent properties shall be adequately protected from noise, odors and unsightly appearance.
- (b) All buildings, structures, and accessory be at least 50 feet from any property line.

8-4-22

QUARRIES, CLAY, SHALE, AND GRAVEL PITS

- (a) No excavation or removal of natural resources material shall be permitted or allowed nearer to any property line or street right of way line than sixty feet. All slopes of excavations shall be maintained at no greater an incline than one foot in vertical measurement to two feet in horizontal measurement.

- (b) The following conditions shall be imposed upon any approval for excavation and/or removal of natural resources materials:
- (1) A survey made by a licensed surveyor or engineer of the applicant's lands indicating thereon the area of the proposed excavation or removal of materials with relation to property and street lines.
  - (2) A contour map made by a licensed surveyor or engineer indicating the topography of the area from which material is to be excavated or removed.
  - (3) Restoration and reseeded of the area upon termination of the permit as near as possible to its original condition and in reasonable topographical conformity with the surrounding terrain.
  - (4) A performance bond to be filed with the Town Clerk and approved by the Town Attorney guaranteeing performance of the conditions imposed by the Board in granting approval.
  - (5) Days and hours of operation of removal and/or excavation of material.
  - (6) Any other conditions which may be deemed desirable and necessary to protect the public safety and general welfare within the spirit and intent of this ordinance including but not limited to a termination date of the permit and maintenance of roadways to and from the excavation or removal area.
  - (7) Farms ponds may be constructed for agricultural or conservation purposes but no top soil, sand, gravel, clay, shale or other materials shall be sold or removed from the farm premises upon which the pond is located. All excavations for any purpose shall be done in an orderly and safe manner and upon completion of the work the premises shall be left in a clean and tidy condition and so as not to be unsightly or detrimental to the adjacent properties or the surrounding area.

**ARTICLE IX  
SUPPLEMENTAL USE AND DIMENSIONAL REGULATIONS**

**9-1      Placement of Accessory Buildings and Uses, Including Garages, Offstreet Parking and Truck Loading Spaces**

9-1-1      In all Districts:

9-1-1.1      Accessory buildings, including garages, if detached from a main building or if connected only by an open breezeway-type structure, shall be not less than 10 feet from the main building.

9-1-1.2      A private garage may be constructed as a structural part of a main building, provided that when so constructed, the garage walls shall be regarded as the walls of the main building in applying the front, rear, and side yard regulations of this Ordinance.

9-1-1.3      Accessory buildings, including private garages, shall not be placed within a required front yard, nor within a required side yard.

9-1-1.4      Accessory buildings, including private garages, located within the rear yard shall be setback from the side and rear property lines at least as far as listed below in each of the specified Districts:

<u>Districts</u>	<u>Min. Setback-feet</u>
AR	20
RR	15
R-1	10
R-2	5
CF	10
MHP	10
VB	5
HC	25
MB	10
IP	20
GI	50
(Amend. 5/26/99)	

9-1-1.5      An access driveway may be located within a required yard.

9-1-1.6      Required accessory offstreet parking area or truck loading space shall not be encroached upon by buildings, open storage, or any other use.

9-1-1.7      The storage of manure, or of odor or dust producing substances as an accessory use shall not be permitted within 100 feet of any side or rear lot line, or within 100 feet of any front lot line.

- 9-1-1.8 The following shall apply to all forms of animal husbandry except the keeping of animals as household pets:
- (a) All shelters provided for livestock, fowl, or fur bearing animals shall be at least 100 feet from any property line, except that an existing shelter may remain and be added to, provided that the addition shall not encroach on a required yard
  - (b) The disposal of animal wastes shall be provided for in such a manner as to prevent any nuisance or sanitary problems.

9-1-2 **In Residence Districts**

- 9-1-2.1 Accessory offstreet parking areas shall be paved in accordance with the municipal specifications.

9-1-3 **In Nonresidential Districts:**

- 9-1-3.1 Accessory offstreet parking areas may be located within required front, side, or rear yards.

**9-2 Lot Area, Lot Coverage and Lot Width**

- 9-2-1 In all districts, except VB District, the lot frontage at the street line shall be not less than 40 feet.

**9-3 Height**

- 9-3-1 Nothing herein contained shall restrict the height of the following:
- (a) Church spire, cupola, belfry, clock tower, flagpole, chimney flue, elevator or stair bulkhead, water tank, silo, stage tower, or scenery loft, radio or television tower, or similar structure.
- 9-3-2 No building or structure erected pursuant to Section 9-3-1 to height in excess of the height limit for the District in which it is situated shall:
- (a) Have a lot coverage in excess of 10 per cent of the lot area
  - (b) Be used for residence or tendency purposes
  - (c) Have any sign, name-plate display, or advertising device of any kind whatsoever inscribed upon or attached to such building or structure.

**9-4 Yards**

- 9-4-1 The following accessory structures may be located in any required front or rear yard:
- (a) Awning or movable canopy not exceeding 10 feet in height
  - (b) Open arbor or trellis
  - (c) Retaining wall, fence or masonry well, pursuant to Section 9-9
  - (d) Unroofed steps, patio or terrace not higher than one (1) foot above ground level.

- 9-4-2 The space in a required front yard shall be open and unobstructed except for structures provided for in Section 9-4-1 and the following :
- (a) An unroofed balcony, projecting not more than eight(8) feet into the yard
  - (b) Other projections specifically authorized in Sections 9-4-3 and 9-4-4.
- 9-4-3 Every part of a yard shall be open to the sky unobstructed except for retaining walls and for accessory buildings in a rear yard, and except for the ordinary projection of sills, belt courses, and ornamental features projecting not to exceed six(6) inches. Cornices and eaves shall not project more than 18 inches.
- 9-4-4 Open or lattice-enclosed fireproof fire escapes or stairways, required by law, projecting into a yard not more than four (4) feet, and the ordinary projections of chimneys and pilasters shall be permitted by the Building Inspector when placed so as not to obstruct light and ventilation.
- 9-4-5 Where a lot extends through from street to street, the applicable front yard regulations shall apply on both street frontages.
- 9-4-6 In all Residence Districts, where 25 per cent of the block frontage within 200 feet of a proposed building is already improved with buildings, or 25 per cent of the opposite block frontage across the street, the front yard at the front of such proposed building shall be required to exceed the minimum dimension stipulated in this Ordinance for the District in which it is situated, in cases where the average alignment of the two nearest buildings within such 200 feet on the same side of the street 25 per cent improved, or otherwise on the opposite side of the street, exceeds such minimum dimension. Such front yard shall extend to such average alignment, provided however, that in no case shall such front yard be required to exceed by more than 10 feet the minimum required front yard prescribed for in the District in which such proposed building is situated. The provisions of this Section shall not apply to the required side yard on the street side of a building on a corner lot.

**9-5 Courts**

- 9-5-1 In all Districts, the least horizontal dimension of an INNER COURT at its lowest level shall be not less than the larger of the following two dimensions:
- (a) One-third (1/3) of the maximum height above such lowest level of the building walls erected on the lot and bounding such court.
  - (b) 15 feet.
- 9-5-2 In all Districts, the least width of an OUTER COURT an its lowest level shall be not less than the largest of the following three dimensions:
- (a) One-third (1/3) of the maximum height above such lowest level of the building walls erected on the same lot and bounding such court .
  - (b) Two-thirds (2/3) of the horizontal depth of such court.
  - (c) 15 feet.

9-5-3 In all Districts, the horizontal depth of an OUTER COURT shall not exceed one and one-half (1 1/2) times its least width.

**9-6 Spacing Between Buildings**

9-6-1 In the layout of a development of garden apartments or other multiple dwellings on a lot or tract of land, a horizontal distance of not less than 20 feet or two-thirds (2/3) the height of the higher building, whichever is the greater, shall be maintained between all main buildings; and, between all main buildings and major detached accessory buildings or groups of accessory buildings, such as a garage compound, having a ground coverage equal to that of a main building.

9-6-2 The above requirement of Section 9-6-1 need not exceed 35 feet when the top of one building is less than eight (8) feet above the level of the first floor of the other building.

9-6-3 Minor accessory buildings shall meet the requirements of section 9-1.

**9-7 Corner Clearance**

On a corner lot in any Residence District, within the triangular area determined as provided in this section, no wall or fence or other structure shall be erected to a height in excess of three (3) feet; and no vehicle, object or any other obstruction of height in excess of three (3) feet shall be parked or placed; and no hedge, shrub, or other growth shall be maintained at a height in excess that trees whose branches are trimmed away to a height of at least 10 feet above the curb level, or pavement level where there is no curb, shall be permitted. Such triangular area shall be determined by two points, one at each intersection street line, each of which point is 25 feet from the intersection of such street lines.

**9-8 Minimum Residential Floor Area**

9-8-1 Statement of Purpose

The requirements contained in this Section are designed to promote and protect the public health; to prevent overcrowded living conditions; to guard against the development of substandard neighbors; to conserve established property values; and to contribute to the general welfare.

9-8-2 Minimum Schedule

Every dwelling or other building, other than a mobile home located in a licensed mobile home court, devoted in whole or in part to a residential use, which is hereafter erected, or converted to accommodate additional families, shall provide a minimum floor area per family on finished floors with clear ceiling height of not less the seven (7) feet six (6) inches, in conformity with the following schedule and with the other provisions of this Section. The minimal stipulated herein shall

be deemed to be exclusive of unenclosed area, and basement and cellar rooms and areas.

**Type of residential building**

**Minimum required floor area per family**

Single and Two family	750 sq. ft.
Multi-family	500 sq. ft.
Studio Apartment	196 sq. ft.
Conversions (Amend. 5/26/99)	500 sq. ft./unit

9-8-3 **First Floor Area of a Dwelling**

The minimum first floor enclosed area of a dwelling other than a mobile home located in the MHP District, exclusive of garage or other accessory building, shall be 500 square feet, and its least overall dimension shall be twenty (20) feet.  
(Amend. 5/26/99)

9-9 **Permitted Fences and Walls**

9-9-1 **Schedule of Permitted Fences and Walls**

The following schedule of permitted fences and walls shall apply according to the District in which the lot is located on the Zoning Map, whether such lot be used for a permitted use or for a special exception use, except where the Planning or Board of Appeals may require special treatment. Any fence or wall erected in accordance with these regulations shall be constructed so that the good side or best appearance of the material faces the adjacent neighbor. (Amend. 5/26/99)

**Maximum Fence or Wall Height**

(except where corner clearances are required in accordance with Section 9-7)

Districts	Front Lot Line	Side Lot Line Outside Rear Yard	Rear Yard Lot Lines	Not in Any Min. Required Yard
AR	4	4	6	6
RR	4	4	6	6
R-1	4	4	6	6
R-2	4	6	6	6
CF	4	6	6	6
MHP	4	8	8	8
VB	3	6	6	6
HC, MB	4	8	8	8
IP, GI	4	8	8	8

(Amend. 5/26/99)



9-9-2            **Method of Measuring the Height of a Fence or Wall**

The height of a fence or wall shall be measured from the ground level at the base of the fence; excepting that there is a retaining wall, and further excepting that any fence or wall on the uphill side of such retaining wall may be at least four (4) feet high, notwithstanding the provisions of the schedule contained in Section 9-9-1.

**9-10            Waterfront and Stream Setbacks**

9-10-1           Along the shore of Lake Ontario and the banks of Eighteen Mile Creek, all buildings and structures shall be setback at least 100 feet from the main water level line as established by the Town Of Newfane, Except for bulkheading and other other marine structures approved by the Town of Newfane.

9-10-2           Along all other drainage lines established in the Niagara Country Internal Drainage Study, all buildings and structures shall be setback at least 50 feet from the centerline of the drainage channel.

**9-11            Minimum First Floor Elevations of Buildings**

9-11-1           All buildings used for human habitation or as shelter for employees shall have a first floor elevation at least five (5) feet above the seasonal high ground water elevation as estimated by the Soils Conseration Service in its soil survey of the Town of Newfane.

**9-12            Required Transitional Yards and Screening**

9-12-1           In order to assure orderly and compatible relationship between Residence Districts and Nonresidential Districts along their common boundry lines thr following requirments shall be met along such boundries:

- (a)    Minimum required transitional side and rear yards within Nonresidential Districts adjoining Residence Districts shall be 30 feet .
- (b)    Minimum required screening within required transitional side and rear yards shall be a 6 foot high stockade-type fence or equal to be erected and maintained by the nonresidential property lines; provided, however, that the Board of Appeals, Subject to the applicable Provisions of Section 13-4, may waive or modify these requirements for screening where the same screening effect is accomplished by the natural terrain or foliage.

**9-13            Produce Stands**

Produce stands may be maintained in residential Districts by the owner or bona fide lessee of the premises on which the stand is to be located upon the following conditions:

- (1)    Only agricultural and garden products grown exclusively within the town of Newfane may be displayed and sold.

- (2) No permanent structures may be erected or maintained for such use except upon approval of the Planning Board.
- (3) Produce stands and displays of products shall not be located nearer than twenty feet from the paved portion of the highways.
- (4) Adequate parking areas shall be provided off the paved portion of the highway.
- (5) All produce stands shall be conducted in a neat and sanitary manner.

9-14

### **Regulation of Automobile Junk Yards**

Chapter 1040 of the Laws of 1965 sets forth a whole new procedure required to be followed by each town, city, and village of the state to regulate automobile junk yards. This new law becomes section 136 of the General Municipal Law and is effective of the Town of Newfane Ordinance. The statute defines a "junkyard" as:

Any place of storage or deposit, whether in connection with another or not, where two or more unregistered, old, or secondhand vehicles, no longer intended or in condition for legal use on the public highway, are held, whether for the purpose of resale of used parts therefrom for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or any other purpose, such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which taken together equal in bulk two or more such vehicles provided however, the term junk yard shall not construe to mean an establishment having facilities for processing iron, steel, or non-ferrous scrap and whose principal product is scrap iron, steel, or non-ferrous scrap for sale for remelting purposes only.

Any person wishing to conduct such a junk yard business must obtain a license and, in Towns with Zoning, a certificate approving the location of this yard, also.

Of special interest are the fencing requirements of this statute. Before use a new junk yard shall be completely surrounded with a fence at least eight feet in height which substantially screens and with a suitable gate which shall be closed and locked except during working hours of such junk yards or when the applicant or his agent shall be working within. Such fence shall be erected not nearer than fifty feet from a public highway. All motor vehicles and parts thereof stored or deposited by applicant shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of business. All wrecking or other work on such motor vehicles and parts and all burning of the same within vicinity of the junk yard shall be accomplished within the enclosure.

Where the topography, naturally growth of timber or other considerations are adequate, the fencing requirement may be reduced by the Town board upon granting the license. New junk yards may not be within 500 feet of church, school, hospital, public building or place of assembly.

An already established yard owner must make an application for a license and pay the \$25.00 fee and get a license. His yard must meet the fencing and other requirements imposed on a new yard within three months.

9-15

### **Regulation of Cluster Development**

Cluster development is intended to encourage flexibility in the siting and subdivision design of residential development for the creation of attractive, economical and environmentally sound land use. The regulation allows for the clustering of residential development to preserve or protect land with unique natural characteristics or physical attributes, or to provide recreation opportunities for the community.

Cluster development shall be applicable in the AR, RR, R-1, R-2, R-3, VB and PRD Districts. Development within each district shall be subject to the uses, structures and dimensional requirements of the district where the cluster lies, except as provided herein. While generally limited to the cluster of housing, cluster development may also pertain to office and commercial structures in the VB District.

Any use of the cluster provisions as provided herein shall require the approval of the Planning Board pursuant to the regulation of the Town of Newfane Subdivision Ordinance. Cluster development may be required by the Planning Board as a condition of site development in order to conserve a specific area as defined in these regulations.

The following regulations shall apply to all cluster development as provided for in this section:

- (a) **Minimum Development Area.** The minimum development area for cluster housing shall be five (5) acres. The minimum development area may be reduced by the Planning Board for an additional cluster adjacent to an existing cluster development
- (b) **Density of Development.** The maximum number of units allowed in a cluster shall not exceed the total density normally allowed on the parcel in the district where the cluster development is being applied.
- (c) **Utility Services.** Public sewer and water services shall be provided to all cluster development, regardless of the requirements of the zoning district.
- (d) **Conservation Area or Open Space.** A minimum of forty percent (40%) of the gross acreage of the original tract (s) shall remain in conservation, recreation or open space and be dedicated as such. A covenant or deed restriction of the open space shall be provided, as acceptable to the Town Attorney, and recorded with the development instrument in the Clerk's Office. Said covenant or deed restriction shall provide for the appropriate restriction of use and maintenance of the open space in accordance with its dedicated purpose.

Conservation, open space or unique physical features required as a minimum to be retained for dedication shall be defined as suitable agricultural land, floodplains, wetlands, steep slopes (in excess of 25%), rock outcroppings, gorges, streams/rivers, caverns, woodlands and other natural areas.

- (e) **Buffer with Surrounding Uses.** A buffer of one hundred (100) feet shall be provided between cluster development and any lower or less intense zoning classification, except in the case of an adjoining or abutting cluster development.
- (f) **Access.** All pedestrian and vehicle access and on-site circulation is to be provided by the developer as part of the cluster development and maintained by the residents of the development. Access to dedicated open space and recreation areas shall be required, as appropriate.
- (g) **Minimum Dwelling Area.** The minimum size of any dwelling in a cluster development shall be 750 square feet; the average of all such dwellings in a cluster development shall be 900 square feet.
- (h) **Maximum Height.** The height of structures shall be governed by the district in which the cluster development lies.
- (i) **Minimum Lot Dimensional Requirements.** The minimum lot standard for cluster development shall be governed by the following schedule:  
(Amend. 5/26/99)

STANDARD	ZONING DISTRICT					
	<u>AR</u>	<u>RR</u>	<u>R-1</u>	<u>R-2</u>	<u>R-3/PRD</u>	<u>VB</u>
Lot Area <sup>1</sup>	40,000	20,000	12,000	6000	4000	3000
Lot Width <sup>2</sup>	125	100	75	60	50	20
Setback	60	50	50	40	30	25
Side Yard (combined/each)	15	10	15/5	10/0	10/0	0
Rear Yard	45	35	30	25	20	0
Side/Rear, Accessory	10	10	5	5	5	0

**9-16 Regulation of Townhouses**

Attached dwellings or townhouses are herein regulated in addition to the provisions of the zoning districts to encourage the planned grouping of dwellings and provide for the common area and ancillary facilities to support the resulting

<sup>1</sup> Square feet  
<sup>2</sup> feet

density of development. These requirements form the minimum standards for townhouse development.

- (a) **Grouping Length.** The maximum group length of townhouse units in a continuous or adjoining cluster is one hundred twenty (120) feet or six (6) contiguous units. There shall be an offset every two (2) units of at least ten (10) feet in the exterior wall facing the street. This produces at least two offsets in groups of five or more and one offset in groups of three units.
- (b) **Unit Size.** Every townhouse shall be eight hundred (500) square feet or more in total livable floor area and the average unit size of any townhouse cluster shall be one thousand (750) square feet.
- (c) **Height.** The maximum height of any townhouse shall be two and one-half (2 ½) stories, not to exceed thirty five (35) feet.
- (d) **Minimum Development Area/Density.** The minimum area for any townhouse development shall be one (1) acre either as an individual use or cumulatively as part of a mixed development. Each townhouse unit shall have a lot area of 5000 square feet reserved of which 2000 square feet is dedicated as common area for recreation and open space. Gross density of development shall not exceed 8.0 units per acre.
- (e) **Street Access.** Each townhouse cluster or group shall have access to a public street via a paved public or private right-of-way accessible by emergency and service vehicles. Any recreation or open space dedicated for public use shall be similarly accessible to an improved public or private street.
- (f) **Utility Services.** Townhouse units shall be served by public sewer and water. Utility services shall be separately provided to each unit and heating, ventilation and air conditioning systems shall be provided to each unit so that no townhouse will in any way be dependent on or through any other unit for such services or utilities.
- (g) **Parking, Drives and Walks.** A minimum of two (2) off-street parking spaces shall be provided for each unit, either on the lot of each unit or in common parking areas available within 300 feet of the unit for which it is intended. All parking areas, drives, walkways and private streets shall be paved and provisions made for continual maintenance by the development. Walkways shall be provided along the street front of each townhouse group and linked to parking and recreation areas.
- (h) **Recreation Areas.** Every townhouse development shall create and maintain a common recreation area for active and passive activities. Such areas may be provided within the development or in joint with a contiguous development, subject to approval of the Planning Board. The recreation area shall consist of a minimum of eight hundred (800) square feet for each unit in the development and be not less than one-half acre in minimum area. Such areas shall be developed and maintained by the townhouse development.
- (i) **Dimensional Requirements.** Townhouse development shall conform to the following minimum development standards:

Minimum Development Width – 120 feet on a public street.  
Setback, Development – 75 from a public right-of-way.  
Setback, Unit – 12 feet from a private right-of-way.  
Minimum Unit Lot Width – 20 feet; 25 feet for end units.  
Side Yard, Development – 20 feet; 50 feet from any other residential zoning.  
Side Yard, Cluster – 20; 30 feet separation between buildings.  
Rear Yard, Development – 50 feet.  
Rear Yard, Cluster – 30 feet.  
Development Coverage – Maximum 40% of the total site.

(Amend. 5/26/99)

9-17

### **Supplemental Regulation of Mobile Home Parks**

Mobile Homes are herein regulated in addition to the provisions of the zoning districts to encourage the planned grouping of units with the infrastructure and services necessary to accommodate the density and type of units involved. These regulations provide for adequate recreation and common area and ancillary facilities to support the resulting density of development. These requirements form the minimum standards for mobile home park development.

9-17-1.1

#### **Supplemental Dimensional Regulations.**

- (a) Area. The minimum area for any mobile home park shall be five (5) acres. There shall be an identified lot for each mobile home within the park which shall be a minimum of 4000 square feet for each dwelling unit; provided, however, that every unit shall be served by public sewer and water services. Maximum density in a mobile home park shall be eight (8) units per acre of total development.
- (b) Lot Width. The minimum width for each mobile home lot shall be forty (40) feet, except that for any mobile home unit greater than twelve (12) feet in width, the minimum lot width shall be sixty (60) feet.
- (c) Lot coverage. The lot coverage of a mobile home, together with an expansion or accessory structure permitted thereto by this ordinance, shall not exceed twenty percent (25%) of the total mobile home lot area.
- (d) Yard Areas. No mobile home shall be located within fifteen (15) feet of another mobile home; provided, however, that with respect to mobile homes parked end to end, the distance between mobile homes so parked shall be no less than ten (10) feet.
- (e) Height. No mobile home shall exceed fourteen (14) feet in height nor shall any storage or other accessory structure permitted in this ordinance exceed the height of any mobile home that it serves; utilities, television antennae and radio aerials exempted.
- (f) Setback. The first lot within a mobile home park shall be located no less than seventy-five (75) feet from any public right-of-way. In no case shall any structure be located closer to the street right-of-way than the setback line.

Mobile homes within the park shall be set back no less than thirty (30) feet from the right-of-way of any street, lane or driveway. In the case of a corner lot within the park, no mobile home shall be located closer than twenty (20) feet from the right-of-way of the side street, lane or driveway.

No structure in the MHP District shall be located closer than fifty (50) feet from the lot line of an adjacent property that is in the Agricultural or Residential Districts.

9-17-2

#### Required Improvements

- (a) Location. Each mobile home lot shall be located on a well-drained site to ensure rapid drainage and freedom from stagnant pools of water.
- (b) Markers for mobile home lots. Every mobile home lot shall be clearly defined by markers posted and maintained in a conspicuous place on each lot corresponding to the number of each lot as shown on the site plan.
- (c) Patio. A Patio of one hundred (100) square feet shall be installed for each mobile home. Said patio shall be constructed of asphalt or concrete and shall be no less than three (3) inches thick.
- (d) Garbage Container. Each mobile home lot within the park shall be provided with at least one tight-fitting, closed-top garbage or trash container with disposal provided at a frequency to assure it will not overflow.
- (e) Parking. Each mobile home park shall provide for adequate vehicle parking at the rate of two (2) car spaces per mobile home lot, either on each lot or in common parking areas within the park conveniently located to the mobile home lot(s) served.

9-17-3

#### Streets

- (a) Minimum width. The minimum street, lane or driveway right-of-way on which an individual mobile home within a mobile home park fronts shall be forty (40) feet in width. In cases where the street, lane or driveway ends, a cul-de-sac with a minimum turning radius of one hundred (100) feet shall be constructed.
- (b) Surface. All streets, lanes and driveways shall be surfaced and maintained for a width of twenty (20) feet thereof with a durable dustproof surface. The minimum material that meets these requirements will be a two-shot bituminous treatment applied to a base of not less than six (6) inches of compacted bank gravel or equivalent.
- (c) Access to public street. All streets, lanes or driveways shall have unobstructed access to a public street or highway. Driveway entrances to a mobile home park from any public street or highway shall conform to the current construction standard for entrance drives of the New York State Department of Transportation.

9-17-4 Water and Sewer Facilities

- (a) Water supply. Each mobile home lot shall be provided with an adequate supply of public water as authorized by the Town of Newfane and shall be furnished to each lot in conformance with all applicable laws, regulations, resolutions or ordinances. All water lines shall be constructed frost-free.
- (b) Sewerage facilities. All waste and wastewater from a faucet, toilet, tub, shower, sink, slop sink, drain, washing machine, garbage disposal unit or laundry from any mobile home lot or common area within the mobile home park shall be collected and conveyed to a public sewer system within the mobile home park which is installed in accordance with regulation and specifications of the Town of Newfane.

9-17-5 Lighting Public areas of mobile home parks shall be adequately lighted so as to permit safe movement of vehicles and pedestrians at night.

9-17-6 Playgrounds. Each mobile home park shall provide park and/or playground space, specifically and exclusively for that purpose, at a rate of two thousand (2000) square feet per mobile home lot and a minimum of twenty thousand (20,000) square feet per park. Playground and recreation areas may be consolidated with adjacent facilities of at least the size provided herein and subject to approval of the Planning Board.

9-17-7 Mobile Home Additions. No structure shall be affixed to any mobile home in a mobile home park nor shall any accessory structure be permitted on any mobile home lot except those structures as required by this ordinance. The prohibition herein against any addition or accessory to a mobile home shall not apply to a canopy or awning designed for use with a mobile home not to any expansion unit or accessory structure specifically manufactured for mobile homes.

9-17-8 Registrations. It shall be the responsibility of the park management to keep a register containing a record of all mobile home owners and occupants within the park. The register shall consist of the following information:

- (a) The name and address of the owner; the make, model, year and registration number of the mobile home; and last place of location of each mobile home.
- (b) The state where each mobile home is registered.
- (c) The lot to which each mobile home is assigned.
- (d) The date of arrival and departure of each mobile home.

The Mobile Home Park shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register. A copy of said register shall be submitted to the Town Assessor of the Town of Newfane by December 31st of each year.



9-17-9

**Site Plan Required.** Before a building permit shall be issued or construction begun on any permitted use in his district, detailed site plans indicating compliance with the substantive provisions of this ordinance shall be submitted to the Planning Board and approved in accordance with this ordinance.

(Amend. 5/26/99)

**ARTICLE X  
OFFSTREET PARKING AND TRUCK LOADING REQUIRMENTS**

**10-1        General.**

Offsteet parking and truck loading spaces shall be provided and kept available as an accessory use to all permitted and special exception uses of buildings, structures and lots in amounts not less than those specified in this ARTICLE.

**10-2        Method of Determining Offstreet Parking Space Requirements**

10-2-1        The requirements for a single use shall be determined directly from the schedule of such requirements which is a part of his ARTICLE.

10-2-2        The requirment for a combination use made up of several component uses (e.g. a bowling alley combined with an auditorium, and resteraunt and bar, or a retail store combined with an office building) shall be determined by establishing the requirment for each component use from the schedule of such requirments which is a part of this ARTICLE and adding them together.

10-2-3        When the required number of spaces is determined to result in a fraction, it shall be increased to the next highest whole number.

10-2-4        If the use is not specifically listed in the schedule of such requirments, the requirment shall be the same as for the most similar listed use.

10-2-5        A garage or carport may be used to meet the requirements of this ARTICLE. A driveway may only be used to meet the requirements of this ARTICLE where it serves a single or two family dwelling.

10-2-6        Uses which require approval pursuant to the special exception use procedure set forth in ARTICLE VIII may be required to provide offstreet parking spaces in excess of the requirements of this ARTICLE, as is indicated in ARTICLE VIII.

**10-3        Schedule of Offstreet Parking Space Requirements for Residential Uses**

<u>Uses</u>	<u>Requirement: No. of Spaces</u>
Single family and Two family dwellings	2 per dwelling unit
Multiple dwelling	1.5 per dwelling unit
Residential membership club or fraternity	1 per residence unit plus 1 per each two employees on the premises at one time

Schedule of Offstreet Parking Space requirements for Nonresidential Uses

<u>Uses</u>	<u>Requirement: No. of Spaces</u>
Animal hospital	1 per 200 sq. ft. of gross floor area
Auditorium, church, convention hall, gymnasium, stadium, theater, studio or other place of public assembly not otherwise classified	1 per 3 permanent seats, or 1 per each 40 sq. ft. of seating area where fixed seating is not provided
<u>Uses</u>	<u>Requirement: No. of Spaces</u>
Bank, savings and loan association	Same as Office
Boat launching ramp	To be determined by the Planning Board, but not less than 10 autos with trailer spaces per ramp
Bowling alley	4 per alley
Drive-in facility or outdoor sales lot	1 per each 600 sq. ft. of lot area
Funeral	1 per 40 sq. ft. of public room floor area
Gasoline station, parking Garage, repair garage	Sufficient parking spaces for all vehicles stored or being serviced at any one time plus a minimum 5 additional spaces
Home occupation, Home professional office	2 for the first 150 sq. ft. of area given over to this component of land use, plus 1 space for each additional 150 sq. ft. of fraction thereof, but in no case less than 2 spaces
Hotel, motel	1 per guest room plus 1 per each two employees on the premises at one time
Manufacturing or industrial establishment, research institute Or laboratory	Parking area equivalent to the total ground coverage of the use, with a minimum of 2 improved spaces per 3 employees on the premises at one time, but in no case less than 2 spaces

Marina, boatyards	1 per berth plus 25% of number of spaces provided for boats plus 2 spaces per employee
Nursing home	1 per each 2 beds plus 1 per each 2 employees on the premises at one time
Offices, office building	1 per 150 sq. ft. of gross floor area
Public or semi-public art gallery, Library or museum	Same as auditorium, etc.
Recreation facility, commercial	1 per each 2 persons of rated facility capacity plus 1 for each employee
Restaurant, club	1 per 4 permanent seats or the floor area equivalent
Retail store, personal service Store	1 per 200 sq. ft. of gross floor area
School	1 per employee plus 1 per each 8 students in the 12 <sup>th</sup> grade or above, or the parking requirement for the auditorium or gymnasium component of the use, whichever is greater
Shop for custom work	1 per 150 sq. ft. of gross floor area
Wholesale establishment, warehouse	Same as Manufacturing or Industrial Establishment

10-5

**Offstreet Truck Loading Space Requirements**

Every building or structure or lot used for nonresidential purposes shall be provided with off-street truck loading spaces in accordance with the following schedule:

<i>Square Feet Of Floor Area</i>	<i>Requirements: Number of Spaces</i>
Under 5,000 sq. ft.	None
5,000 to 14,999 sq. ft.	1 space
15,000 to 40,000 sq. ft.	2 spaces
Over 40,000 sq. ft.	1 space for each additional 40,000 sq. ft. over and above the requirement for the first 40,000 sq. ft.

**10-6 Private Garage or Offstreet Parking areas in Residence Districts-  
Supplemental Regulations**

10-6-1 Not more than (2) parking spaces per dwelling unit may be rented to persons living off the premises in the case of a single or two family dwelling units may be rented to persons living off the premises in the case of any other residence use.

10-6-2 Not more than one commercial vehicle shall be housed or parked in a private garage or offstreet parking area. Such commercial vehicle shall not exceed a gross motor vehicle weight of 10000 pounds or 25 feet in length.

**10-7 Access Driveway Requirement**

10-7-1 Parking garages, public areas, filling stations, and repair garages may have separate or combined entrances and exits.

10-7-2 Every separate entrance or exit driveway shall have a minimum unobstructed width of ten (10) feet. Every combined entrance and exit driveway shall have a minimum unobstructed width of twenty (20) feet or more shall have at least two separate ten (10) foot driveways.

10-7-3 The intersection of an exit or combined exit and entrance driveway of a public parking area with the public street shall have the same corner clearance as prescribed for intersecting streets in Section 9-7.

**10-8 Design Requirements for Offstreet Parking and Truck Loading Areas**

10-8-1 All accessory offstreet parking and truck loading areas shall be located in accordance with the provisions of Section 9-1.

10-8-2 The physical improvements of offstreet parking and truck loading areas shall include:

- (a) Curbs, paving, sidewalks, and drainage facilities complying with the standards established in municipal ordinances, regulations, or specification.
- (b) Adequate lighting in public parking areas to assure the general safety and convenience of the public.
- (c) Appropriate screening for the protection of adjacent properties, particularly along District boundary lines as provided in Section 8-4-21-i.

10-8-3 All aisles within parking areas shall have a minimum width of 24 feet when the parking spaces are at a 90 degree angle with the aisle; 18 feet when the parking spaces are at 60 degrees; and 12 feet when the parking spaces are at 45 degrees.

10-8-4 Aisles and turning areas have adequate radii to assure ease of mobility, ample, clearance, and convenient access and egress.

10-8-5 Centerline gradients of aisles shall not exceed 8 per cent.

10-8-6 Accessory offstreet parking areas shall be marked off into parking spaces with a minimum width of nine (9) feet, and a minimum length of 18 feet; or, in the case of parking spaces for trucks or special equipment, parking spaces of a minimum size to be determined by the municipal based on the nature of the parked vehicles.

10-8-7 An accessory offstreet truck loading space shall have a minimum width of 12 feet, a minimum length of 25 feet, and a minimum clear height of 14 feet. The related aisle shall have the same minimum clear height.

**10-9 Exemptions and Waivers**

10-9-1 Existing buildings and uses are exempt:  
The provisions of this Section shall not apply to any building or structure or lot lawfully in use at the effective date of this Ordinance, whether continued as a permitted use or as a legal nonconforming use, or thereafter converted or changed without enlargement to a different lawful use having the same parking and truck lading requirements.

10-9-2 Within a established Municipal Parking District where the municipality has, as a matter of public policy, taken the responsibility for providing adequate offstreet parking facilities for all uses in the District, the offstreet parking space requirements stipulated in this Section shall be automatically waived.

10-9-3 The Board of Appeals, subject to the applicable provisions of Section 13-4, may waive the requirements, in whole or in part, for the offstreet parking or truck loading spaces stipulated in this Section.

**ARTICLE XI  
SIGN REGULATIONS**

**11-1 Schedule of Permitted Signs**

The following schedule of permitted signs shall apply, according to the District in which the lot is located on the Zoning Map, whether such lot be used for a permitted use or for a special exception use.

**PERMITTED SIGNS**

<b><u>Type Of District</u></b>	<b><u>Professional and Announcement Signs</u></b>	<b><u>Identification Signs</u></b>	<b><u>Real Estate :For Sale” or “For Rent” Signs and Construction Signs</u></b>	<b><u>Temporary Signs</u></b>
<i>Residential Districts</i>	One (1) on each public street frontage, pursuant to 11-2	Prohibited	One (1) on each public street frontage for single lots or buildings; two (2) subdivision signs on each public street frontage for each approved subdivision pursuant to Sec. 11-5-1	Pursuant to Section 11-4-2
<i>Business Districts</i>	One (1) on each public street frontage, pursuant to 11-2	One (1) wall sign and one (1) detached or ground sign on each public street frontage, pursuant to 11-3	One (1) on each public street frontage for single lots or buildings; pursuant to Sec. 11-5-1	Pursuant to Section 11-5-2
<i>Industrial Districts</i>	One (1) on each public street frontage, pursuant to 11-2	One (1) wall sign and one (1) detached or ground sign on each public street frontage, pursuant to 11-4	One (1) on each public street frontage for single lots or buildings; pursuant to Sec. 11-5-1	Pursuant to Section 11-5-2

**11-2            Professional Signs and Announcement Signs- Supplemental Regulations**

11-2-1        A professional sign or an announcement sign for a home professional office or home occupation shall bear only the name and profession or occupation of the resident. Such sign shall have a maximum area of two(2) square feet and may be located on the building wall or in the required front yard, provided that it is set back at least 15 feet from all property lines and is not more than six (6) feet above the natural ground level at its location.

11-2-2        A church or other place of worship may have one (1) announcement sign, not over 12 square feet in area, on each public street frontage of its property, either fixed on the main wall of the building or located in the required front yard, provided that it is set back at least five (5) feet from the front property line and at least 25 feet from all other property lines

11-2-3        A parish house, club, school, or public or semi-public building may have one (1) announcement sign, not over six (6) square feet in area, on each public street frontage of its property, either fixed on the main wall of the building or located in the required front yard, provided that it is set back at least five (5) feet from the front property line and at least 25 feet from all other property lines.

11-2-4        Such signs may be double-faced.

11-2-5        Such signs may be lighted only by shielded light sources attached to the sign.

**11-3            Business District Identification Signs-Supplemental Regulations**

11-3-1        A wall identification sign shall be attached to or incorporated in the building wall. Such sign shall have.

- (a)    A maximum area of two (2) square feet for each horizontal foot of building wall on which it is mounted
- (b)    A maximum width of 75 percent of the building wall's horizontal measurement, except that, where such horizontal measurement is 20 feet or less, the maximum width may be 90 percent of such measurement
- (c)    A maximum projection of 12 inches from the face of the building wall to which the sign is attached.

11-3-2        A detached or ground identification sign may be erected where the building is set back from the street line a distance of 40 feet or more.

Such a sign shall have:

- (a)    A maximum area of 40 square feet
- (b)    A maximum height measured from the ground level of 18 feet
- (c)    At least three (3) feet of clear space between the sign board, and the ground, provided that necessary supports may extend through such clear space
- (d)    A set back of at least 20 feet from any property line, except that if the average front set back of existing buildings within the same block is less



than 10 feet, then the average set back so established shall be applied to such sign.

- 11-3-3 Identification signs may be interior lighted with non-glaring lights, or may be illuminated by shielded floodlights; provided, however, that red and green lights shall be set back at least 75 feet from the point of intersection of the street lines at a street corner, and further provided that intermittent or flashing lights shall not be used on or in any sign. Moving or animated signs are prohibited.

**11-4 Industrial District Identification Signs- Supplemental Regulations**

- 11-4-1 A wall identification sign shall be attached to or incorporated in the building wall. Such sign shall have:

- (a) A maximum area of one (1) square feet for each horizontal foot of building wall on which it is mounted
- (b) A maximum width of 75 percent of the building wall's horizontal measurement.
- (c) A maximum projection of 12 inches from the face of the building to which the sign is attached.

- 11-4-2 A detached or ground identification sign may be erected where the building is set back from the street line a distance of 40 feet or more.

Such sign shall have:

- (a) A maximum area of 40 square feet
- (b) A maximum height measured from the ground level of 18 feet
- (c) At least three (3) feet of clear space between the sign board and the ground, provided that the necessary supports may extend through such clear space
- (d) A set back of at least 20 feet from any property line, except that if the average front set back of existing buildings within the same block is less than 10 feet, then the average set back so established shall be applied to such sign.

- 11-4-3 Identification signs may be interior lighted with non-glaring lights, or may be illuminated by shielded floodlights; provided, however, that red and green lights shall be set back at least 75 feet from the point of intersection of the street lines at a street corner, and further provided the intermittent or flashing lights shall not be used on or in any sign. Moving or animated signs are prohibited.

**11-5 Real Estate and Construction signs**

- 11-5-1 Real Estate and construction signs shall be set back at least 15 feet. Such signs shall have a maximum area of eight (8) square feet, except that subdivision signs shall have a maximum area of 24 square feet, and shall have not be illuminated.

- 11-5-2 Temporary directional signs indicating the location of a real estate subdivision shall be permitted as variances, under the provision of Section 13-4 For a period of one (1) year shall be the subject of applications to the board of Appeals.

**11-6**

**General Provisions**

- 11-6-1 The area of a sign shall be determined by the smallest rectangle that encompasses all of the letters or symbols that make up the sign together with the area of any background of a different color or material than the general finish of the building, whether painted or applied.
- 11-6-2 In no case shall lighted signs be so located that they constitute hazard to vehicular traffic.
- 11-6-3 The outlining by direct illumination of all or part of a building such as a gable, roof wall, side, or corner is prohibited, except during the Christmas season.
- 11-6-4 Temporary or permanent signs relating on, or attached to, vehicles shall not be used as a means to circumvent the provisions of this Ordinance.

**ARTICLE XII**  
**NONCONFORMING USES AND**  
**NONCONFORMING BUILDINGS OR STRUCTURES**

**12-1           Applications of Regulations**

12-1-1        These provisions shall apply to all buildings or structures, and all uses of buildings or structures, or lots lawfully existing prior to the effective date of this ordinance, or of subsequent amendments, revisions or re-enactments of such ordinance, which do not conform to the provisions of said zoning ordinance, or to such revisions or re-enactments on their effective dates.

**12-2           Unlawful Buildings, Structures, or Uses Not to Be Construed as Nonconforming**

12-2-1        No unlawful building or structure, or unlawful use of a building or structure or lot existing at the effective date of this Ordinance shall be deemed to be a nonconforming building, structure, or use.

**12-3           Continuance**

12-3-1        Any lawful use occupying any building, structure, lot or land at the time of the effective date of this Ordinance or any amendment thereto, which does not comply, after the effective date of this Ordinance or any amendment thereto, with the use regulations of the District in which it is situated, may be continued in the building or structure or upon the lot or land so occupied, except as provided in Section 12-7.

12-3-2        A building or structure used by a NONCONFORMING USE shall not be reconstructed, structurally altered, restored or repaired to an extent exceeding 50 per cent of the replacement cost of such buildings or structure, exclusive of foundations, unless the use of such building or structure, exclusive of foundations, unless the use of such building or structure is changed to a conforming use.

12-3-3        A NONCONFORMING BUILDING OR STRUCTURE that is not devoted to a nonconforming use may be reconstructed, structurally altered, restored or repaired in whole or in part, and the provisions of Section 12-3-2 shall not apply, except that the degree of nonconformity shall not be increased.

12-3-4        A NONCONFORMING LOT separately owned and not adjoining any lot land in the same ownership at the effective date of this Ordinance may be used, or a building or structure may be erected on such a lot for use, in accordance with all the other applicable provisions of this ORDINANCE, provided that proof of such separate ownership is offered in the form of a title search.

12-3-5        An existing building designed and used for a conforming use but located on a nonconforming lot, whether the building is conforming or nonconforming with respect to lot coverage and minimum yard requirements, may be reconstructed,

structurally altered, restored or repaired in whole or in part, except that the degree of nonconformity shall not be increased.

**12-4        Extension**

12-4-1        A nonconforming use shall not be enlarged or extend, except as provided in Section 13-4.3.

**12-5        Change**

12-5-1        A nonconforming use shall be changed only to a conforming use, except as provided in Section 13-4-4.3.

**12-6        Abandonment**

12-6-1        A nonconforming use shall be deemed to have been abandoned:

12-6-1.1      When it is changed to a conforming use

12-6-1.2      In cases where such nonconforming use is of a building or structure designed for such use, when it has been voluntarily discontinued for a period of 12 consecutive months.

12-6-1.3      In cases where such nonconforming use is of a building or structure not designed for such use, or is of a lot or land whereon there is no consequential building or structure devoted to such use, when it has been voluntarily discontinued for a period of six (6) months.

12-6-2        A nonconforming use that has been abandoned shall not thereafter be reinstated.

**12-7        Compulsory Termination**

12-7-1        A NONCONFORMING STRUCTURE or NONCONFORMING USE may be subject to compulsory termination by the municipal legislative body when it is found detrimental to the conservation of the value of surrounding land and improvements, or to future development of surrounding lands, and therefore is tending to deteriorate or blight the neighborhood.

12-7-2        In ordering the compulsory termination of a nonconforming structure or nonconforming use, the municipal legislative body will establish a definite and reasonable amortization period during which the nonconforming use may continue while the investment value remaining after the date of the termination order is amortized. Determination of the amount to be amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming use, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

**ARTICLE XIII  
BOARD OF APPEALS**

**13-1        Organization and General Procedure**

- 13-1-1        There shall be a Board of Appeals. Said Board shall consist of seven members. The method of appointment, terms of office, and tenure of its members shall be as prescribed by law.
- 13-1-2        The Board shall have all the powers and duties prescribed by law and by this Ordinance.
- 13-1-3        The Board shall appoint a Secretary and shall prescribe rules for the conduct of its affairs.
- 13-1-4        All meeting of the Board of Appeals shall be open to the public. A quorum shall consist of four members.
- 13-1-5        Every decision by the Board shall be by resolution, and shall contain a full record of the findings of the Board in the particular case.

**13-2        Application and Public Hearing Procedure**

- 13-2-1        Applications for any action by the Board of Appeals shall be submitted in the form required by the Board and filed in the municipal office.
- 13-2-2        The Board shall fix a time and place for a public hearing thereon, and shall provide for the giving of notice at least 10 days prior to the date thereof, as follows:
  - 13-2-2.1        By publishing a notice in the official newspaper and sending a notice by certified mail to the owners of properties within 300 feet of the property affected by the proposed application, including properties on the opposite side of the street or highway.
  - 13-2-2.2        By requiring the applicant to erect a white-with-black-lettering sign or signs measuring not less than two(2) feet long and one(1) foot wide, which shall be predominately displayed on the premises facing each public street on which the property abuts, giving notice that an application for an appeal is pending, and the date, time and place where the public hearing will be held. The sign shall not be set back more than 10 feet from the property or street line and shall be not less than two(2) nor more than six(6) feet above the grade at the property line. The sign shall be furnished by the municipal clerk. It shall be displayed for a period of not less than 10 days immediately preceding the public hearing date or any adjournment date. The applicant shall file an affidavit that he has complied with the provisions of this Section.

- 13-2-2.3 If the land involved in an application is within 500 feet of the boundary of any other municipality, notice of the public hearing shall also be mailed to the municipal clerk of such other municipality.
- 13-2-3 Notice of the public hearing and a description of the applicant's proposal shall be mailed to the Niagara County Economic Development and Planning Commission, in any case where the land involved in an application is within 500 feet of:
- 13-2-3.1 The boundary of any other municipality
- 13-2-3.2 Any State or County park or other recreation area
- 13-2-3.3 The right-of-way of any Federal, State, or County parkway, thruway, expressway, or other controlled access highway
- 13-2-3.4 The right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines
- 13-2-3.5 The boundary of any State- or Courtyard-owned land on which a public building or institution is situated.
- 13-2-4 No action shall be taken on applications referred to the Niagara County Economic Development and Planning Commission, Until the Commission's recommendation has been received, or 30 days have elapsed after the Commission received the full statement on the applicant's proposal.
- 13-2-5 A record shall be established of all variances granted pursuant to action of the Board of Appeals under this Ordinance. Each case shall be identified by a sequential numbering system and alphabetically by applicant's name. Said files shall be available for public inspection.
- 13-2-6 The Board shall keep minutes of its proceeding showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Board shall keep records of its examinations and official actions all of which shall be a public record.
- 13-2-7 Building permits authorized by Board of Appeals action on variance cases shall be obtained within 90 days and shall automatically expire if construction under the permit is not started within 90 days of issuance and completed within one (1) year. Extensions of these periods may be granted by the Board of Appeals where good cause is shown.
- 13-2-8 The fee of variance applications to the Board of Appeals shall be as established by resolution of the Town of Newfane Town Board and on file in the Building Office. (Amend. 5/26/99)

**13-3      Appeals on Interpretation of the Zoning Ordinance and Map**

13-3-1      The Board of Appeals shall, upon appeal, hear and decide:

13-3-1.1      Any matter where the applicant alleges that the Building Inspector was in error in refusing to issue a building permit or certificate of occupancy, as a result of misinterpreting the meaning, intent or application of any section or part of this Ordinance.

13-3-1.2      Any matter where the applicant alleges that the Building Inspector was in error in his determination as to the exact location of a District boundary line on the Zoning Map that forms a part of this Ordinance.

13-3-1.3      Any matter which the Building Inspector appeals on grounds of doubt as to the meaning or intent of any provision of this Ordinance or as to the location of a District Boundary line on the Zoning Map.

**13-4      Variances**

13-4-1      The Board of Appeals shall have the power in passing on appeals where, as a result of exceptional physical conditions connected with a particular site, there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Ordinance that would deprive the owner of the reasonable use of the land or building involved, to vary or modify the application of the regulations or provisions of this Ordinance.

13-4-2      Guiding Principals

13-4-2.1      Every decision by the Board of Appeals granting a variance shall clearly set forth the nature and extent of such variance.

13-4-2.2      Every variance granted by the Board of Appeals may be made subject to such conditions and safeguards as the Board shall deem to be applicable to the particular case. Violations of such conditions or safeguards that are a part of the Board's decision shall be deemed a violation of this Ordinance punishable under the provisions of Section 14-10.

13-4-2.3      Any variance granted by the Board of Appeals pursuant to the provisions of this Section shall be construed to be a nonconforming use.

13-4-3      General Studies

13-4-3.1      For every such variance in the strict application of any provision of this Ordinance, the Board of Appeals shall determine that:

- (a)      Strict application of the Ordinance would cause practical difficulties or unnecessary hardships, which under the circumstances, are so severe as to deprive the applicant of the reasonable use of such land or buildings approaching confiscation thereof. (Amend. 5/26/99)

- (b) Such practical difficulties or unnecessary hardships are unique and are not shared by all properties in the vicinity
- (c) Such practical difficulties or unnecessary hardships are not self-imposed
- (d) Such variance is the minimum variance that will relieve such practical difficulties or unnecessary hardships
- (e) Such variance is in spirit of the general purposes and intent of this Ordinance as stated in ARTICLE I.
- (f) Such variance is so designed as to provide reasonable consideration to, among other things, the character of the neighborhood or District, the conservation of property values in the vicinity, and the guidance of building development in accordance with the comprehensive plan.
- (g) Such variance does not involve substantial detriment to the public welfare, nor substantially impair the intent and purpose of the zone plan and of this Ordinance.

13-4-4 Specific Types of Variances

13-4-4.1 In the instances of the following types of variances, the Board of Appeals is hereby specifically empowered to grant the variance pursuant to the Guiding Principals and the General Standards stated in Sections 13-4-2 and 13-4-3 and to the following provisions:

13-4-4.2 With respect to lots lying across district boundary lines:

- (a) To grant a permit, in appropriate cases, where the lot of the appellant, as such lot existed on the effective date of this Ordinance, lies across the boundary of two Districts, for the extension into the more restrictive District of a lawful conforming use permitted in less restrictive District, but for a distance not exceeding 50 feet measured at right angles to such District boundary line

13-4-4.3 With respect to nonconforming uses, buildings and lots:

- (a) To grant a permit for the enlargement or extension of a nonconforming use or building on the lot occupied by such use or building on the effective date of this Ordinance, provided that:
  - (1) such enlargement or extension was arranged, intended or designed for such nonconforming use or building on the effective date of this Ordinance
  - (2) such enlargement or extension shall not exceed in all 50 per cent of the replacement cost of the existing building on the effective date of this Ordinance, exclusive of foundations
  - (3) all parking and truck loading requirements of ARTICLE X are complied with.
- (b) To grant a permit for the reconstruction, structural alteration, restoration or repair of a building or structure used for a nonconforming use, to an extent exceeding in aggregate 50 per cent of the replacement cost of such building or structure, exclusive of foundations



- (c) To grant a certificate of occupancy for a change in a nonconforming use, provided that:
  - (1) the Board of Appeals shall have made a determination that such change will be beneficial to the general neighborhood
  - (2) such change be made subject to such reasonable conditions and safeguards as the Board of Appeals may stipulate.

13-4-4.4 With respect yard requirements:

- (a) To grant a variance modifying the yard requirements of a nonconforming lot which qualifies under the terms of Section 12-3-4 as to ownership, but where compliance with the dimensional provisions of the Ordinance is infeasible.

13-4-4.5 With respect to fences:

- (a) To grant a permit, in appropriate cases, for a higher fence or wall than the maximum heights stipulated in section 9-9.

13-4-4.6 With respect to accessory parking and truck loading spaces:

- (a) To waive the requirements of Section 10-2, 10-3 and 10-4 for offstreet parking and truck loading spaces, in whole or in part, in a case where the municipality owns or operates a public parking and/or truck loading area within 500 feet of the lot, and where the Board of Appeals determines that there is no need for additional facilities
- (b) To waive the requirements of Sections 10-2, 10-3 and 10-4 for offstreet parking and/or loading spaces, in whole or in part, after making a finding that the normal application of such requirements is infeasible, because:
  - (1) the lot has too restricted and area, unusual dimensions, shape or topographic character.
  - (2) no other suitable and adequate lot can reasonably be put to such use within 500 feet of the property to which said parking and/or truck loading spaces are accessory.
- (c) To permit a reduction in the number of offstreet parking spaces and/or truck loading spaces original required and installed for a particular use pursuant to Sections 10-2, 10-3 and 10-4 and in cases where the Board of Appeals determines that, by reason of diminution in number of dwelling units or residents, or in floor area, seating capacity or area, number of employees, or change in other factors determining the demand for such spaces, the proposed reduction in available space will be consistent with the requirements of Sections 10-2, 10-3 and 10-4 and further provided that the area so withdrawn from these uses remain in reverse for potential future increases in need.

13-4-4.7 With respect to temporary building permits:

- (a) To grant a temporary building permit for a period not to exceed one (1) year for a nonconforming building, structure or use incidental to building or other construction project, including such uses as the storage of building supplies and machinery, a real estate office or model houses

located on or near a tract of land where individual properties are being offered for sale, provided that:

- (1) such temporary permit shall be issued only upon written agreement by the owner or his agent to remove such building, structure or use to convert it to a conforming use upon the expiration of the permit
  - (2) such permit shall be subject to such reasonable conditions as the said Board of Appeals shall determine to be necessary to protect the public health, safety, morals or general welfare
- (b) such permit may be renewed annually, at the direction of the Board of Appeals, for not more than two (2) additional years.

**ARTICLE XIV  
ADMINISTRATION AND ENFORCEMENT**

**14-1           Interpretation**

In applying and interpreting this Ordinance, its provisions shall be held to be a minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, or the general welfare. The following specific regulations shall apply:

- 14-1-1           A minimum required lot or yard size for one building or structure shall not be used in whole or in part as any part of a required lot or yard for a second structure.
- 14-1-2           The required lot or yard for an existing building or structure shall not be diminished below the minimum requirements of this Ordinance.
- 14-1-3           The parking spaces required for one building or structure or use shall not be included in the computation of required parking spaces for a second building or structure or use.

**14-2           Relation of Zoning Ordinance to Other Provisions of Law, and to Private Covenants and Agreements**

- 14-2-1           Nothing contained in this Ordinance shall be taken to repeal, abrogate, annual or in any way impair or interfere with the Building Code or any rules or regulations adopted or issued thereunder, or any other provisions of law or ordinance, or regulations, existing or as may be adopted in the future, when this Ordinance. Nor is it intended by this Ordinance to interfere with or aborgate or annual any easements, covenants or other agreements between parties; provided however, that when this Ordinance imposes a greater restriction upon the use of buildings, structures, premises, lots or land, or upon the height of buildings or stuctures, or required larger lots, yards, courts or other open spaces than imposed or required by such other provision of law, ordinance or regulations, or by such easement, covenants or agreements, the provisions of this Ordinanceshall control.
- 14-2-2           wherever the provisions of any other law or ordinance or regulations impose a greater restriction than this Ordinance, the provisions of such other law or ordinance or regulations shall control.
- 14-2-3           No provision contained in this ORDINANCE SHALL BE CONSTRUED AS JUSTIFYING the encroachment of any building or structure within any street lines now or hereafter laid down on any subdivision plat filed in the office of the County Clerk or within any Federal, State, County or municipal street or highway.

**14-3        Enforcement**

14-3-1        It shall be the duty of the Building Inspector to administer and enforce the provisions of this Ordinance.

14-3-2        Should said Building Inspector be in doubt as to the meaning or intent of any provision of this Ordinance, or as to the location of any District boundary line on the Zoning Map, or as to the propriety of issuing a Building Permit or a Certificate of Occupancy in a particular case related to the provisions of this Ordinance, he shall appeal the matter to the Board of Appeals for interpretation and decision.

14-3-3        The Building Inspector should adopt rules of procedure, consistent with this Ordinance, for the purpose of assuring efficient and uniform administration of its provisions.

14-3-4        If the Building Inspector should mistakenly issue a building permit which violates the provisions of this Ordinance, that the building permit shall be valid.

**14-4        Building Permits-General Procedure**

14-4-1        All procedure with respect to applications for and issuance of building permits shall be in conformity with the provisions of the Building Code. All such applications shall be accompanied by such other information as may be necessary to determine and provide for the enforcement of this Ordinance.

14-4-3        Where a lot is formed from part of an existing lot, whether already improved or not, the separation must be effected in such a manner that neither of the lots, nor any existing or proposed improvements thereon, contravene the provisions or intent of this ordinance.

14-4-4        After completion of footings and establishing of the forms on the first course of the foundation walls, or equivalent structure, the owner shall notify the Building Inspector. If required by the Building Inspector, the owner shall cause a survey to be made by a licensed land surveyor, showing the true location of such foundation walls with respect to the lot lines of the lot, and copy of such survey shall be filed with the Building Inspector before construction is continued.

**14-5        Building Permits for Single or Two Family Dwellings and Residential Accessory Structures**

14-5-1        Building permit applications shall include two (2) copies of a layout or plot plans showing the actual dimensions of the lot to be built upon and its tax map and subdivision plat name, lot and block identification, the size and location on the lot of the structures, and accessory structures to be erected, other pertinent site improvement information and any other facts necessary to determine compliance with and provide for the enforcement of this Ordinance.

14-5-2 One (1) copy of each layout or plot plan shall be returned to the applicant when the building permit has been approved.

14-6 **Site Plan Review Procedures and Standards**

14-6-1 Purpose and Intent. The purpose of this Section is to encourage innovative and creative design and use of property to facilitate and promote the most advantageous construction techniques in the development of land in the Town. It is the further intention of this Section to ensure the efficient use of land, consideration of potential impacts on the environment and their avoidance, wherever possible, and the promotion of high standards in the design, layout, landscaping and construction of development.

14-6-2 Applicability. No development shall occur within the Town of Newfane unless in accordance with the provisions of this Section. No building permit, variance, special exception or certificate of occupancy shall be issued until all the requirements of this Section have been satisfied and the site plan has been approved by the Planning Board. A site plan shall be submitted and required for the following:

- (a) Any development in a CF, MHP, VB, HC, MB, IP or GI District that involves construction or addition requiring a building permit or the addition or improvement of parking spaces, utilities/roads or storm water management.
- (b) Any use requiring a special exception permit.
- (d) Residential development other than single family uses.
- (e) Churches, schools, institutional uses and recreational development where parking, landscaping or structures are involved.

14-6-3 Site Plan Application.

14-6-4 Sketch Plan. Prospective applicants for site plan review shall schedule a meeting with the Building Inspector for identification of critical development issues and the appropriate information to accompany the application. Appropriate review agencies and Town Officials will be identified for coordination and the SEQRA responsibilities will be provided.

All applicants for site plan shall submit a sketch plan of the proposed development and a SEQRA Environmental Assessment Form (Part I) to the Building Inspector for review. The Building Inspector will review the overall design concepts, development layout, infrastructure, natural features, neighborhood implications and prospective environmental issues to guide the site plan development

14-6-5 Site Plan. Upon completion of sketch plan review, an applicant may prepare a formal site plan in accordance with this Section and submit it to the Building Inspector for scheduling of formal consideration. The site plan shall be prepared by an architect, landscape architect, engineer or surveyor licensed in New York State and certified with their signature and seal. The Building Inspector shall

determine the completeness of the application for consideration by the Planning Board based on the following minimal information:

- (a) The location of the tract or parcel by means of an inset map at a scale not less than one inch equals two thousand (2000) feet indicating the names of adjoining roads, streams, bodies of water, railroads, subdivisions and landmarks sufficient to identify the location of the property.
- (b) A boundary survey of the property, plotted to scale, including the acreage and legal description thereof and the location of survey datum.
- (c) A certificate signed by the surveyor or engineer setting forth the source of title and the place of record of the last instrument in the chain of title.
- (d) Title of drawing including the name and address of the applicant, the developer and person(s) responsible for preparation the drawing.
- (e) Existing structures, roads, easements, utility lines, streams and drainage ways, flood plain and wetland designations, natural features and landforms.
- (f) Existing topography at a maximum of two (2) foot intervals.
- (g) Zoning and present use of the property and surrounding properties; setback of existing development to the nearest property line.
- (h) A plan of the proposed site development at a scale of one inch equals fifty (50) feet or larger that includes the following elements:
  - North arrow, scale and date.
  - Proposed streets and easements.
  - Location, type and size of vehicle entrances including fire lanes.
  - All off-street parking, loading and stacking indicating surfacing, size and angle of stalls, width of aisles and the schedule of spaces to serve the proposed development.
  - Location and layout of proposed structures including number of floors, floor area, height, gross and net density, setback and proposed use of each structure.
  - Proposed grading matched to existing contours and supplemented by finished floor, building and spot elevations, where appropriate.
  - Location, type and height of lighting, fencing, retaining walls and screen planting, where required, and signage.
  - Drainage channels and their direction of flow and storm water management facilities.
  - Proposed utility connections and location, size and grade of sewer and water lines.
  - Refuse collection and removal areas and their screening from adjacent streets and properties.
- (i) Water and sanitary sewer profiles identifying the vertical and horizontal alignments, connection details to existing facilities, invert and rim elevations, pump stations and force mains, hydrants, valves, blowoffs, etc.
- (j) Pavement profile and details including a typical cross-section of parking and drive areas, vertical and horizontal curves (where appropriate), entry

and curb radii, handicapped parking designation and handicapped ramps and curbs.

- (k) Grading and drainage plan which incorporates storm water management for the proposed development including location, type and size of facilities and the identification of easements to accommodate existing and proposed drainage and management facilities; calculations of storm water management and drainage prepared by a professional engineer are required in accordance with the Erie-Niagara Regional Planning Board's storm drainage design manual.
- (l) General landscape plan and planting schedule.
- (m) Summary of the proposed development including uses, acreage, descriptions of the utility plans, projected traffic impact and circulation, site soils and zoning conditions that apply to the development. Any separate permits (state or Federal) required for the development must be obtained prior to finalization of site plan approval. Proposed easement or right-of-way dedications must be provided on a separate plat map for recording.

14-6-6

#### Site Plan Review Procedures.

- (a) **Submission.** An application for site plan review must be complete as specified in this Section and submitted to the Building Inspector a least ten (10) days prior to the Planning Board meeting to provide adequate opportunity for review, distribution of notices and advertisement of public hearing. The Building Inspector is responsible for coordination of the review and may include the Town Engineer, Planning Consultant, Highway Superintendent, NYEDEC and other agencies in the review process, as appropriate, to advise the Planning Board. The application must be accompanied by the application form, application fees (as established by resolution of the Town Board), plan as specified herein, supportive documentation, SEQRA Environmental Assessment Form (all parts) and any additional information as may be requested by the Building Inspector. The evaluation shall include compliance with the Zoning Ordinance and this Section, consistency with Town maps and plans for development review, compatibility with neighborhood development and conformance with general principles of site planning and engineering.
- (b) **Environmental Review.** Any application for site plan review must be accompanied by a completed Environmental Assessment Form (Parts I-III) identifying the prospective impact resulting from the proposed development and demonstrating the opportunities or mitigation or planned revisions to avoid such impacts. It is assumed that the Planning Board will be Lead Agency for all applications, subject to SEQRA determination, and be responsible for the conduct of review procedures as required by SEQRA. Any obligations for fulfillment of the SEQRA regulations, including the satisfaction of procedures and the preparation and review of an Environmental Impact Statement, if required, shall be borne by the applicant. A SEQRA public hearing, if required, shall be

coordinated with the site plan hearing and conducted simultaneously, where practical.

- (c) **Planning Board Review.** An applicant shall provide ten (10) copies, clearly legible, of the complete application to the Building Inspector for review by the Planning Board. The Planning Board shall review the site plan and make a determination based on the provisions of this Section within sixty-two (62) days of the public hearing, unless extended by the applicant. The determination shall be in the form of a written record of approval, approval with conditions or disapproval of the site plan and shall be filed with the Town Clerk.

The Planning Board may impose special conditions or modifications limiting the use or occupancy of the proposed land and development consistent with the intent and purposes of his ordinance. Any conditions so imposed shall become a part of the site plan approval and must be satisfied prior to the issuance of any permits for development. No building or other development permit shall be issued for property that is subject to a site plan except in conformity with the approved plan for that site. The Planning Board approval or denial and any conditions thereto shall be guided by the following general standards for site development:

- (1) Conformance with this ordinance, adopted Town development plans, an approved Development Plan that includes the subject site, if one exists, and all other applicable laws.
- (2) Compatibility of the proposed development with the natural features of the land and the environmental attributes of the site.
- (3) The general layout and design of buildings, lighting, signage, open space and development features consistent with reasonable planning principles.
- (4) The location and design of vehicular entrances/exits, including emergency access and fire lanes, in relation to the street system, traffic circulation and control within the site; and coordination of access points and circulation with adjoining properties.
- (5) The provision and protection of pedestrian movement on the site and their coordination with adjoining properties and the street system.
- (6) The location and adequacy of parking, loading and stacking areas including the provision of opportunities for handicapped parking.
- (7) Provisions of landscape, screening and buffers to compliment development and protect adjacent uses from unsightliness, noise, glare and other nuisances. Such elements shall also be used to promote the availability of green space in non-residential development and recreation space in residential development to avoid a continuous paved or build environment.
- (8) Adequate provision of drainage and storm water management facilities.
- (9) Adequacy of sewer and water facilities, fire protection and conformance with Town regulations for the provision and construction of those services.



(10) The concurrence of Town agencies, New York State Department of Transportation, New York State Department of Environmental Conservation, and other county or state agencies, as appropriate.

14-6-7

**Required Improvements.** In furtherance of the purposes of this ordinance and to assure the public safety and general welfare, the Planning Board shall require the following improvements:

- (a) The designation of pedestrian paths, walkways or sidewalks for the safe and convenient movement of people within the site and with adjoining sites.
- (b) The dedication of rights-of-way and easements for all facilities to be publicly maintained for the full frontage of the lot or parcel prior to the issuance of any certificate of occupancy.
- (c) The construction of all off-site curbs, gutters, sidewalks and road widening or construction as shown in the Town of Newfane Master Plan, and any amendments thereto.
- (d) The construction of curbs, gutters and drives which will permit vehicular travel on the site and their connection to and from adjacent parking areas and properties.
- (e) Screening, fencing, walls, berms and screen plantings adequate to screen views in accordance with requirements of this ordinance for adjacent subdivisions, contrasting development of less intensity and state highways of limited access. Designated plantings and landscaping shall be in accordance with the approved schedule and annually maintained by the property owner.
- (f) Adequate sewer, water and storm water drainage facilities in accordance with Town regulations including lines, connections, retention facilities, valves, hydrants and other facilities.

14-6-8

**Agreement Bond.** Prior to the issuance of any building permit or authorization for development of any portion of the site, there shall be executed by the owner or developer an agreement to construct the required physical improvements located within public rights-of-way and easements together with a bond securing the estimated cost of said improvements as determined by the Building Inspector. The agreement and bond shall be adequate to provide for the completion of all work covered therein plus an additional 20% for administration and services should execution of the bond be necessary. The reservation of surety offered by the bond may be released in phases by the Building Inspector as entire components of the work is concluded, inspected and approved as complete.

14-6-9

**Site Plan Revisions, Extension.** No change, revision or modification to any approved plan may be made without the authorization of the Planning Board after due consideration of a written request. Minor changes which do not effect the site facilities or the intent of the site plan may be authorized by the Building Inspector. Any site plan may be formally revised in the same manner and utilizing the same process as originally approved by the Planning Board.

Approval of a site plan authorized under this Section shall expire within one (1) year from the date of approval unless building permits have been obtained for the proposed development. A single extension of six (6) months may be granted after consideration by the Planning Board prior to the expiration of the site plan.

14-6-10 Inspections, Certificate of Occupancy. Upon satisfactory completion of all required improvements shown on the approved site plan, an "as built" plan shall be submitted for the review and approval of the Building Inspector at least one (1) week prior to the occupancy of the building. Such plan shall include the record of all progress and final inspections for the installation of all on-site and off-site improvements as approved by the Building Inspector or certified by a licensed engineer. The completion of "as built" plans and the successful inspection reports shall be the basis for release of any surety bond or portion thereof.

A final occupancy permit may be issued for any appropriately completed building, or portion thereof, located on a part of an approved site plan, provided that:

- (a) "As built" plans have been submitted and approved for the required improvements on the site plan that relate to and provide services to the requested building for occupancy;
- (b) All inspections and conditions that are required for the service and support of the building requested for occupancy have been successfully completed and are certified for use by the proposed use(s) being requested;
- (c) Any off-site improvements related to and necessary to service the requested building for occupancy have been completed and successfully inspected; and
- (d) Any remaining on-site construction will not adversely effect the occupants or the intended use of the building requested for occupancy.

(Amend. 5/26/99)

14-7 **Completion of Building For Which Permits Have Been Used**

14-7-1 Nothing in this Ordinance shall require any change in the plans, construction or designated use of building or structure for which a lawful building permit issued prior to the effective date of this Ordinance or any amendment thereto affecting such building or structure or the use thereof, provided that:

14-7-1.1 The construction of such building or structure shall have been begun and diligently prosecuted within three (3) months from the date of such permit.

14-7-1.2 The entire building or structure shall be completed according to such filed and approved plans upon which the issuance of such permit was based, within one (1) year from the effective date of this Ordinance or any such amendment thereto.

14-7-2 In the event that either condition Section 14-7-1.1 or 14-7-1.2 is not complied with, such building permit shall be revoked by the Building Inspector.

**14-8**            **Certificates of Occupancy**

14-8-1            It shall be unlawful to use or to permit the use of any building, structure, premises, lot or land or part thereof, hereafter, erected or altered, enlarge or moved, or put into use, in whole or part, after the effective date of this Ordinance, or of any building, structure, premises, lot or land, or part thereof which the use is changed, until a certificate of occupancy has been obtained by the owner, as provided for under the Building Code.

14-8-2            No certificate of occupancy shall be issued for any building, structure, premises, lot or land unless the erection, construction, reconstruction, structural alteration, restoration, repair or moving of such building or structure or part thereof and the intended use thereof are in conformity in all respects with the provisions of this Ordinance.

14-8-3            The building Inspector shall obtain a written order from the Planning Board before issuing a certificate of occupancy in any case involving a special exception use pursuant to ARTICLE VIII; and shall obtain a written order from the Board of Appeals before issuing a certificate a variance from the provisions of this Ordinance pursuant to Section 13-4.

**14-9**            **Fees**

14-9-1            Fees for building permit applications, and for issuance of building permits and certificates of occupancy shall be as provided in the ordinance establishing the Building Code.

**14-10**           **Violations, Penalties and Remedies**

14-10-1           Where a violation of this Ordinance is determined to exist, the Building Inspector shall serve notice by certified mail, return receipt requested, on the owner, agent or contractor of the building, structure, or lot where such violation has been committed or shall exist, and on the lessee or tenant of the part of or of the entire building, structure or lot where such violation has been committed or shall exist; and on the agent, architect, contractor or any other such person who takes part or assists in such violation, or who maintains any building, structure, or lot in which any such violation shall exist.

14-10-2           Such notice shall require the removal of the violation within 10 days after service of the notice.

14-10-3           In cases where the removal of the violation within 10 days would be manifestly impossible, the Building Inspector shall charge to the governing body of the municipality for a determination as to a reasonable period of time within which such violation shall be removed.

14-10-4           If those persons notified shall fail to remove such violation within the allotted time period, the Building Inspector shall charge them with such violation of this Ordinance before the appropriate court of law.

- 14-10-4 Persons found guilty of such violation shall be subject to fine not exceeding fifty dollars (\$50) or to imprisonment for not more than 60 days, or both, for each violation. Each and every week such violation continues after the altered period of time for its removal, shall be deemed a separate and distinct violation.
- 14-10-6 In addition to other remedies provided by law, any appropriate action or proceeding whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance, or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure, or lot, or to prevent any legal act, conduct, business or use in or about such premises.
- 14-10-7 Any person may file a complaint with the Building Inspector regarding a violation of this Ordinance.
- 14-10-7.1 All such complaints shall be in writing.
- 14-10-7.2 All such filed complaints shall be investigated by the Building Inspector and a report prepared thereon and action instituted where appropriate within three(3) days.
- 14-11 Procedure for Amendment**
- 14-11-1 The municipal legislative body may from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Ordinance, including the Zoning Map, after public notice and hearing, in accordance with State Law.
- 14-11-2 Petitions for amendments shall be submitted in quadruplicate to the municipal clerk with an application fee as shall be established by resolution of the Town of Newfane Town Board and filed in the Clerk's Office. (Amend. 5/26/99)
- 14-11-3 Any petition for a change in the Zoning Map shall include the following;
- 14-11-3.1 The name of the Property owner.
- 14-11-3.2 A map accurately drawn to an appropriate scale, showing the proposed zone district boundary changes, property lines, the calculated areas affected in acres or square feet, the street right-of-ways in the immediate vicinity, and the lands and names of owners immediately adjacent to and extending within 300 feet of all boundaries of the property to be rezoned.
- 14-11-3.3 A metes and bounds description of the proposed amendment.
- 14-11-4 The municipal legislative body, resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given.

- 14-11-5 Every such proposed amendment or change, whether initialed by the municipal legislative body or by petition, may be referred to the Planning Board for review and recommendation before the public hearing is held thereon. The Planning Board shall report to the Town Board no more than seventy five (75) days from the date of referral by the Town Board with a recommendation for approval, denial or conditional approval subject to amendments to the proposal. Failure to report within the stated time shall be deemed a favorable recommendation enabling the Town Board to proceed with the public hearing and determination of the request. (Amend. 5/26/99)
- 14-11-6 Proposed amendments that must be referred to the Niagara County Economic Development and Planning Commission under the provisions of section 239m of Article 12-B of the General Municipal Law shall be transmitted as soon as possible and in any case prior to the public hearing.
- 14-11-7 The municipal legislative body shall require the petitioner to submit evidence that he has notified by certified mail, receipt requested, all property owners within 300 feet of all boundaries of the affected property.
- 14-11-8 The municipal legislative body shall reserve decision on all zoning amendments or changes that must be referred to the Niagara County Economic Development and Planning Commission until its report has been presented, provided that such report is presented within a period of 30 days after the Niagara County Economic Development and Planning Commission receives such referral.
- 14-11-9 Upon adoption of change in the Zoning Map pursuant to a petition, the petitioner shall cause a monument to be placed at one (1) location on the property's street frontage, and shall also file with the Municipal Clerk and the Building Inspector, copies of an accurate survey description and drawing of the area affected by such amendment.

**ARTICLE XV  
VALIDITY**

- 15-1** If any section or subsection, paragraph, clause, phrase or provision of this Ordinance, or the location of any District boundary shown on the Zoning Map that forms a part thereof shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance or Zoning Map as a whole or any part so adjudged to be invalid or unconstitutional.

**ARTICLE XVI  
WHEN EFFECTIVE**

- 16-1** After a number of Public Hearings were held, the Town Clerk having properly published due notice thereof in the Union Sun & Journal, the Town Board at the meeting of May 26, 1999 did adopt this Ordinance.

## **ARTICLE VIII-A ZONING ORDINANCE ADULT ENTERTAINMENT USES:**

### **8a-1: Findings and Legislative Intent.**

- a) It is recognized that there are some uses, which, because of their very nature, have serious objectionable operational characteristics under certain circumstances, which produce a deleterious effect upon adjacent areas. Special Regulation of these uses is necessary to ensure that adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The Town Board of the Town of Newfane finds it in the public interest to enact these regulations. The purpose of these regulations is to prevent or lessen the secondary effects of adult entertainment uses, and not to inhibit freedom of speech.
- b) The unrestrained proliferation and inappropriate location of such businesses is inconsistent with existing development and future plans for the Town of Newfane in that they often result in influences on the community which increase the crime rate and undermine the economic, and social welfare of the community. The deleterious effects of these businesses change the economic and social character of the existing community and adversely affect existing businesses and community and family life.

### **8a-2: Definitions.**

- a) Adult Entertainment Uses shall be defined as follows:
  1. Adult Book and/or Video Store-An establishment having as a substantial or significant portion of its stock in trade books, magazines, periodicals, or other printed matter or photographs, films, videos, slides or other visual representations, which are characterized by the exposure or emphasis of "specified sexual activities" or "specified anatomical areas" or instruments, devices or paraphernalia which are designed for use in connection with

"specified sexual activities" which are for sale, rental or viewing on or off the premises.

2. Adult Entertainment Cabaret-A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters or waitresses, male or female impersonators, lingerie models or exotic dancers, or other similar entertainment or films, motion pictures, videos, slides or other photographic material, or which utilizes employees, that as part of their employment, regularly expose patrons to "specified sexual activities" or "specified anatomical areas".
3. Adult Theater-A theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances characterized by the exposure of "specified sexual activities" or specified anatomical areas".
4. Adult Motion Picture Theater-Any motion picture theater where, for any form of consideration, films, motion pictures, video cassettes, slides or other photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas".
5. Massage Establishment-Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths or steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.
6. Adult Model Studio-Any place where a person who appears in a state of nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration.
7. Peep Shows-A theater which presents materials distinguished or characterized by primary emphasis on matters depicting, describing or relating to specified sexual activities or specified sexual anatomical areas, in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged.



b) Specified Sexual Activities:

1. Human genitals in a state of sexual stimulation or arousal: or
2. Acts of human masturbation, sexual intercourse or sodomy: or
3. Fondling or other erotic touching of human genitals, pubic region, buttocks or breasts.

c) Specified Anatomical Areas:

1. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
2. Human male genital in a discernible turgid state even if completely and opaquely covered.

**8a-3 Locational Restrictions**

Adult entertainment uses shall be permitted only in the Light Industry/Industrial Park (IP) Zone subject to the following restrictions:

- a) Adult entertainment uses are prohibited within:
  1. 500 feet of any zoning district which is zoned to allow residential use.
  2. 500 feet of any single-family, two-family, or multiple family dwelling including structures devoted to both residential and commercial or business purposes;
  3. 500 feet of any public or private school;
  4. 500 feet of any church or other religious facility or institution;
  5. 500 feet to any public park, public bike path, playground or playing field, cemetery, civic or recreational facility.
- b) No adult entertainment use shall be allowed within 500 feet of another existing adult entertainment use.
- c) No more than one adult entertainment use shall be located on any lot.
- d) The distances provided hereinabove shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the adult entertainment use is to be located to the nearest point of the parcel of property or the land use district boundary line from which the adult entertainment use is to be separated.

#### **8a-4 Other Restrictions**

- a) No adult entertainment use shall be conducted in any manner that allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not containing an adult entertainment use. This provision shall apply to any display, decoration, sign, show, window or other opening.
- b) There shall be no outdoor sign, display, or advertising of any kind other than one identification sign limited to only the name of the establishment.
- c) Adult entertainment uses shall obtain site plan approval from the Planning Board in accordance with Article XIV Section 14-6 of this Code.
- d) Adult entertainment uses shall meet all other regulations of the Town of Newfane including but not limited to district lot and bulk regulations, parking regulations and signage.
- e) It shall be unlawful to operate an adult entertainment use between the hours of 2:00 A.M. and 8:00 A.M.
- f) No person under the age of 21 years shall be permitted on or within the premises of an adult entertainment business.

#### **8a-5 Permit**

- A. No person shall engage in, conduct, or carry on an adult entertainment business in the Town of Newfane unless a complete application therefore has been submitted, approved, and a permit issued by the Town of Newfane Zoning Enforcement Officer (ZEO).
- B. Each application for an adult business shall be submitted to the ZEO, contain all the information described below, and be accompanied by a nonrefundable application fee of \$500:
  - (1) The name, residential street address, and residential mailing address (if different) of the applicant.
  - (2) The street address and mailing (if different) of the proposed adult business
  - (3) All other residences of the applicant for the three-year period immediately preceding the date of the application.
  - (4) The business, occupation, or employment of the applicant for the three-year period immediately preceding the date of the application.

- (5) Written proof that the applicant is 21 years of age or older.
- (6) A complete set of the applicant's fingerprints.
- (7) A description of the facilities and services to be available on the premises of the proposed adult business.
- (8) The history of the applicant in the operation of similar establishments or businesses, including, but not limited to, whether or not the person, previously operating in this state or another city or state under license, has had such permit revoked or suspended and the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
- (9) The criminal record, if any, other than misdemeanor traffic violations, of the applicant; if the applicant is an association or partnership, the criminal record of each officer or director of the corporation and each of the stockholders owning more than 10% of the stock of the corporation; if the applicant is a limited-liability company, the criminal record of each of the members and managers of the limited-liability company.
- (10) A scale site plan showing: North arrow, drawing scale, Tax Map number, property boundaries and dimensions, existing and proposed buildings and dimensions, proposed grading and drainage, vegetation, parking, driveways, lighting, signs, refuse containers, fences, water source, sewage system and any other pertinent information that may be deemed necessary by the Town of Newfane Planning Board and site plan requirements of the Town of Newfane.

- C. Upon receipt of a complete application and fee as provided for above, the ZEO shall make or cause to be made a thorough investigation of the applicant's criminal record, and shall review the site plan for compliance with the provisions of this chapter.

**8a-6 Approval, denial, suspension or revocation of permit.**

- A. Permit approval. A permit application may be approved by the ZEO where it appears that the applicant has not been convicted of any offense which would be cause for denial of a permit upon and original application, has not made false statements on a application for a permit, has not previously owned or operated an adult business which resulted suspension or revocation of permits or licenses, and has not committed an act in violation of this chapter. The ZEO shall issue a permit within five days of completing his investigation and concluding that issuance of the permit is warranted. A copy of the permit shall be filed in the office of the Town Clerk.

- B. Permit denial. A permit application may be denied by the ZEO where it appears that the applicant has been convicted of any offense which would be cause for denial of a permit upon an original application, or has made a false statement on an application for a permit, or has previously owned or operated an adult business which resulted in suspension or revocation of permits or licenses, or has committed an act in violation of this chapter. The ZEO shall give the applicant a written notice specifying the grounds for permit denial. The applicant may, within 10 days from the date of such denial, file written request with the Town Board for a public hearing. The hearing shall be conducted by the Town Board and held within 30 days after filing the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Town Board shall then issue a written finding within five days after the date of the public hearing as to whether the permit application was properly denied. If the Town Board determines the permit was unduly denied, the ZEO shall be directed to issue a permit within five days of the date of the written finding. A copy of the permit shall be filed in the office of the Town Clerk.
- C. Permit suspension. A permit may be suspended and a fine levied against the permit holder by the ZEO where it appears that the permit holder has committed an act in violation of this chapter. The ZEO shall give the permit holder a written notice which shall: direct the permit holder to immediately cease operation of the business, specify the grounds for suspension, specify the action that the permit holder must undertake to correct the violation, designate a ten-day time period from the date of said notice for all violations to be corrected to the satisfaction of the ZEO, specify that if the violations are not adequately corrected within the ten-day time period, the permit shall be immediately revoked, and specify the fine to be levied against the permit holder. The permit holder may, upon payment of all fines and within 10 days from the date of such suspension, file a written request with the Town Board for a public hearing. The hearing shall be conducted by the Town Board and held within thirty days after filing the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Town Board will then issue a written finding within five days after the date of the public hearing as to whether the permit was properly suspended. If the town Board determines the permit was unduly suspended, the permit shall be immediately reinstated, monies collected for fines shall be returned, and the adult business shall be allowed to resume operation. If the Town Board determines the permit was properly suspended, the adult business shall continue not to operate, and the permit holder shall have 10 days from the date of receipt of the written finding to correct the violation(s) to the satisfaction of the ZEO. If the violation(s) are adequately corrected, the ZEO shall immediately reinstate the permit and the adult business shall be allowed to resume operation. If the violation(s) are not adequately corrected, the ZEO shall immediately revoke the permit following the procedures described below.
- D. Permit revocation. A permit may be revoked by the ZEO where it appears that the permit holder has not corrected violations pertaining to a previously issued

suspension notice, or has committed an act in violation of this chapter. A permit shall be automatically revoked if the permit holder receives more than two separate suspensions. The ZEO shall give the permit holder a written notice directing the permit holder to immediately terminate operation of the business and shall specify the grounds for revocation. The permit holder may, within 10 days from the date of such revocation, file a written request with the Town Board for a public hearing. The hearing shall be conducted by the Town Board and held within 30 days after the filing of the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Town Board shall then issue a written finding within five days after the public hearing as to whether the permit was properly revoked. If the Town Board determines the permit was properly revoked, the adult business shall immediately and permanently cease to operate.

**8a-7 Registration required.**

- A. The owner of a building or premises, his agent for the purpose of managing, controlling or collecting rents or any other person managing or controlling a building or premises, any part of which contains and adult use, shall register with the Town Clerk of the Town of Newfane the following information:
- (1) The address of the premises.
  - (2) The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
  - (3) The name of the business or the establishment subject to the provisions of this chapter.
  - (4) The name(s) and address(es) of the owner, beneficial owner or the major stockholder(s) of the business or establishment subject to the provisions of this chapter.
  - (5) The date of initiation of the adult use.
  - (6) The nature of the adult use.
  - (7) If the premises or building is leased, a copy of said lease.
- B. It is a violation of this chapter for the owner or person in control of any property to establish operate thereon or to permit any person to establish or operate thereon and adult use without having properly registered said adult use with the Town Clerk.
- C. Registration fee shall be \$1,000 annually.

**8a-8 Display of registration.**

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

**8a-9 Penalties for offenses.**

- A. A violation of any provision of this chapter shall constitute an offense, and shall be subject to suspension of the permit and be punishable by a fine of \$500 for the first suspension, and \$1,000 for a second and final suspension. A permit shall be automatically revoked if the permit holder receives more than two separate suspensions.
- B. If an adult business operates without a permit, or unlawfully operates after a permit was properly suspended or revoked, such violation shall be punishable by a fine of \$1,000 and/or by imprisonment for up to 15 days, Each day such a violation continues shall constitute a separate offense.

**8a-10 Severability.**

Should any section or provision of this article be declared to be unconstitutional or invalid by the courts, such decision shall not affect the validity of the balance of this article.

**8a-11 Effective.**

This local law shall take effect immediately upon filing with the Secretary of State.

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

- County
- City of Newfane
- Town
- Village

Local Law No. 1 of the year 20 08

A local law creating a 6 month Moratorium on Construction of Wind Energy Facilities  
*(Insert Title)*

Be it enacted by the Town Board of the  
*(Name of Legislative Body)*

- County
- City of Newfane as follows:
- Town
- Village

(Delete this line of text and enter text of local law here)

Section 1. Title. This Local Law shall be referred to as the "Temporary 6 Month Moratorium on Construction of Wind Energy Facilities".

Section 2. Definitions.

A. Wind Energy Facility as used in this Law shall mean any structure used for the generation of electrical energy through wind power including wind mills or wind turbines.

Section 3. Purpose and Intent. Pursuant to the statutory powers vested in the Town of Newfane to regulate and control land use, and to protect the health, safety and welfare of its residents, the Town Board hereby declares a temporary 6 month moratorium on the establishment, placement, construction, enlargement or erection of Wind Energy Facilities.

The Town of Newfane has inadequate zoning regulations governing the construction of Wind Energy Facilities within the Town. It is clear that application for the construction of these facilities will be multiplying in the near future due to the increase in energy needs in the United States. The location of the Town of Newfane along Lake Ontario with its scenic resources obliges the Town to place in effect the best possible regulations to govern the location and placement of Wind Energy Facilities. These regulations will encourage and foster the development of alternative energy within the Town while protecting the natural and scenic resources of the area through proper regulation of land use in the placement of the Wind Energy Facilities.

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

The Town of Newfane's present failure to adequately regulate Wind Energy Facilities in the face of past and anticipated application, represents a clear and obvious deficiency in the Town of Newfane's system of land use regulation.

The Town Board desires to address the establishment, placement, construction, enlargement and erection of Wind Energy Facilities on a comprehensive Town-wide basis, and to adopt a zoning ordinance to regulate same.

#### Section 4. Scope of Controls.

##### A. During the effective period of this Local Law:

1. The Town Board shall not grant any approvals which would have as the result the establishment, placement, construction, enlargement or the erection of Wind Energy Facilities.

2. The Town of Newfane Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special use permit or wetlands permit which would have as a result the establishment, placement, construction, enlargement or the erection of Wind Energy Facilities.

3. The Zoning Board of Appeals of the Town of Newfane shall not grant any variance for any use which would result in the establishment, placement, construction, enlargement or the erection of Wind Energy Facilities.

4. The Zoning Enforcement Officer of the Town of Newfane shall not issue any permit which would result in the establishment, placement, construction, enlargement or the erection of Wind Energy Facilities.

B. The Newfane Town Board reserves the right to direct the Zoning Enforcement Officer or Building Code Inspector to revoke or rescind any Zoning Permits, Building Permits or Certificates of Occupancy issued in violation of this Local Law.

Section 5. No Consideration of New Application. No applications for construction effected by this Local Law or for approvals for site plan, special use permit, subdivision, variance or wetlands permit shall be considered by any board or agency of the Town of Newfane while this Local Law is in effect.

Section 6. Term. This Local Law shall be in effect for a period of 6 months from its effective date.

Section 7. Penalties. Any person, firm or corporation that shall establish, place, construct, enlarge or erect any Wind Energy Facility in violation of the provisions of this



Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by laws, rules and regulations of the Town of Newfane for violations; and

B. Injunctive relief in favor of the Town of Newfane to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction which may have taken place in violation of this Local Law.

Section 8 Validity. The invalidity of any provision of this Local Law shall not effect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

Section 9. Effective Date. This Local Law shall take effect immediately upon filing with the Office of the Secretary of State as provided in Section 27 of the Municipal Home Rule Law.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 08 of the (County)(City)(Town)(Village) of Newfane was duly passed by the Town Board on        20       , in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

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

I hereby certify that the local law annexed hereto, designated as local law No.        of 20        of the (County)(City)(Town)(Village) of        was duly passed by the        on        20       , and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the        and was deemed duly adopted *(Elective Chief Executive Officer\*)* on        20       , in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No.        of 20        of the (County)(City)(Town)(Village) of        was duly passed by the        on        20       , and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the        on        20       . *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on        20       , in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No.        of 20        of the (County)(City)(Town)(Village) of        was duly passed by the        on        20       , and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the        on        20       . Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of        20       , in accordance with the applicable provisions of law.

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

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

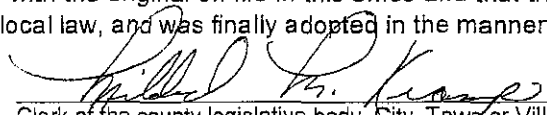
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: January 24, 2008

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

STATE OF NEW YORK  
COUNTY OF NIAGARA

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



Signature  
Town Attorney

Title

County  
City of Newfane

Town  
Village

Date: January 23, 2008

LOCAL LAW NO. 2 OF THE YEAR, 2008

(Use this form to file a local law with the Secretary of State.)  
A Local Law Entitled "Amendment to the Code of the Town of Newfane"  
Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~XXXXXX~~  
~~XXXXXX~~ of Newfane  
Town  
~~XXXXXX~~

Local Law No. 2 of the year 2008

A local law Entitled "Amendment to the Code of the Town of Newfane"  
(Insert Title)  
-----  
-----  
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Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~XXXXXXXX~~  
~~XXXXXX~~ of Newfane as follows:  
Town  
~~XXXXXX~~

Be it Enacted by the Town of Newfane as Follows:

The Code of the Town of Newfane is hereby amended by this Local Law, as follows:

Article VIII Special Exception Uses, Zoning is amended by adding the following new section.

Article VIII C Commercial Wind Energy Systems.

8C-1 Definitions:

- (1) COMMERCIAL WIND ENERGY SYSTEM – A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale.
- (2) NON-COMMERCIAL WIND ENERGY SYSTEM-A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet.
- (3) TOWER-The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.
- (4) TOWER HEIGHT- The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.
- (5) TOTAL HEIGHT- (also MAXIMUM OVERLL HEIGHT)- The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (5) WIND ENERGY SYSTEM- The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.
- (6) WIND ENERGY CONVERSION SYSTEMS- One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for sale, or redistribution to others.

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

8C-2. Commercial wind energy conversion systems.

- (1) The placement, construction, and major modification of all commercial wind energy conversion systems within the boundaries of the Town of Newfane shall be permitted only by special use permit, upon site plan approval issued by the Planning Board as provided herein, after SEQR review, with the Town of Newfane designated as lead agent, and upon issuance of a building permit, and subject to all provisions of this section.
- (2). Applications under this section shall be made as follows:
  - (a) Applicants for a special use permit to place, construct or modify Wind Energy Conversion Systems within the Town of Newfane shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:
    - (1) Name and address of applicant
    - (2) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
    - (3) Visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the Visual EAF (or by the Town of Newfane), existing tree lines and proposed elevations. The Visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures.
    - (4) A site plan drawn in sufficient detail to show the following:
      - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
      - [2] Utility lines, both above and below the ground, within a radius equal to the proposed tower height, including the blades.
      - [3] Property lot lines and the location and dimensions of all existing structures and uses on site within 675 feet of the Wind Energy Conversion Systems.
      - [4] Surrounding land use and all structures within 675 feet of the Wind Energy Conversion Systems.
      - [5] Dimensional representation of the various structural components of the tower construction including the base and footing.
      - [6] Certification by a registered New York State Professional Engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
      - [7] Existing topography.
      - [8] Proposed plan for grading and removal of natural vegetation.
      - [9] Proposed plan for restoration after construction according to NYS Agriculture and Markets and NYS Department of Environmental Construction Code.

- [10] Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
  - [11] Plan for ingress and egress to the proposed project site including:
    - [a] A description of the access route from the nearest State, County, and/or Town-maintained roads to include:
      - (i) Road surface material stating the type and amount of surface cover.
      - (ii) Width and length of access route.
      - (iii) Dust control procedures.
    - [b] A road maintenance schedule or program.
    - [c] Review railroad accessibility for deliveries.
  - [12] Detailed construction plan including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in field with name and phone number.
  - [13] Tree removal; All groves of trees shall be located on the site plan at time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board.
  - (5) Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
  - (6) Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
  - (7) Noise report. A noise report shall be furnished which shall include the following:
    - [1] A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
    - [2] A description and map of the noise sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two (2) miles of the proposed facilities.
    - [3] A survey and report prepared by a qualified engineer, that analyzes the pre-existing ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction; and analyses at affected sensitive receptors located within two (2) miles of the proposed project site.
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- [4] A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers and estimates of expected noise levels at sensitive receptor locations;
  - [5] A description and map of the cumulative noise impacts.
  - [6] A description of the projects proposed noise-control features, including specific measures proposed to protect workers, and specific measures proposed to protect workers, proposed to mitigate noise impacts for sensitive receptors consistent with level in this ordinance.
  - [7] Identification of any problem areas.
  - [8] Manufacturers' noise design and field testing data, both audible (dB(A), and low frequency (deep bass vibration), for all proposed structures.
  - [9] A report that outlines issues and considerations for individuals that use hearing aids
- (8) A geotechnical report shall be furnished which shall at a minimum include the following:
- [1] Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - [2] Foundation design criteria for all proposed structures.
  - [3] Slope stability analysis.
  - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (9) Ice throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed).
- (10) Blade throw calculations: A report from a New York Professional Engineer that; calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed).
- (11) Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
- (12) FAA notification: A copy of written notification to the Federal Aviation Administration.
- (13) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (14) Notification to microwave communications link operators: An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (15) Floodplain: An application that includes any wind turbine which is located within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.
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- (16) Other information: Such additional information as may be reasonably requested by the Town Engineer or Planning Board.

8C-3 Special use permits issued for Wind Energy Conversion Systems shall be subject to the following conditions.

- (a) Commercial WECS shall be limited in location to the following areas within the Town of Newfane. That area located on the north by Lake Ontario, on the south by Wilson-Burt Road and Drake Settlement Road, on the east by the Newfane Town Line and on the west by the Newfane Town Line.
- (b) Setbacks: The applicant shall adhere to the following setbacks:
- (1) From structures:
    - [a] A minimum 1.25 times the total WECS height from any residential dwelling.
    - [b] A minimum of 2.25 times the total WECS height from any dwelling not on property.
  - (2) From property lines:
    - [a] A minimum of 1.25 times the total WECS height from any property line excluding adjoining lot lines of project participants.
  - (3) From public road and highways:
    - [a] A minimum of 1.25 times the total WECS height from any public road and highway.
    - [b] Where the lot line abuts a public right of way, the setbacks specified above shall be measured from the center line of such right of way.
  - (4) From aboveground transmission lines greater than 12 kilovolts:
    - [a] A minimum of 1.25 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD Zones.
  - (5) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback. This paragraph does not apply to the above paragraphs 8C-3 (b) (3) and 8C-3 (b) (4).
- (c) Maximum overall height: The maximum overall height of any Wind Energy Conversion System shall be 450 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (d) Signage:
  - (1) Signage limited: No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- (e) Color and finish:
  - (1) Color and finish: Wind turbines shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective.
  - (2) Camouflage facilities: The design of commercial wind energy facility buildings and related structures shall, to the extent reasonably possible,



use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.

(f) Lighting:

- (1) Lighting plan required: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.

(g) Compliance with regulatory agencies:

The applicant is required to obtain all necessary regulatory approvals and permits from all Federal, State, County and Local Agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.

(h) Compliance with the Local Waterfront Revitalization Plan.

The applicant is required to conform to all requirements of the Town of Newfane Local Waterfront Revitalization Plan.

(i) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.

- (1) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- (2) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
- (3) Wiring: All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the period.
- (4) All transmission lines from wind energy conversion systems to on site substations shall be underground. The Planning Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Planning Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
- (5) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
- (6) Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level.
- (7) Access doors locked: All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.

- (8) Self-supporting structures: All structures or guy wire supported structures shall be permitted.
  - (9) Signage: Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with Local, State, and Federal Codes.
  - (10) Ice throw: Permit shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (j) Noise requirements: The applicant shall adhere to the following Noise requirements.
- (1) Compliance with noise regulations required: A commercial wind energy facility permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
  - (2) Noise study required: The applicant shall submit a noise study based on the requirements set out in the Subsection B of this section. The Planning Board shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - [1] Low Frequency Noise.
    - [2] Infrasound Noise.
    - [3] Pure Tone.
    - [4] Repetitive/Impulsive sound.
  - (3) Noise setbacks: The Planning Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
  - (4) Audible noise standard: The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out of any one-hour time period or to exceed 50 dB(A) for any time period.
  - (5) Operations-low frequency noise: A commercial wind energy facility shall not be operated so that the impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
  - (6) Noise complaint and investigation process required: The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- (k.) Fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
- (1) Fireproof or fire resistant building materials.
  - (2) Buffers or fire retardant landscaping.
  - (3) Availability of water.

- (4) An automatic fire-extinguishing system for all buildings or equipment, or transmission equipment-without regular human occupancy.
  - (5) Provision of training and fire fighting equipment for local fire protection personnel.
- (l.) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat.
- (1) Endangered or threatened species: Development and operation of a commercial wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Newfane Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the Federal or State regulatory agencies.
  - (2) Migratory birds: Development and operation of a commercial wind energy facility shall be evaluated based on SEQR findings.
- (m.) Unsafe and inoperable wind energy facilities; site reclamation: The applicant shall adhere to the following:
- (1) Removal and site restoration: Unsafe commercial wind energy facilities, inoperable commercial wind energy facilities, and commercial wind energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible. A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration.
  - (2) Removal and site restoration plan required: The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Town Planning Board for its review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regarding and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial wind energy facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  - (3) Public nuisance: Every unsafe commercial wind energy facility and every inoperable commercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable commercial wind energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in process or planned and will be completed within no more than six months.

- (4) Inoperable, defined: A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding 6 months.
- (n.) Interference with residential television, microwave and radio reception. The applicant must submit information that the proposed construction of the Wind Energy Conversion System will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (o.) Interference with aviation navigational systems: The applicant shall adhere to the following:
- (1) No interference with aviation facilities: No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
  - (2) Compliance with FAA Regulations: All commercial wind energy siting shall comply with Federal Aviation Administration ("FAA") regulations.
  - (3) Locking mechanisms to limit radar interference required: All commercial wind energy facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or "clutter". This provision does not apply while the WECS is "free-wheeling" during start-up and shutdown. The planning Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or "clutter" will be caused by the commercial wind energy facility.
- (p.) Erosion control: The applicant shall adhere to the following:
- (1) Erosion Control Plan: Before the Town of Newfane shall issue a grading or building permit for the commercial wind energy facility, the applicant shall submit and Erosion Control Plan to the Planning Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class 1 and 11 streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
  - (2) If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the Notice of Intent (N.O.I.) and Stormwater Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Newfane prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.
- (q.) Certification: The applicant shall provide the following certifications.
- (1) Certification of structural components: The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The engineer shall certify compliance with a good engineering practices

and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.

- (2) Certification of post construction: After completion of the Wind Energy Conversion System, the applicant shall provide a post-construction from a licensed professional engineer registered in the State of New York the project complies with applicable codes and industry practices and has been completed to the design plans.
  - (3) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
  - (4) Certification of rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices.
  - (5) Certification of project: Certificate of Completion must be supplied by the applicant and approved by the Town of Newfane Code Enforcement Officer.
- (4.) Monitoring requirements for wind energy conversion systems:
- (a) Right to enter premises for monitoring: Upon reasonable notice, Town of Newfane officials or their designated representatives may enter a lot on which a compliance with any permit requirements. Twenty-four hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
  - (b) Avian/bat impact study plan: The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet for the commercial wind energy facility.
  - (c) Periodic reporting required: The applicant shall agree to submit periodic operations and environmental impacts, and shall be in the form prescribed by the Planning Board.
  - (d) Power production report required: The applicant shall agree to submit a quarterly power production report to the Planning Board. The power production report shall cover the preceding calendar quarter, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt hours for each commercial wind energy facility.
  - (e) Inspections: Unless waived by the Planning Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State Licensed Professional Engineer that has been approved by the Town or at any other time upon determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any
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fee or expense associated with this inspection shall be borne entirely by the permit holder.

(f) General complaint process:

- (a) During construction, the Town of Newfane Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
- (b) Post construction: After construction is complete, the permit holder shall establish a contact person including name and phone number, for receipt of any complaint concerning any permit requirements, Upon receipt of complaint from the Town of Newfane Code Enforcement Officer, the permit/contact person shall have 7 working days to reply to the Town in writing.

(5.) Application and development impact fees and costs:

- (a) Application fee: The applicant shall pay all costs associated with the Town of Newfane's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Newfane may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- (b) Development fees to be paid: A one-time or periodic fee and a requirement to provide works or services may be imposed as a condition of a commercial wind energy facility permit. Such fees must be related to the public need created by the wind energy development. The purpose for which the permit fee may be used, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.
- (c) Payment in lieu of taxes (host community agreement):
  - (1) Prior to a building permit being issued, the applicant is required to negotiate a Payment in Lieu of Taxes (Host Community) agreement with the Town of Newfane.
- (d) Proof of insurance: Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
- (e) The Town of Newfane reserves the right to, by Local Law; provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.

(6.) Findings:

Findings necessary to grant a commercial wind energy facility permit: In order to grant a commercial wind energy facility permit, the Town of Newfane shall review the application; all findings by any other party; and conduct a public hearing. A commercial wind energy facility shall not be granted unless the Town of Newfane makes the following findings based on substantial evidence:

fee or expense associated with this inspection shall be borne entirely by the permit holder.

(f) General complaint process:

- (a) During construction, the Town of Newfane Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
- (b) Post construction: After construction is complete, the permit holder shall establish a contact person including name and phone number, for receipt of any complaint concerning any permit requirements, Upon receipt of complaint from the Town of Newfane Code Enforcement Officer, the permit/contact person shall have 7 working days to reply to the Town in writing.

(5.) Application and development impact fees and costs:

- (a) Application fee: The applicant shall pay all costs associated with the Town of Newfane's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Newfane may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- (b) Development fees to be paid: A one-time or periodic fee and a requirement to provide works or services may be imposed as a condition of a commercial wind energy facility permit. Such fees must be related to the public need created by the wind energy development. The purpose for which the permit fee may be used, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.
- (c) Payment in lieu of taxes (host community agreement):
  - (1) Prior to a building permit being issued, the applicant is required to negotiate a Payment in Lieu of Taxes (Host Community) agreement with the Town of Newfane.
- (d) Proof of insurance: Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
- (e) The Town of Newfane reserves the right to, by Local Law; provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.

(6.) Findings:

Findings necessary to grant a commercial wind energy facility permit: In order to grant a commercial wind energy facility permit, the Town of Newfane shall review the application; all findings by any other party; and conduct a public hearing. A commercial wind energy facility shall not be granted unless the Town of Newfane makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan: The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Newfane.
  - (b) Will not, Unreasonably Interfere With the Orderly Land Use and Development Plans: The proposed commercial wind energy facility will not unreasonably interfere with the orderly land use and development plans of the Town of Newfane.
  - (c) Benefits to the Applicant and Public Will Exceed Any Burdens: That the benefits to the Applicant and the Public of the proposed commercial wind energy facility project will exceed any burden.
  - (d) Not Detrimental to the Public Health, Safety and General Welfare of the Community: The proposed commercial wind energy facility shall comply with all required provisions of the zoning ordinance, unless variances have properly applied for and granted pursuant to Article XIII of the Zoning Ordinance of the Town of Newfane.
- (7.) The Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the Special Use Permit, the applicant shall obtain a building permit for each tower.
- (8.) The special use permit shall not be assigned.
- (9.) Amendments to Special Use Permit – Any changes or alterations post construction to the Wind Energy Conversion System shall be done only by the amendment to the Special Use Permit and subject to all requirements of this Local Law.

8c-3

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

8c-4

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



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

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

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 08 of the ~~(County)~~(City)(Town)(Village) of Newfane was duly passed by the Town Board on October 22 20 08, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ (Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

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

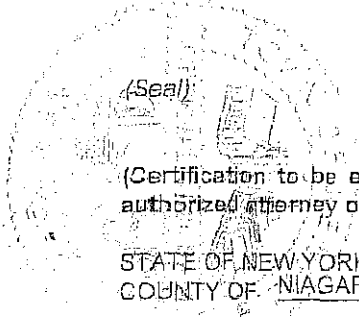
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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



(Seal)

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

STATE OF NEW YORK  
COUNTY OF NIAGARA

Milled M. Kramp  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: October 22, 2008

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

James J. Sansone  
Signature  
Town Attorney James J. Sansone  
Title

County \_\_\_\_\_  
City of Newfane  
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date: October 22, 2008

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~XXXXXX~~  
~~XXXX~~  
Town  
~~XXXXXX~~

of NEWFANE

Local Law No. 3 of the year 2008

A local law Entitled "Amendment to the Code of the Town of Newfane"  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~XXXXXX~~  
~~XXXX~~  
Town  
~~XXXXXX~~

of Newfane

as follows:

The Code of the Town of Newfane is hereby amended by this Local Law, as follows:

Article VIII Special Exception Uses, Zoning, is amended by adding the following new section:

Article VIII B Noncommercial wind energy conversions systems.

8b-1 The placement, construction, and major modification of all noncommercial wind energy conversion systems within the boundaries of the Town of Newfane shall be permitted only by special use permit, upon site plan approval issued by the Planning Board herein and issuance of a building permit, and subject to all provisions under this section shall be made as follows

8b-2 Applications under this section shall be made as follows:

(1) Applications for a special permit to place, construct or modify wind energy conversion systems within the Town of Newfane shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation.

(a) Name and address of the applicant.

(b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.

(c) A site plan drawn in sufficient detail to show the following:

[1] Location of the tower(s) on their site and the tower height, including blades, rotor diameter and ground clearance.

[2] Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the Wind Energy Conversion Systems.

[3] Dimensional representation of the various structural components of the tower construction including the base and footing.

[4] Certification by a registered New York State withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.

- [5] Wind characteristics and dominant wind direction in the direction from which 50% or more of the energy contained in the wind flows.
- (d) Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the residential wind turbine and tower.
- (e) Turbine drawings: photographs or detailed drawings of each wind turbine model, including the tower and foundation.
- (f) A noise report shall be furnished which shall include the following:
  - [1] Manufacturers' Noise design and filed testing data for the proposed structure.
- (g) A geotechnical report shall be furnished which shall include the following:
  - [2] Foundation design criteria for all.
  - [3] Slope stability analysis.
  - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (h) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (i) Electrical line drawing: A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.
- (j) Floodplain: An application that includes any wind turbine which is located within a 100-year flood plain area, as such flood hazard areas are shown on the floodplains maps, shall be accompanied by a detailed report shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.
- (k) Other Information: Such additional information as may be reasonably requested by the Town Engineer of Planning Board.

8b-3 Special use permits issued for Wind Energy Conversion Systems shall be subject to the following conditions:

- (1) Setbacks: The applicant shall adhere to the following setbacks.
  - (a) From structures: A minimum 1.25 times the total WECS height from any dwelling located upon owner's property and 2.25 times the total WECS height from any dwelling not located upon owner's property.

- (b) From property lines a minimum of 1.25 times the total WECS height from all property lot lines.
  - (c) From public road and highways: A minimum of 1.25 times the total WECS height from any public road and highway.
  - (d) From Railroads:  
A minimum 1.25 times the total WECS height from any railroad right-of-way.
  - (e) From aboveground Transmission Lines greater than 12 kilovolts:  
A minimum 1.25 times the total WECS height from any aboveground transmission line greater than 12 kilovolts.
- (2) The Planning Board shall determine the number of WECS to be system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed across property lines.
- (3) Maximum height: The maximum overall height of any noncommercial wind energy conversion system shall be 150 feet.
- (4) Noncommercial wind energy conversion system shall be placed or located in rear yards.
- (5) Notification of adjacent property owners
- (a) All applicants are required to notify all property owners within 500 feet of the property line of the proposed parcel where the noncommercial wind energy conversion system will be erected of the proposed project. The adjacent property owners shall be notified by the Town Clerk in writing within 10 days of filing an application for WECS Permit with the Town of Newfane. This notification shall include the size, location and planned construction date of residential WECS system.
- (6) Signage:
- (a) Signage limited: No advertising sign or logo shall be placed or painted on any non-commercial wind energy facility. A noncommercial wind energy facility permit may allow the placement of the tower's manufacturer's logo on a system generator housing in an unobtrusive manner.
- (7) Lighting:
- (a) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) Color and finish
- (a) Color and finish: Wind turbines shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective.
- (9) Compliance with the regulatory agencies.

- (a) The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conservation System.
  - (b) The applicant is required to submit a long Environmental Assessment Form (EAF) with the Town of Newfane designated as lead agent for the SEQR process.
- (10) Compliance with the Local Waterfront Revitalization Plan.
- (a) The applicant is required to conform to all requirements of the Town of Newfane Local Waterfront Revitalization Plan.
- (11) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.
- (a) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
  - (b) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical code.
  - (c) Wiring: All wiring associated with the wind energy facility shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers or lines.
  - (d) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
  - (e) Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level.
  - (f) Anchor points for guy wires: Anchor points for any guy wires for a system tower shall be located with the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence 6 feet high or sheathed in bright orange or yellow covering from to eight feet above the ground. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.
  - (g) Signage: Appropriate warning signage shall be place on wind turbine towers, and electrical equipment. Signage

shall also include one (1) twenty-four-hour emergency contact numbers to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

- (12) Noise requirements: The applicant shall adhere to the following noise requirements:
  - (a) Audible noise standard: The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out or any one-hour time period or to exceed 50 dB(A) for any time period.
  - (b) Operations-low frequency noise: A noncommercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (13) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat.
  - (a) Endangered species: Development and operation of residential wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Newfane Comprehensive Plan and/or the studies and plans of the regional planning commissions.
  - (b) Migratory birds: Development and operation of a residential wind energy facility shall not have an adverse impact on migratory bird species.
- (14) Interference with residential television, microwave and radio reception.
  - (a) The noncommercial wind energy conversion energy system shall be operated such that no electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (15) Unsafe and inoperable wind energy facilities; site reclamation: The applicant shall adhere to the following:
  - (a) Removal and site restoration: unsafe noncommercial wind energy facilities inoperable noncommercial wind energy facilities and noncommercial wind energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the noncommercial wind energy facility shall

be eliminated and the site shall be restored to its natural condition to the extent feasible.

- (b) Public nuisance: Every unsafe noncommercial wind energy facility and every inoperable noncommercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable noncommercial wind energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
  - (c) Inoperable, defined: A noncommercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- (16) Interconnection and Electrical Distribution Facilities: The applicant shall adhere to the following:
- (a) Facility Standards: All interconnection facilities shall be constructed to the specifications of the utility.
  - (b) Interconnection Standards: Interconnection shall conform to procedures and standards established by the Federal Regulatory Commission, and the New York State Public Service Commission, as applicable.
- (17) Erosion control: The applicant shall adhere to the following:
- (a) Erosion control plan required: Before the Town of Newfane shall issue a grading or building permit for the noncommercial wind energy facility, the applicant shall submit and Erosion Control Plan to the Planning Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class 1 and 11 streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
- (18) Certification: The applicant is required to provide the following certifications.
- (a) Certification of structural components: The foundation, tower and compatibility of the tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The Engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.
  - (b) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York. The Engineer shall certify



compliance with good engineering practices and with the appropriate provisions of the Electrical Code that have been adopted by New York State.

- (c) Certification or rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The Engineer shall certify compliance with good engineering practices.
- (19) General Compliant Process:
- (a) During construction the Town of Newfane Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
  - (b) Post construction: After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of any complaint from the Town of Newfane Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- (20) Final Inspection conducted by Code Enforcement Officer in conjunction with the Town Engineer to insure compliance with all manufacturers' specifications and the New York State Uniform Construction Code.

8b-4 Application fees and costs:

- (1) Application Fee: Applicant shall pay all costs associated with the Town of Newfane's review and processing of the application. Applicant shall submit a deposit with the application in the amount of as determined by resolution by the Town Board. The Town of Newfane may require additional deposits to cover the costs or reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the applicant with summary of the cost incurred.
- (2) Development of a noncommercial wind energy conversion system shall be subject to assessment by the Town of Newfane.

8b-5 Findings:

- (1) Findings necessary to grant a noncommercial wind energy facility permit: In order to grant a noncommercial wind energy facility permit, the Town of Newfane shall review the application; all filings by any other party; and conduct a public hearing. A noncommercial wind energy facility permit shall not be granted unless the Town of Newfane makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan: The proposed noncommercial wind energy facility project is consistent with the Comprehensive Plan of Town of Newfane.
- (b) Will not unreasonably interfere with the orderly land use and development plans: The proposed noncommercial wind energy land use and development plans of the Town of Newfane.
- (c) Not detrimental to the public health, safety and general welfare of the community: The proposed noncommercial wind energy facility will not be detrimental to the public health, safety or general welfare of the community.
- (d) Complies with all required provisions of the Zoning Ordinance: The proposed non-commercial wind energy facility shall comply with all required provisions of the zoning ordinance, unless variances have been properly applied for and granted pursuant to Article XVIII of Chapter 205 of the Code of the Town of Newfane.

8b-6 The Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for the tower.

8b-7 The special use permit shall not be assignable or transferable.

8b-8 Amendments to special use permit- Any changes or alterations post construction to the wind energy conversion system shall be done only by amendment to the special use permit and subject to all requirements of this section.

8b-9 If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

8b-10 This Local Law shall take effect immediately upon filing with the Secretary of State of New York.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 20 08 of the ~~(County)~~(City)(Town)(Village) of Newfane was duly passed by the Town Board on October 20 20 08, in accordance with the applicable *(Name of Legislative Body)* provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_\_, became operative.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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

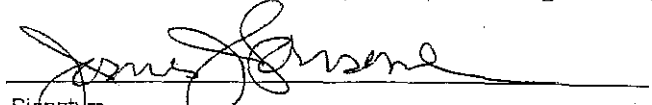
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: October 22, 2008

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

STATE OF NEW YORK  
COUNTY OF NIAGARA

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



Signature  
Town Attorney James J. Sansone  
Title

County  
City of Newfane  
Town  
Village

Date: October 22, 2008

# Local Law #2 Wind Energy

Be it Enacted by the Town of Newfane as Follows:

The Code of the Town of Newfane is hereby amended by this Local Law, as follows:

Article VIII Special Exception Uses, Zoning is amended by adding the following new section.

Article VIII C Commercial Wind Energy Systems.

8C-1 Definitions:

- (1) **COMMERCIAL WIND ENERGY SYSTEM** - A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale.
- (2) **NON-COMMERCIAL WIND ENERGY SYSTEM**-A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet.
- (3) **TOWER**-The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.
- (4) **TOWER HEIGHT**- The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.
- (5) **TOTAL HEIGHT**- (also **MAXIMUM OVERALL HEIGHT**)- The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (5) **WIND ENERGY SYSTEM**- The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.
- (6) **WIND ENERGY CONVERSION SYSTEMS**- One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for sale, or redistribution to others.

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

8C- 2. Commercial wind energy conversion systems.

- (1) The placement, construction, and major modification of all commercial wind energy conversion systems within the boundaries of the Town of Newfane shall be permitted only by special use permit, upon site plan approval issued by the Planning Board as provided herein, after SEQR review, with the Town of Newfane designated as lead agent, and upon issuance of a building permit, and subject to all provisions of this section.
- (2). Applications under this section shall be made as follows:
  - (a) Applicants for a special use permit to place, construct or modify Wind Energy Conversion Systems within the Town of Newfane shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:
    - (1) Name and address of applicant
    - (2) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
    - (3) Visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the Visual EAF (or by the Town of Newfane), existing tree lines and proposed elevations. The Visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures.
  - (4) A site plan drawn in sufficient detail to show the following:
    - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
    - [2] Utility lines, both above and below the ground, within a radius equal to the proposed tower height, including the blades.
    - [3] Property lot lines and the location and dimensions of all existing structures and uses on site within 675 feet of the Wind Energy Conversion Systems.
    - [4] Surrounding land use and all structures within 675 feet of the Wind Energy Conversion Systems.
    - [5] Dimensional representation of the various structural components of the tower construction including the base and footing.
    - [6] Certification by a registered New York State Professional Engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
    - [7] Existing topography.
    - [8] Proposed plan for grading and removal of natural vegetation.
    - [9] Proposed plan for restoration after construction according to NYS Agriculture and Markets and NYS Department of Environmental Construction Code.

- [10] Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
- [11] Plan for ingress and egress to the proposed project site including:
  - [a] A description of the access route from the nearest State, County, and/or Town-maintained roads to include:
    - (i) Road surface material stating the type and amount of surface cover.
    - (ii) Width and length of access route.
    - (iii) Dust control procedures.
  - [b] A road maintenance schedule or program.
  - [c] Review railroad accessibility for deliveries.
- [12] Detailed construction plan including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in field with name and phone number.
- [13] Tree removal; All groves of trees shall be located on the site plan at time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board.
- (5) Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
- (6) Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
- (7) Noise report. A noise report shall be furnished which shall include the following:
  - [1] A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  - [2] A description and map of the noise sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two (2) miles of the proposed facilities.
  - [3] A survey and report prepared by a qualified engineer, that analyzes the pre-existing ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction; and analyses at affected sensitive receptors located within two (2) miles of the proposed project site.

- [4] A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers and estimates of expected noise levels at sensitive receptor locations;
  - [5] A description and map of the cumulative noise impacts.
  - [6] A description of the projects proposed noise-control features, including specific measures proposed to protect workers, and specific measures proposed to protect workers, proposed to mitigate noise impacts for sensitive receptors consistent with level in this ordinance.
  - [7] Identification of any problem areas.
  - [8] Manufacturers' noise design and field testing data, both audible (dB(A), and low frequency (deep bass vibration), for all proposed structures.
  - [9] A report that outlines issues and considerations for individuals that use hearing aids
- (8) A geotechnical report shall be furnished which shall at a minimum include the following:
- [1] Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - [2] Foundation design criteria for all proposed structures.
  - [3] Slope stability analysis.
  - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (9) Ice throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed).
- (10) Blade throw calculations: A report from a New York Professional Engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed).
- (11) Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
- (12) FAA notification: A copy of written notification to the Federal Aviation Administration.
- (13) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (14) Notification to microwave communications link operators: An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (15) Floodplain: An application that includes any wind turbine which is located within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.



- (16) Other information: Such additional information as may be reasonably requested by the Town Engineer or Planning Board.

8C-3 Special use permits issued for Wind Energy Conversion Systems shall be subject to the following conditions.

- (a) Commercial WECS shall be limited in location to the following areas within the Town of Newfane. That area located on the north by Lake Ontario, on the south by Wilson-Burt Road and Drake Settlement Road, on the east by the Newfane Town Line and on the west by the Newfane Town Line.
- (b) Setbacks: The applicant shall adhere to the following setbacks:
- (1) From structures:
    - [a] A minimum 1.25 times the total WECS height from any residential dwelling.
    - [b] A minimum of 2.25 times the total WECS height from any dwelling not on property.
  - (2) From property lines:
    - [a] A minimum of 1.25 times the total WECS height from any property line excluding adjoining lot lines of project participants.
  - (3) From public road and highways:
    - [a] A minimum of 1.25 times the total WECS height from any public road and highway.
    - [b] Where the lot line abuts a public right of way, the setbacks specified above shall be measured from the center line of such right of way.
  - (4) From aboveground transmission lines greater than 12 kilovolts:
    - [a] A minimum of 1.25 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD Zones.
  - (5) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback. This paragraph does not apply to the above paragraphs 8C-3 (b) (3) and 8C-3 (b) (4).
- (c) Maximum overall height: The maximum overall height of any Wind Energy Conversion System shall be 450 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (d) Signage:
  - (1) Signage limited: No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- (e) Color and finish:
  - (1) Color and finish: Wind turbines shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective.
  - (2) Camouflage facilities: The design of commercial wind energy facility buildings and related structures shall, to the extent reasonably possible,

use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.

(f) Lighting:

(1) Lighting plan required: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.

(g) Compliance with regulatory agencies:

The applicant is required to obtain all necessary regulatory approvals and permits from all Federal, State, County and Local Agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.

(h) Compliance with the Local Waterfront Revitalization Plan.

The applicant is required to conform to all requirements of the Town of Newfane Local Waterfront Revitalization Plan.

(i) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.

- (1) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- (2) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
- (3) Wiring: All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the period.
- (4) All transmission lines from wind energy conversion systems to on site substations shall be underground. The Planning Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Planning Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
- (5) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
- (6) Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level.
- (7) Access doors locked: All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.

- (8) Self-supporting structures: All structures or guy wire supported structures shall be permitted.
- (9) Signage: Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with Local, State, and Federal Codes.
- (10) Ice throw: Permit shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (j) Noise requirements: The applicant shall adhere to the following Noise requirements.
  - (1) Compliance with noise regulations required: A commercial wind energy facility permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
  - (2) Noise study required: The applicant shall submit a noise study based on the requirements set out in the Subsection B of this section. The Planning Board shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - [1] Low Frequency Noise.
    - [2] Infrasound Noise.
    - [3] Pure Tone.
    - [4] Repetitive/Impulsive sound.
  - (3) Noise setbacks: The Planning Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
  - (4) Audible noise standard: The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more that five (5) minutes out of any one-hour time period or to exceed 50 dB(A) for any time period.
  - (5) Operations-low frequency noise: A commercial wind energy facility shall not be operated so that the impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
  - (6) Noise complaint and investigation process required: The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- (k.) Fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
  - (1) Fireproof or fire resistant building materials.
  - (2) Buffers or fire retardant landscaping.
  - (3) Availability of water.

- (4) An automatic fire-extinguishing system for all buildings or equipment, or transmission equipment-without regular human occupancy.
  - (5) Provision of training and fire fighting equipment for local fire protection personnel.
- (l.) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat.
- (1) Endangered or threatened species: Development and operation of a commercial wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Newfane Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the Federal or State regulatory agencies.
  - (2) Migratory birds: Development and operation of a commercial wind energy facility shall be evaluated based on SEQR findings.
- (m.) Unsafe and inoperable wind energy facilities; site reclamation: The applicant shall adhere to the following:
- (1) Removal and site restoration: Unsafe commercial wind energy facilities, inoperable commercial wind energy facilities, and commercial wind energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible. A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration.
  - (2) Removal and site restoration plan required: The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Town Planning Board for its review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regarding and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial wind energy facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  - (3) Public nuisance: Every unsafe commercial wind energy facility and every inoperable commercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable commercial wind energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in process or planned and will be completed within no more than six months.

- (4) Inoperable, defined: A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding 6 months.
- (n.) Interference with residential television, microwave and radio reception. The applicant must submit information that the proposed construction of the Wind Energy Conversion System will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (o.) Interference with aviation navigational systems: The applicant shall adhere to the following:
- (1) No interference with aviation facilities: No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
  - (2) Compliance with FAA Regulations: All commercial wind energy siting shall comply with Federal Aviation Administration ("FAA") regulations.
  - (3) Locking mechanisms to limit radar interference required: All commercial wind energy facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or "clutter". This provision does not apply while the WECS is "free-wheeling" during start-up and shutdown. The planning Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or "clutter" will be caused by the commercial wind energy facility.
- (p.) Erosion control: The applicant shall adhere to the following:
- (1) Erosion Control Plan: Before the Town of Newfane shall issue a grading or building permit for the commercial wind energy facility, the applicant shall submit and Erosion Control Plan to the Planning Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class 1 and 11 streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
  - (2) If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the Notice of Intent (N.O.I.) and Stormwater Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Newfane prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.
- (q.) Certification: The applicant shall provide the following certifications.
- (1) Certification of structural components: The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The engineer shall certify compliance with a good engineering practices

and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.

- (2) Certification of post construction: After completion of the Wind Energy Conversion System, the applicant shall provide a post-construction from a licensed professional engineer registered in the State of New York the project complies with applicable codes and industry practices and has been completed to the design plans.
  - (3) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
  - (4) Certification of rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices.
  - (5) Certification of project: Certificate of Completion must be supplied by the applicant and approved by the Town of Newfane Code Enforcement Officer.
- (4.) Monitoring requirements for wind energy conversion systems:
- (a) Right to enter premises for monitoring: Upon reasonable notice, Town of Newfane officials or their designated representatives may enter a lot on which a compliance with any permit requirements. Twenty-four hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
  - (b) Avian/bat impact study plan: The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet for the commercial wind energy facility.
  - (c) Periodic reporting required: The applicant shall agree to submit periodic operations and environmental impacts, and shall be in the form prescribed by the Planning Board.
  - (d) Power production report required: The applicant shall agree to submit a quarterly power production report to the Planning Board. The power production report shall cover the preceding calendar quarter, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt hours for each commercial wind energy facility.
  - (e) Inspections: Unless waived by the Planning Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State Licensed Professional Engineer that has been approved by the Town or at any other time upon determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any
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fee or expense associated with this inspection shall be borne entirely by the permit holder.

(f) General complaint process:

- (a) During construction, the Town of Newfane Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
- (b) Post construction: After construction is complete, the permit holder shall establish a contact person including name and phone number, for receipt of any complaint concerning any permit requirements, Upon receipt of complaint from the Town of Newfane Code Enforcement Officer, the permit/contact person shall have 7 working days to reply to the Town in writing.

(5.) Application and development impact fees and costs:

- (a) Application fee: The applicant shall pay all costs associated with the Town of Newfane's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Newfane may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- (b) Development fees to be paid: A one-time or periodic fee and a requirement to provide works or services may be imposed as a condition of a commercial wind energy facility permit. Such fees must be related to the public need created by the wind energy development. The purpose for which the permit fee may be used, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.
- (c) Payment in lieu of taxes (host community agreement):
  - (1) Prior to a building permit being issued, the applicant is required to negotiate a Payment in Lieu of Taxes (Host Community) agreement with the Town of Newfane.
- (d) Proof of insurance: Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
- (e) The Town of Newfane reserves the right to, by Local Law; provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.

(6.) Findings:

Findings necessary to grant a commercial wind energy facility permit: In order to grant a commercial wind energy facility permit, the Town of Newfane shall review the application; all findings by any other party; and conduct a public hearing. A commercial wind energy facility shall not be granted unless the Town of Newfane makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan: The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Newfane.
  - (b) Will not, Unreasonably Interfere With the Orderly Land Use and Development Plans: The proposed commercial wind energy facility will not unreasonably interfere with the orderly land use and development plans of the Town of Newfane.
  - (c) Benefits to the Applicant and Public Will Exceed Any Burdens: That the benefits to the Applicant and the Public of the proposed commercial wind energy facility project will exceed any burden.
  - (d) Not Detrimental to the Public Health, Safety and General Welfare of the Community: The proposed commercial wind energy facility shall comply with all required provisions of the zoning ordinance, unless variances have properly applied for and granted pursuant to Article XIII of the Zoning Ordinance of the Town of Newfane.
- (7.) The Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the Special Use Permit, the applicant shall obtain a building permit for each tower.
- (8.) The special use permit shall not be assigned.
- (9.) Amendments to Special Use Permit – Any changes or alterations post construction to the Wind Energy Conversion System shall be done only by the amendment to the Special Use Permit and subject to all requirements of this Local Law.

8c-3 If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

8c-4 This Local Law shall take effect immediately upon filing with the Secretary of State of New York.



# Local Law #3 - Wind Energy

The Code of the Town of Newfane is hereby amended by this Local Law, as follows:

Article VIII Special Exception Uses. Zoning, is amended by adding the following new section:

Article VIII B Noncommercial wind energy conversions systems.

8b-1 The placement, construction, and major modification of all noncommercial wind energy conversion systems within the boundaries of the Town of Newfane shall be permitted only by special use permit, upon site plan approval issued by the Planning Board herein and issuance of a building permit, and subject to all provisions under this section shall be made as follows

8b-2 Applications under this section shall be made as follows:

- (1) Applications for a special permit to place, construct or modify wind energy conversion systems within the Town of Newfane shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation.
  - (a) Name and address of the applicant.
  - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
  - (c) A site plan drawn in sufficient detail to show the following.
    - [1] Location of the tower(s) on their site and the tower height, including blades, rotor diameter and ground clearance.
    - [2] Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the Wind Energy Conversion Systems.
    - [3] Dimensional representation of the various structural components of the tower construction including the base and footing.
    - [4] Certification by a registered New York State withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.

- [5] Wind characteristics and dominant wind direction in the direction from which 50% or more of the energy contained in the wind flows.
- (d) Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the residential wind turbine and tower.
- (e) Turbine drawings: photographs or detailed drawings of each wind turbine model, including the tower and foundation.
- (f) A noise report shall be furnished which shall include the following:
  - [1] Manufacturers' Noise design and filed testing data for the proposed structure.
- (g) A geotechnical report shall be furnished which shall include the following:
  - [2] Foundation design criteria for all.
  - [3] Slope stability analysis.
  - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (h) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (i) Electrical line drawing: A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.
- (j) Floodplain: An application that includes any wind turbine which is located within a 100-year flood plain area, as such flood hazard areas are shown on the floodplains maps, shall be accompanied by a detailed report shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.
- (k) Other Information: Such additional information as may be reasonably requested by the Town Engineer of Planning Board.

8b-3 Special use permits issued for Wind Energy Conversion Systems shall be subject to the following conditions:

- (1) Setbacks: The applicant shall adhere to the following setbacks.
  - (a) From structures: A minimum 1.25 times the total WECS height from any dwelling located upon owner's property and 2.25 times the total WECS height from any dwelling not located upon owner's property.

- (b) From property lines a minimum of 1.25 times the total WECS height from all property lot lines.
  - (c) From public road and highways: A minimum of 1.25 times the total WECS height from any public road and highway.
  - (d) From Railroads:  
A minimum 1.25 times the total WECS height from any railroad right-of-way.
  - (e) From aboveground Transmission Lines greater than 12 kilovolts:  
A minimum 1.25 times the total WECS height from any aboveground transmission line greater than 12 kilovolts.
- (2) The Planning Board shall determine the number of WECS to be system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed across property lines.
- (3) Maximum height: The maximum overall height of any noncommercial wind energy conversion system shall be 150 feet.
- (4) Noncommercial wind energy conversion system shall be placed or located in rear yards.
- (5) Notification of adjacent property owners
- (a) All applicants are required to notify all property owners within 500 feet of the property line of the proposed parcel where the noncommercial wind energy conversion system will be erected of the proposed project. The adjacent property owners shall be notified by the Town Clerk in writing within 10 days of filing an application for WECS Permit with the Town of Newfane. This notification shall include the size, location and planned construction date of residential WECS system.
- (6) Signage:
- (a) Signage limited: No advertising sign or logo shall be placed or painted on any non-commercial wind energy facility. A noncommercial wind energy facility permit may allow the placement of the tower's manufacturer's logo on a system generator housing in an unobtrusive manner.
- (7) Lighting:
- (a) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) Color and finish.
- (a) Color and finish: Wind turbines shall be painted a non-obtrusive (e.g., light environmental color such as white, gray, or beige) color that is non-reflective.
- (9) Compliance with the regulatory agencies.

- (a) The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conservation System.
  - (b) The applicant is required to submit a long Environmental Assessment Form (EAF) with the Town of Newfane designated as lead agent for the SEQR process.
- (10) Compliance with the Local Waterfront Revitalization Plan.
- (a) The applicant is required to conform to all requirements of the Town of Newfane Local Waterfront Revitalization Plan.
- (11) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.
- (a) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
  - (b) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical code.
  - (c) Wiring: All wiring associated with the wind energy facility shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers or lines.
  - (d) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
  - (e) Climability: Wind turbine towers shall not be climbable up to 15 feet above ground level.
  - (f) Anchor points for guy wires: Anchor points for any guy wires for a system tower shall be located with the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence 6 feet high or sheathed in bright orange or yellow covering from to eight feet above the ground. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.
  - (g) Signage: Appropriate warning signage shall be place on wind turbine towers, and electrical equipment. Signage

shall also include one (1) twenty-four-hour emergency contact numbers to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

- (12) Noise requirements: The applicant shall adhere to the following noise requirements:
  - (a) Audible noise standard: The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out or any one-hour time period or to exceed 50 dB(A) for any time period.
  - (b) Operations-low frequency noise: A noncommercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (13) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat.
  - (a) Endangered species: Development and operation of residential wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Newfane Comprehensive Plan and/or the studies and plans of the regional planning commissions.
  - (b) Migratory birds: Development and operation of a residential wind energy facility shall not have an adverse impact on migratory bird species.
- (14) Interference with residential television, microwave and radio reception.
  - (a) The noncommercial wind energy conversion energy system shall be operated such that no electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (15) Unsafe and inoperable wind energy facilities; site reclamation: The applicant shall adhere to the following:
  - (a) Removal and site restoration: unsafe noncommercial wind energy facilities inoperable noncommercial wind energy facilities and noncommercial wind energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the noncommercial wind energy facility shall

- be eliminated and the site shall be restored to its natural condition to the extent feasible.
- (b) Public nuisance: Every unsafe noncommercial wind energy facility and every inoperable noncommercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable noncommercial wind energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
  - (c) Inoperable, defined: A noncommercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- (16) Interconnection and Electrical Distribution Facilities: The applicant shall adhere to the following:
- (a) Facility Standards: All interconnection facilities shall be constructed to the specifications of the utility.
  - (b) Interconnection Standards: Interconnection shall conform to procedures and standards established by the Federal Regulatory Commission, and the New York State Public Service Commission, as applicable.
- (17) Erosion control: The applicant shall adhere to the following:
- (a) Erosion control plan required: Before the Town of Newfane shall issue a grading or building permit for the noncommercial wind energy facility, the applicant shall submit and Erosion Control Plan to the Planning Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class 1 and 11 streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
- (18) Certification: The applicant is required to provide the following certifications.
- (a) Certification of structural components: The foundation, tower and compatibility of the tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The Engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.
  - (b) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York. The Engineer shall certify

compliance with good engineering practices and with the appropriate provisions of the Electrical Code that have been adopted by New York State.

- (c) Certification or rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The Engineer shall certify compliance with good engineering practices.
- (19) General Compliant Process:
- (a) During construction the Town of Newfane Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
  - (b) Post construction: After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of any complaint from the Town of Newfane Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- (20) Final Inspection conducted by Code Enforcement Officer in conjunction with the Town Engineer to insure compliance with all manufacturers' specifications and the New York State Uniform Construction Code.

8b-4 Application fees and costs:

- (1) Application Fee: Applicant shall pay all costs associated with the Town of Newfane's review and processing of the application. Applicant shall submit a deposit with the application in the amount of as determined by resolution by the Town Board. The Town of Newfane may require additional deposits to cover the costs or reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the applicant with summary of the cost incurred.
- (2) Development of a noncommercial wind energy conversion system shall be subject to assessment by the Town of Newfane.

8b-5 Findings:

- (1) Findings necessary to grant a noncommercial wind energy facility permit: In order to grant a noncommercial wind energy facility permit, the Town of Newfane shall review the application; all filings by any other party; and conduct a public hearing. A noncommercial wind energy facility permit shall not be granted unless the Town of Newfane makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan: The proposed noncommercial wind energy facility project is consistent with the Comprehensive Plan of Town of Newfane.
- (b) Will not unreasonably interfere with the orderly land use and development plans: The proposed noncommercial wind energy land use and development plans of the Town of Newfane.
- (c) Not detrimental to the public health, safety and general welfare of the community: The proposed noncommercial wind energy facility will not be detrimental to the public health, safety or general welfare of the community.
- (d) Complies with all required provisions of the Zoning Ordinance: The proposed non-commercial wind energy facility shall comply with all required provisions of the zoning ordinance, unless variances have been properly applied for and granted pursuant to Article XVIII of Chapter 205 of the Code of the Town of Newfane.

8b-6 The Planning Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for the tower.

8b-7 The special use permit shall not be assignable or transferable.

8b-8 Amendments to special use permit- Any changes or alterations post construction to the wind energy conversion system shall be done only by amendment to the special use permit and subject to all requirements of this section.

8b-9 If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

8b-10 This Local Law shall take effect immediately upon filing with the Secretary of State of New York.



# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~

~~City~~

~~Town~~

~~Village~~

of Newfane, New York

Local Law No. 3 of the year 2010

A local law for Flood Damage Prevention as authorized by the

*(Insert Title)*

New York State Constitution, Article IX, Section 2, and

Environmental Conservation Law, Article 36.

Be It enacted by the

Town Board

*(Name of Legislative Body)*

of the

~~County~~

~~City~~

~~Town~~

~~Village~~

of Newfane, New York

as follows:

"See pages numbers 2-23 attached hereto and made a part hereof".

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

**A local law for Flood Damage Prevention as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36.**

**SECTION 1.0  
STATUTORY AUTHORIZATION AND PURPOSE**

**1.1 FINDINGS**

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

**1.2 STATEMENT OF PURPOSE**

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

- (1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify and maintain for participation in the National Flood Insurance Program.

**1.3 OBJECTIVES**

The objectives of this local law are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

## SECTION 2.0 DEFINITIONS

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

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

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

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

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

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

**"Building"** see "Structure"

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

**"Crawl Space"** means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of

this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

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

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

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

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

- (1) the overflow of inland or tidal waters;
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

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

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

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

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

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

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

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

**"Floodway"** - has the same meaning as "Regulatory Floodway".

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

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

**"Historic structure"** means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (i) by an approved state program as determined by the Secretary of the Interior or
  - (ii) directly by the Secretary of the Interior in states without approved programs.

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

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

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

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

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

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

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

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

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

**"Recreational vehicle"** means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

**"Start of construction"** means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including

a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

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

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

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

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

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

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

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

**SECTION 3.0  
GENERAL PROVISIONS**

**3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES**

This local law shall apply to all areas of special flood hazard within the jurisdiction of the Town of Newfane, Niagara County.

**3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard for the Town of Newfane, Community Number 360504, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) Flood Insurance Rate Map Panel Number:

36063C0059E, 36063C0067E, 36063C0069E, 36063C0078E, 36063C0079E,  
36063C0081E, 36063C0082E, 36063C0083E, 36063C0084E, 36063C0086E,  
36063C0087E, 36063C0088E, 36063C0089E, 36063C0095E, 36063C0207E,  
36063C0226E, 36063C0227E, 36063C0231E, 36063C0232E, 36063C0233E,  
36063C0234E

whose effective date is September 17, 2010, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

(2) A scientific and engineering report entitled "Flood Insurance Study, Niagara County, New York, All Jurisdictions" dated September 17, 2010.

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

The office of the Town Clerk, Town of Newfane, New York  
2737 Main Street, Newfane, New York 14108

**3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS**

This Local Law includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.

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

**3.4 SEVERABILITY**



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

### 3.5 PENALTIES FOR NON-COMPLIANCE

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

### 3.6 WARNING AND DISCLAIMER OF LIABILITY

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

## SECTION 4.0 ADMINISTRATION

### 4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR

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

### 4.2 THE FLOODPLAIN DEVELOPMENT PERMIT

#### 4.2-1 PURPOSE

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 3.2, without a valid floodplain development permit.

Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

#### 4.2-2 FEES

All applications for a floodplain development permit shall be accompanied by an application fee of \$ 50.00. In addition, the applicant shall be responsible for reimbursing the Town of Newfane for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of not more than \$500.00 to cover these additional costs.

#### 4.3 APPLICATION FOR A PERMIT

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

- (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- (2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- (3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 5.2-3, UTILITIES.
- (4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in Section 5.4, NON-RESIDENTIAL STRUCTURES.
- (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in Section 3.2, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
- (6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.

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

#### 4.4 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

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

##### 4.4-1 PERMIT APPLICATION REVIEW

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

- (1) Review all applications for completeness, particularly with the requirements of sub-section 4.3, APPLICATION FOR A PERMIT, and for compliance with the provisions and standards of this law.
- (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 5.0, CONSTRUCTION STANDARDS and, in particular, sub-section 5.1-1 SUBDIVISION PROPOSALS.
- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.

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

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

##### 4.4-2 USE OF OTHER FLOOD DATA

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

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

#### 4.4-3 ALTERATION OF WATERCOURSES

- (1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

#### 4.4-4 CONSTRUCTION STAGE

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

#### 4.4-5 INSPECTIONS

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

#### 4.4-6 STOP WORK ORDERS

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

#### **4.4-7 CERTIFICATE OF COMPLIANCE**

- (1) In areas of special flood hazard, as determined by documents enumerated in Section 3.2, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this local law.
- (2) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Section 4.4-5, INSPECTIONS, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

#### **4.4-8 INFORMATION TO BE RETAINED**

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

- (1) Floodplain development permits and certificates of compliance;
- (2) Certifications of as-built lowest floor elevations of structures, required pursuant to sub-sections 4.4-4(1) and 4.4-4(2), and whether or not the structures contain a basement;
- (3) Floodproofing certificates required pursuant to sub-section 4.4-4(1), and whether or not the structures contain a basement;
- (4) Variances issued pursuant to Section 6.0, VARIANCE PROCEDURES; and,
- (5) Notices required under sub-section 4.4-3, ALTERATION OF WATERCOURSES.

## SECTION 5.0 CONSTRUCTION STANDARDS

### 5.1 GENERAL STANDARDS

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

#### 5.1-1 SUBDIVISION PROPOSALS

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

- (1) Proposals shall be consistent with the need to minimize flood damage;
- (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,
- (3) Adequate drainage shall be provided to reduce exposure to flood damage.

#### 5.1-2 ENCROACHMENTS

- (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
  - (i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,
  - (ii) the Town of Newfane agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Newfane for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Newfane for all costs related to the final map revision.
- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 3.2, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
  - (i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,

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

## 5.2 STANDARDS FOR ALL STRUCTURES

### 5.2-1 ANCHORING

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

### 5.2-2 CONSTRUCTION MATERIALS AND METHODS

- (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
  - (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
  - (ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

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

### 5.2-3 UTILITIES

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet

above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### 5.3 RESIDENTIAL STRUCTURES

#### 5.3-1 ELEVATION

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

#### STANDARDS FOR ALL STRUCTURES:

- (1) Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.



## 5.4 NON-RESIDENTIAL STRUCTURES

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

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

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

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

- (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
- (ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 5.4(1)(ii).

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

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

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

## 5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES

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

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

- (i) be on site fewer than 180 consecutive days,
- (ii) be fully licensed and ready for highway use, or
- (iii) meet the requirements for manufactured homes in paragraphs 5.5(2), (3) and (4).

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

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

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

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

## SECTION 6.0 VARIANCE PROCEDURE

### 6.1 APPEALS BOARD

- Zoning Board of \_\_\_\_\_
- (1) The Appeals \_\_\_\_\_ as established by the Town of Newfane shall hear and decide appeals and requests for variances from the requirements of this local law.
  - (2) The Appeals \_\_\_\_\_ shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
  - (3) Those aggrieved by the decision of the Appeals \_\_\_\_\_ may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
  - (4) In passing upon such applications, the Appeals \_\_\_\_\_ shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:

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

- (ii) the danger to life and property due to flooding or erosion damage;
- (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) the importance of the services provided by the proposed facility to the community;
- (v) the necessity to the facility of a waterfront location, where applicable;
- (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (vii) the compatibility of the proposed use with existing and anticipated development;
- (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
- (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
- (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

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

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

## 6.2 CONDITIONS FOR VARIANCES

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

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

- (i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure"; and
  - (ii) the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - (i) the criteria of subparagraphs 1, 4, 5, and 6 of this Section are met; and
  - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall only be issued upon receiving written justification of:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
  - (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - (ii) such construction below the base flood level increases risks to life and property.

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

SECTION 7.0  
REPEAL OF PRIOR LAW

- (7.1) Repeal Local Law No. 1-1987 regarding Flood Damage Prevention adoption March 25, 1987, is hereby repealed in its entirety.

Be it enacted this 23 day of June, 2010 by the

Town Board \_\_\_\_\_ of the \_\_\_\_\_ Town \_\_\_\_\_

Newfane, New York \_\_\_\_\_ Niagara \_\_\_\_\_ County, New York,

to be effective immediately

Gordon B. Helchen

Frank Rutland

Men R. Hoag

Robert A. Galt

Walter H. Hawley

SEAL

ATTEST

L. L. L. L. L.

CLERK

Rmc,cmc

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 20 10 of the ~~(County)(City)(Town)(Village)~~ of Newfane was duly passed by the Town Board on 20 10, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_ (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted \_\_\_\_\_ (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_ (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ (Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

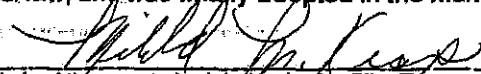
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) \_\_\_\_\_ (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

5. (City local law concerning Charter revision proposed by petition.)  
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of  
the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of  
the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting  
thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)  
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of  
the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of  
November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having  
received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the  
qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)  
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a  
correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in  
paragraph \_\_\_\_\_, above.

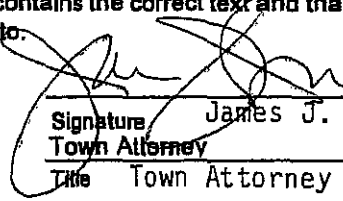
  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body  
Mildred Kramp CMC, RMC  
Date: 6-23-2010

(Seal)

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

STATE OF NEW YORK  
COUNTY OF NIAGARA

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

  
Signature James J. Sansone  
Town Attorney  
Title Town Attorney

County  
City of Newfane  
Town  
Village

Date: 6-23-2010