

ARTICLE XI –REGULATIONS
GOVERNING SPECIAL PERMIT USES

**ARTICLE XI
REGULATIONS GOVERNING SPECIAL PERMIT USES**

SECTION 1100 GENERAL PROVISIONS

The uses specified in this Article are hereby declared to possess unique characteristics requiring that each proposal for any such use shall be considered by the Town Board as an individual case. Upon application complying with the requirements of Article III, special use permits may be issued by the Board in accordance with the administrative procedures set forth in Article III and only after it has found that each and all of the following standards have been met:

- A. The proposed special use is consistent with the general intent of the Town's Land Use and Development Plan and with each of the specific purposes set forth in Article I herein.
- B. The location, size and use of the structures involved, nature and intensity of the operations involved and size and layout of the site in relation to the proposed special use are such that it will be compatible with the orderly development of the use district.
- C. Operation of the proposed special use is not more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use.
- D. The proposed special use satisfies each and all standards and conditions specified for such special use by the relevant provisions of this Article. Failure to comply with the conditions specified herein shall be grounds for the revocation of the special use permit.
- E. The Town Board may impose additional conditions or restrictions as it may deem necessary prior to approving any special use permit application in order to protect public health and safety, the quality of the Town's natural resource base and the value of the property.
- F. No site preparation or construction shall commence nor shall existing structures be occupied for any special permit use until final site plan approval has been granted by the Town Board and permits have been issued by all governmental agencies involved.

SECTION 1101 ESSENTIAL SERVICES

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- A. Essential services as defined in Article II herein may be allowed as a special permit use in any zone district upon the approval of a special use permit by the Town Board.
- B. The Town Board shall determine the following prior to approving a special use permit:
 - 1. The proposed installation in a specific location is necessary and convenient for the efficiency of the essential service or the satisfactory and convenient provision of service to the area in which the particular use is located.
 - 2. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is located.
 - 3. Adequate and attractive fences and other safety devices will be provided.
 - 4. A buffer strip not less than fifteen (15) feet in depth shall be provided around the perimeter of the property.
 - 5. Adequate off-street parking shall be provided.
 - 6. All other applicable requirements of this Law shall be met.

SECTION 1102 MOTOR VEHICLE SERVICE STATIONS AND PUBLIC GARAGES

- A. Motor vehicle service stations and public garages may be permitted as special permit uses in the B - Business District upon the approval of a special use permit by the Town Board.
- B. In addition to the information required in the special permit application and enumerated in Article III herein, the site plan submitted shall also show the location and number of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, and the number and location of fuel pumps to be installed.
- C. Where a motor vehicle service station abuts a residential district, it shall be screened by a buffer area not less than ten (10) feet in depth composed of a densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Town Board, will be adequate to prevent the

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transmission of headlight glare ~~across the district boundary line~~. The Town Board shall determine on an individual case basis how close to the right-of-way the landscaped buffer shall be required to be installed. Such buffer screen shall have a minimum height of six (6) feet above the ground. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate screen, the Zoning Officer shall direct the property owner to replace said shrubs.

- D. The entire area of the site traveled by motor vehicles shall be hard surfaced.
- E. All repairs of motor vehicles, except for minor servicing, shall be performed in a fully enclosed building. No motor vehicle parts, or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- F. No commercial parking shall be allowed on the premises of a motor vehicle service station or public garage.
- G. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans, and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- H. In addition to the signs permitted by Article X hereof, motor vehicle service stations may also exhibit one (1) temporary sign for a period of up to forty-five (45) days setting forth special seasonal servicing of automobiles. Such temporary sign shall not exceed thirty-two (32) feet in area, be located not less than ten (10) feet inside the property line and shall be removed when no longer current.
- I. No motor vehicle service station or public garage may display more than two (2) unlicensed vehicles for sale outside of an enclosed building at one time, **unless the request for this special use permit is in combination with new or used automobile sales as permitted as a principal use in Section 904 of this Law.**
- J. There shall be no more than two (2) driveways, with a combined width of not more than one-third (1/3) the site frontage on each public street fronting the site.
- K. No driveway shall be closer than fifty (50) feet to the intersection of two (2) street corner lot lines, or within twenty (20) feet of an adjacent lot line.
- L. Motor vehicle service stations may include facilities for the sale of food, household items and convenience merchandise, provided that the sale of such items takes place entirely within an enclosed building.

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M. *Illumination of buildings, landscaping and parking areas as follows:*

- 1. *Average levels of illuminations for all buildings, landscaping and parking shall not significantly exceed minimum levels necessary for safety and security lighting and shall not unnecessarily encroach on adjacent properties and shall be so arrange as to prevent direct glare onto any adjacent property or highway.***
- 2. *Pedestrian-scale lighting shall be on fixtures not exceeding fifteen (15) feet in height. These can be freestanding fixtures located along sidewalks. Luminaries without cut-offs are acceptable for pedestrian-level lights.***
- 3. *Parking and circulation lighting fixtures shall not exceed twenty-five (25) feet in height and are required to have ninety degree (90°) cutoff-type luminarie(s) to prevent light above the fixture.***

N. *HVAC units and dumpsters shall be kept to the rear of the frontline of the main structure and shall be vegetatively or otherwise unobtrusively screened from view and are subject to Planning Board approval prior to the issuance of a special use permit to operate.*

**SECTION 1103 ~~HOME OCCUPATIONS OR HOME PROFESSIONAL~~
OCCUPATIONS**

- A. Home **professional** occupations may be allowed as special permit uses in the A - Agricultural and R-R - Rural-Residential Districts upon the approval of a special use permit by the Town Board.**
- B. No more than two (2) persons other than a member of the immediate family occupying such dwelling shall be employed as part of the home ~~occupation or~~ **professional occupation**.**
- C. A home **professional** occupation must be conducted within a dwelling which is bona fide residence of the principal practitioner or in an accessory building thereto which is normal associated with a residential use.**
- D. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs or the emission of sounds, noises or vibrations.**
- E. No outdoor display of goods or outside storage of equipment or material used in**

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the home **professional** occupation shall be permitted.

- F. No sign shall be permitted except in accordance with the provisions of Article X.
- G. Off-street parking shall be provided in accordance with Article X.
- H. No commercial vehicles with a rated capacity in excess of one and one-half (1-1/2) ton shall be used in connection with the home **professional** occupation or parked on the property.
- I. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home **professional** occupation exists.
- J. No more than thirty (30) percent of the gross floor area of such residence shall be used for the conduct of a home ~~occupation or~~ **professional occupation**. No more than forty (40) percent of the floor area of an accessory structure shall be used for a home ~~occupation or~~ **professional occupation**.

SECTION 1104 EXCAVATION OPERATIONS

- ~~A. Excavation operations may be permitted as special permit uses in the A—
Agricultural District upon the approval of a special-use permit by the Town Board.~~
- ~~B. The applicant shall furnish evidence of a valid permit from the New York State
Department of Environmental Conservation pursuant to Title 27, Article 23 of the
Environmental Conservation Law where applicable.~~
- ~~C. The minimum lot area for any such use shall be ten (10) acres.~~
- ~~D. All buildings and excavation operations shall be located or shall occur not less
than one hundred (100) feet from any street or property line. The setback area
shall not be used for any use in conjunction with the excavation and appurtenant
activities except for one (1) public notice sign identifying the use of the property,
fencing, berms, buffers, access roads and parking.~~
- ~~E. All equipment used for excavations and processing shall be constructed,
maintained and operated in such a manner as to eliminate as far as is practicable
noises and vibrations, and dust conditions which are injurious or a nuisance to
persons living in the vicinity.~~

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- ~~F. All land which has been excavated must be rehabilitated in accordance with reclamation plan approved by D.E.C.~~
- ~~G. All access routes leading to public highways shall be dust and mud free. All precautions such as applying calcium chloride or watering daily, or more frequently if and when necessary shall be taken to prevent dust and sand from being blown from the premises. Also, the first two hundred (200) feet of access from a public road shall be improved to meet written specifications provided by the Town Board to insure its suitability to carry heavy traffic.~~
- ~~H. Operations shall not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent property.~~
- ~~I. An adequate and comprehensive drainage system shall be provided to convey the storm water runoff originating on and crossing the premises in accordance with the natural direction of runoff for the total watershed area. No excavation shall be allowed within fifty (50) feet to a natural stream. Sediment control measures shall be installed to keep sediment drainage, if any, totally within the applicant's property. The Town Board shall determine whether or not the system and control measures are adequate and, in force, prior to approval of original or renewal permit.~~
- ~~J. The applicant shall include a plan for the control of soil erosion and excessive ground water seepage upon public roads, streams or adjacent property. The Town Board shall determine whether or not the controls are adequate and, in force, prior to approval of the original or renewed permit.~~
- ~~K. All applications for a permit under this section must contain an operations plan in sufficient detail to describe the excavation operation including active excavation and storage areas.~~
- ~~L. Excavation permits shall be issued for a period of one (1) year and shall be subject to periodic site inspection and review by the Town Board and Zoning Officer. If all operations undertaken pursuant to any permit issued hereunder have been conducted in full compliance with the terms of such permit and all provisions of this Law, such permit may be renewed by the Town Board for a period of one (1) year. At least ten (10) days before taking any such renewal action, the Town Board shall cause a notice to be published in the official newspaper and posted on the Official Sign Board of the proposed renewal and a statement indicating clearly both the property affected and the nature of the operation. All Laws and regulations in effect at the time a renewal is granted shall apply to the renewal permit in the same manner as when a new or original permit is issued.~~

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Excavation operations may be allowed as special permit uses in the A - Agricultural upon the approval of a special use permit by the Town Board. Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, shall require a special use permit from the Town Board as provided for in Section 303.

A. Major Excavation

1. **State Permit** – In order to obtain a special use permit, the applicant shall furnish evidence of a valid permit, the applicant shall furnish evidence of a valid permit form the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.
2. **Reclamation** – The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

B. Minor Excavation – As part of the application process for a special use permit, the applicant's plan shall be presented to the Wyoming County Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Town Board must find that such excavation will not endanger the stability of adjacent land or structures or the quality or quantity of groundwater and that it does not constitute a deterrent to public health, safety or welfare by reason of excessive dust, noise, traffic, erosion, siltation other condition.

In granting said special use permit, the Town Board shall specify any reasonable requirement including the following:

1. **Minimum Lot Area** - The Minimum lot area shall be ten (10) acres.
2. **Minimum Setback Requirements**-All buildings shall be located not less than one hundred (100) feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

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3. **Slope** - During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.
4. **Drainage** - All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads, adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.
5. **Dust** - All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind blown air pollutants.
6. **Roadside Landscape** - Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the over-burden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.
7. **Fencing** - Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water and slope of pit walls.
8. **Topsoil** - All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.
9. **Erosion** - The applicant shall include a plan for the control of soil erosion.

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10. **Hours of Operation** - All operations shall be conducted between the hours of seven o'clock in the morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
11. **Blasting and/or Processing** - Operations involving blasting and on-site processing of mineral deposits shall not be allowed.
12. **Reclamation Plan** - The applicant shall submit a reclamation plan:
 - a. **Reclamation Plan:** Means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.
 - b. Where feasible, reclamation shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.
13. **Performance Bond** - Performance bond or some other financial guarantee may be required to assure that the conditions stipulated in the approval of the special use permit are carried out.
14. All access routes leading to public highways shall be dust and mud free. All precautions such as applying calcium chloride or watering daily, or more frequently if and when necessary shall be taken to prevent dust and sand from being blown from the premises. Also, the first two hundred (200) feet of access from a public road shall be improved to meet written specifications provided by the Town Board to insure its suitability to carry heavy traffic. Further, all driveways must be paved.

C. Duration of Special Use Permit

The special use permit for a minor excavation shall be issued for a period of one (1) year, subject to a subsequent annual review and recertification by the Town Board based on a written request for such continuance, which

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request shall be submitted to the Town Zoning Officer at least sixty (60) days prior to the expiration of each such one (1) year period. A public hearing shall not be required for such annual recertification, except upon motion of the Town Board.

The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms therein, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.

If on-site mining or processing operations are not carried out continuously for one (1) year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.

SECTION 1105 PRIVATE AIRSTRIPS

- A. Private airstrips may be allowed as special permit uses in the A - Agricultural District with the approval of a special use permit by the Town Board.
- B. An application for the establishment, construction, enlargement or alteration of an airstrip shall include, in addition to requirements for special use permits outlined in Article III, the following statements and information:
 - 1. Name and address of proponent.
 - 2. Classification of the proposed airport (commercial, non-commercial or restricted).
 - 3. Type of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, et cetera).
 - 4. Number of aircraft expected to be based at the airport initially and within five (5) years.
 - 5. Type of aircraft expected to be based at the airport (single engine, multi-engine, turboprop jet, et cetera).
 - 6. Whether an instrument approach procedure will be offered.
 - 7. Statement as to the anticipated number of daily operations.

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8. Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
9. A copy of the New York State Commissioner of Transportation's determination concerning this airport in accordance with the provision of 249 of the New York State General Business Law.
10. A site development plan of the airport, as approved by the Town Board, which includes the following:
 - a. Scale no smaller than one inch equals one hundred feet (1" = 100')
 - b. Location of existing and proposed structures.
 - c. Alignment of existing and/or proposed runways shall be shown in exact location and magnetic bearing to the nearest thirty (30) minutes.
 - d. Existing and proposed contours at five (5) foot intervals.
 - e. Location of aircraft parking and tie-down areas.
 - f. Provisions for access and off-street parking.
 - g. Provisions for sanitary waste disposal and water supply.
 - h. Location and method of fuel storage.
11. An area map at a scale of not less than one inch equals five hundred feet (1" = 500') showing:
 - a. Distances from buildings, roads, natural features, power or other possible obstructions within two thousand (2,000) feet of the ends of runways shall be accurately plotted.
 - b. Properties within one thousand (1,000) feet of the airport boundary shall be plotted, owners identified and the location and height of each building demarcated.
12. Permits issued for the operation of an airstrip shall be valid for a period of one (1) year. ~~Said permits may be extended by action of the Town Board for successive periods of three (3) years if the operation conforms to the initial proposal and the conditions on which the initial permit was issued~~

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~~are unchanged.~~ **This permit is subject to annual inspection and the fee for this inspection shall be borne by the applicant at an amount to be set annually by the Town Board.**

13. The Town Board, in considering a request for special use permit or the extension of a permit to operate an airstrip, may impose any conditions it deems necessary to protect the health, safety and public welfare of the Town.

SECTION 1106 CAMPING GROUNDS

- A. Camping grounds may be allowed as special permit used in the A - Agricultural District with the approval of a special use permit by the Town Board.
- B. The Town Board shall determine that not more than five (5) percent of the site area proposed for use as a camping ground contains prime agricultural soils as defined by the Town of Middlebury.
- C. Camping ground shall be occupied by travel trailers, pick-up coaches, motor homes, camping trailers and recreational vehicles, and tents suitable for temporary habitation and uses for travel, vacation and recreation purposes. No permanent external appurtenances such as carports. ~~However except,~~ cabanas or patios may be attached to **permitted with** any travel trailer or other vehicular accommodation parked in a camping ground, **subject to site plan review.** and The removal of wheels and placement of a unit on a foundation in a camping ground is prohibited. ~~No travel trailer or recreation vehicle in excess of thirty-eight (38) feet in length shall be permitted in any camping ground.~~
- D. Minimum site area: ten (10) acres.
- E. Not more than a total of ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
- F. Location and access. A camping ground shall be so located that no entrance or exit from a site shall discharge traffic into any residential district nor require movement of traffic from the camping ground through a residential district. A camping ground shall have a minimum of two hundred (200) feet of frontage on a public street.
- G. Site conditions. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion of the camping grounds subject to flooding,

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subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.

- H. Accessory uses. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions:
1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camping ground.
 2. Such establishments shall be restricted in their use to occupants of the camping ground.
 3. Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
- I. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Environmental Conservation and the Wyoming County Department of Health and shall receive approval from said agencies.
- J. Streets in camping grounds shall be private, but shall be constructed with a stabilized travelway and shall meet the following minimum stabilized travelway width requirements:
1. One (1) way, no parking - twelve (12) feet.
 2. One (1) way with parking on one (1) side, or two (2) way with no parking - eighteen (18) feet.
 3. Two (2) way with parking on one (1) side - twenty-seven (27) feet.
 4. Two (2) way with parking on both sides - thirty-four (34) feet.
- K. Sites. Each travel trailer site shall be at least two thousand five hundred (2,500) square feet in area and have a minimum width of forty (40) feet.

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- L. Recreation facilities. A minimum of ten (10) percent of the gross site area for the camping ground shall be set aside and developed as common use area for open and enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area or utility site shall be counted as meeting recreational purposes.
- M. Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic in adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and radii of curbs and pavements at intersections shall be such as to facilitate easy turning movements for vehicles with trailers attached.
- N. Off-street parking and loading. In connection with use of any camp ground, no parking, loading or maneuvering incidental to parking or loading shall be permitted on any public street, sidewalk, or required buffer or right-of-way, or any public grounds, or on any private grounds not part of the camping ground, unless the owner has been given written permission for such use. Each camping ground shall provide off-street parking, loading and maneuvering space located and scaled so that the prohibitions above may be observed, and camping ground owners shall be responsible for violations of these requirements.
- O. An adequate lighting system shall be provided for the camping ground.
- P. All utilities shall be underground.
- Q. Not less than one (1) covered twenty (20) gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- R. All applicable sanitation standards promulgated by the State of New York shall be met.
- S. No camp structure, except fences, gates and permitted signs shall be located within two hundred (200) feet of any street or property line.

SECTION 1107 NOT-FOR-PROFIT, PUBLIC AND SEMI-PUBLIC USES AND BUILDINGS

- A. Public and semi-public uses of institutional, health, education, recreational, religious or cultural nature may be allowed as special permit uses in any district upon the approval of a special use permit by the Town Board.

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- B. A statement setting forth the details of the operation of the use along with evidence of the proposed activity's eligibility as a "Not-for-Profit" use as defined in Article II shall be submitted to the Town Board.
- C. The proposal shall meet the minimum area and yard requirements for such uses as specified in the Schedule **I of this Law**.
- D. The proposed use shall meet the minimum off-street parking and loading and unloading requirements **set forth in Schedule II** of this Law as may be appropriate.
- E. The Town Board, in considering the request for a special use permit, may impose conditions it deems necessary to protect the health, safety and public welfare of the Town.

SECTION 1108 KENNELS

- A. Kennels may be permitted as special permit uses in the A - Agricultural District upon the approval of a special use permit by the Town Board.
- B. The minimum lot area for such uses shall be five (5) acres.
- C. Shelters for animals within kennels shall not be closer than one hundred (100) feet to any lot line.
- D. No outdoor area enclosed by fences for the use of animals shall be permitted within the front yard. Fenced areas shall be setback not less than fifty (50) feet from any side or rear property line.
- E. **Animals must be kept in a sound-proof building at night.**

SECTION 1109 ROOMING HOUSE (BOARDING HOUSE)

- A. Rooming houses may be permitted as special permit uses in the A - Agricultural and R-R - Rural-Residential Districts upon the approval of a special use permit by the Town Board.
- B. Off-street parking shall be provided as follows: At least two (2) spaces for the family residing on the premises plus not less than one (1) additional space for each roomer.

SECTION 1110 ~~WINDMILLS OR WIND GENERATORS~~

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- ~~A. Windmills or wind generators may be permitted as an accessory use in any district upon the approval of a special use permit by the Town Board.~~
- ~~B. In addition to the requirements for special use permits outlined in Article III, the site plan shall also show:~~
- ~~1. Location of tower on site, tower height, including blades, rotor diameter and ground clearance.~~
 - ~~2. Underground utility lines within a radius equal to the proposed tower height, including blades.~~
 - ~~3. Dimensional representation of the various structural components of the tower construction including the base and footings.~~
 - ~~4. Design data indicating the basis of design, including manufacturer's dimensional drawings, installation and operation instructions.~~
 - ~~5. Certification by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind load requirements for structures as established by the N.Y.S. Uniform Code.~~
- ~~C. No windmill, including blades, shall extend more than seventy five (75) feet above the average ground level measured at the base of the tower except in the A Agricultural District where the height may extend to one hundred (100) feet.~~
- ~~D. No more than one (1) windmill or tower shall be permitted as an accessory use to any property.~~
- ~~E. Towers may be located in either a rear or side yard. Applicants seeking a side yard siting shall demonstrate that such a location is essential to the viability of the proposed investment.~~
- ~~F. All sites proposed for windmills shall have sufficient access to unimpeded air flow for adequate operation. The Siting Handbook for Small Wind Energy Conservation System, PNL 2521, or another nationally recognized reference should be used as a guide in siting the location of towers.~~
- ~~G. No windmill shall be erected in any location where its overall height, including blades, is greater than the distance from its base to any property line.~~
- ~~H. Access to a tower shall be limited either by means of a fence six (6) feet high around the tower base with a locking portal, or by limiting tower climbing~~

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- ~~_____ apparatus to no lower than twelve (12) feet from the ground.~~
- ~~I. _____ No windmill shall be installed in any location along the major axis of an existing
_____ microwave communications link where the operation of the windmill is likely to
_____ produce an unacceptable level of electromagnetic interference, unless the
_____ applicant provides sufficient evidence satisfactory to the Town Board indicating
_____ the degree of expected interference and the possible effect of the microwave
_____ communications link.~~
- ~~J. _____ No windmill shall be installed in a location where the impact on the neighborhood
_____ character is determined by the Town Board to be detrimental to the general
_____ neighborhood character.~~
- ~~K. _____ If the windmill is to be interconnected to an electric utility distribution system, the
_____ applicant shall provide evidence of approval of the proposed interconnect by the
_____ New York State Electric and Gas Company.~~
- ~~L. _____ Guy wires and anchors for towers shall not be located closer than ten (10) feet to
_____ any property line.~~
- ~~M. _____ All windmills shall be designed with a regulating device to prevent over-speeding
_____ and excessive pressure on the tower structure.~~
- ~~N. _____ The minimum distance between the ground and any protruding blades shall not
_____ be less than fifteen (15) feet as measured at the lowest point of the arc of the
_____ blades.~~
- ~~O. _____ Windmills or wind generators may also be permitted in conjunction with business
_____ established to further research, design, development and implementation of
_____ innovative technologies in the field of wind energy. Due to the nature of such
_____ installations, such uses may only be permitted in the A Agricultural District upon
_____ the approval of a special permit by the Town Board. In addition to the
_____ requirements for special use permits outlined in Article III the following
_____ regulations shall apply in such instances:~~
- ~~_____ 1. _____ Prior to erecting any windmill or tower, the applicant shall submit a site
_____ plan which, in addition to the requirements specified in Article III, also
_____ show:~~
- ~~_____ a. _____ Location of tower on site, tower height, including blades, rotor
_____ diameter and ground clearance.~~
- ~~_____ b. _____ Underground utility lines within a radius equal to the proposed
_____ tower height, including blades.~~

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~~c. Dimensional representation of the various structural components of the tower construction including the base and footings.~~

~~2. No windmills, including blades, shall extend more than one hundred (150) feet above the average ground level measured at the base of the tower.~~

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~~**Note Discrepancies in words and numbers above "one hundred (150)" found on page 99 in original Zoning Law Book.~~

~~3. No tower shall be located in a front yard.~~

~~4. All requirements and standards specified in Section 1110, G through N.~~

SECTION 1111 STABLES OR RIDING ACADEMIES

~~A. Stables for the commercial boarding of horses or riding academies may be permitted in the A Agricultural District upon the approval of a special use permit by the Town Board.~~

~~B. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the Town Board and permits have been issued by all governmental agencies involved.~~

~~C. The permitted use may include any of the following:~~

~~1. Storage of horse vans for conveying or vanning of horses as may be accessory to the principal use.~~

~~2. Sale or rental of horses for use by public by hour, day, month or year.~~

~~3. Rides on horses by the public.~~

~~4. Rental of horse vans.~~

~~5. Riding lessons to the public.~~

~~D. The land devoted to their use shall not be less than twenty (20) contiguous acres.~~

~~E. One (1) principal single family dwelling may be located on the land devoted to this use provided that it complies with the requirements for this Law. The land area on which the principal single family dwelling is located shall not be considered as part of the land "devoted to this use" as set forth in paragraph D~~

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~~above.~~

~~F. The number of horses that may be boarded and/or trained at such property shall not exceed twenty five (25) horses for the first twenty (20) acres of land devoted to this use, plus one (1) horse for each additional one half (1/2) acre.~~

~~G. The stable and the facilities for the storage of manure shall be located on the land devoted to this use and not less than two hundred (200) feet from any boundary line.~~

~~H. Exercise tracks and riding rings shall be at least fifty (50) feet from any boundary line.~~

~~I. Accessory buildings such as barns (not housing horses) sheds and the like, may be located on the land devoted to this use provided that:~~

~~1. Said building is set back at least one hundred (100) feet from the street line and one hundred (100) feet from each side boundary line.~~

~~2. Said building is not used for the storage of manure.~~

~~J. Structures on the land devoted to this use (not including the principal dwelling) shall not in the aggregate over more than ten (10) percent of the area of the land devoted to this use.~~

~~K. No structure shall exceed thirty five (35) feet in height.~~

~~L. Suitable and adequate off street parking in accordance with the reasonable requirements of the Planning Board shall be provided.~~

~~M. Exterior lighting shall be permitted only to the extent necessary to prevent injury to the public and shall be so installed and arranged as to reflect light away from the adjoining streets and prevent any nuisance to adjoining property.~~

~~N. Exterior loudspeakers shall be installed or used on the premises so as to minimize potential nuisances to adjacent properties.~~

~~O. No manure shall be permitted to be stored within one hundred (100) feet of any lot line in any district.~~

~~P. The maintenance of the structures and hygiene conditions connected with the use here permitted shall be under the continuous supervision of the Town Board and the Department of Public Health to the extent necessary. If conditions are~~

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~~found to exist which are dangerous to the health, safety and welfare of humans or horses, of if any of the requirements of this or any other section of this Law or of any condition attached to the permit issued hereunder are not complied with by the operator of the boarding stable, the permit issued hereunder may be revoked or suspended by the Town Board after public hearing.~~

SECTION 1112 MULTIPLE FAMILY DEVELOPMENTS

- A. Multiple family developments may be permitted in the **A – Agricultural and R-R - Rural-Residential Districts** upon the approval of a special use permit by the Town Board.
- B. No site preparation or construction shall commence nor shall existing structures be occupied until final site plan approval has been granted by the Town Board and permits have been issued by all governmental agencies involved.
- C. The minimum land area required for such use shall be ten (10) acres.
- D. The maximum gross density shall not exceed ten (10) units per acre.
- E. Apartment buildings shall contain no more than twelve (12) dwelling units.
- F. Townhouse buildings shall contain no more than six (6) dwelling units.
- G. Minimum habitable floor area requirements:
 - 1. Townhouse unit, two (2) bedrooms or less: eight hundred fifty (850) square feet.
 - 2. Townhouse unit, three (3) bedrooms or more: one thousand (1,000) square feet.
 - 3. Apartment unit, efficiency: five hundred fifty (550) square feet.
 - 4. Apartment unit, one (1) bedroom: seven hundred fifty (750) square feet.
 - 5. Apartment unit, two (2) bedroom: nine hundred (900) square feet.
 - 6. Apartment unit, three (3) bedroom: one thousand (1,000) square feet.
- H. Unit distribution:
 - 1. No more than thirty (30) percent of the total units within a multiple family

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dwelling development shall be efficiency units.

2. No more than thirty (30) percent of the total units within a multiple family dwelling development shall be three (3) or more bedroom units.
- I. Setback requirements. Minimum area and yard requirement for each multiple family structure within a multiple family development shall be as follows:
1. Setback: front and rear, seventy-five (75) feet; and side, fifty (50) feet.
 2. Minimum distance between buildings: eighty (80) feet.
 3. Direct line of sight visibility from one (1) building to another shall not be less than one hundred twenty-five (125) feet.
 4. Every building shall have a minimum setback of twenty-five (25) feet from all interior roads, driveways and parking areas.
 5. A strip of land at least six (6) feet in width surrounding each building shall be kept completely open except for foundation plantings of less than six (6) feet in height.
 6. Court yards bounded on three (3) sides by the wings of a single building or by the walls of separate building shall have a minimum court width of two (2) feet for each one (1) foot in height of the tallest adjacent building.
- J. No exterior wall shall exceed one hundred (100) feet in length unless there is a lateral offset of at least eight (8) feet in its alignment not less frequently than along each one hundred (100) feet of length of such exterior wall.
- K. All stairways to the second floor or higher shall be located inside the building.
- L. Access to public road:
1. All multiple family dwelling developments shall have direct access to a public road.
 2. If there are more than twelve (12) dwelling units in a multiple family dwelling development, direct access must be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
 3. If there are more than fifty (50) dwelling units in a multiple family dwelling, or if in the opinion of the Planning Board the location or topography of the

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site indicates the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.

- M. Requirements for off-street parking as provided in Article X of this Law shall be met, except that the location of off-street parking lots may be modified to conform with the approved site plan, provided that such lots shall not be located within the front yard or the required side yard setback.
- N. The aggregate lot coverage of multiple family dwelling developments shall not exceed thirty (30) percent of the total lot area.
- O. Services:
1. Each dwelling unit shall contain complete kitchen facilities, toilet, bathing and sleeping facilities.
 2. There shall be a minimum common storage area in each building for bicycles, perambulators and similar type of equipment of forty (40) square feet in area, a minimum of five (5) feet in height and not less than four (4) feet in width per dwelling unit.
 3. Sufficient laundry, drying, garbage pick-up and other utility areas shall be provided and shall be located with a view both to convenience and to minimizing the detrimental effect on the aesthetic character of the building(s) and shall be enclosed and shielded from view by fencing, walls or shrubbery of at least six (6) feet in height around the perimeter. Fencing and walls shall be not more than fifty (50) percent open on the vertical surface.
- P. Recreation, open space, maintenance:
1. Multiple family dwelling complexes shall be designed to create useable private open space. A minimum of ten (10) percent of the total tract area, exclusive of the required setback areas, buffer strip and parking areas shall be designated for common recreational purposes.
 2. No recreational area shall be less than ten thousand (10,000) square feet in area not less than one hundred (100) feet in width. Areas designated for recreation purposes shall be approved by the Planning Board.
 3. Multiple family dwelling complexes shall be attractively shrubbed and properly maintained. Open space adjacent to, around, or between driveways, parking areas, structures or other required improvements shall

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be graded and seeded to provide a thick stand of grass or other plant material.

Q. Utilities:

1. All public utility, electric, gas, cable television and telephone lines shall be installed underground.
2. An adequate supply of water shall be provided for multiple family dwellings. Where public water is available, connection thereto shall be used exclusively. If a public system is not available, the development of private water system shall be approved by the New York State Department of Health or other authorities having jurisdiction thereof.
3. An adequate and approved system shall be provided in all multiple family developments for conveying and disposing of sewage from dwellings, service buildings and other accessory facilities. Where public sewers are available, connection thereto shall be used exclusively. If a public system is not available, the development of a private water supply system shall be approved by the New York State Department of Health or other authorities having jurisdiction thereof.

SECTION 1113 — SATELLITE TELEVISION DISHES AND ANTENNAE

- ~~A. — Satellite television dish antennae may be permitted in the A Agricultural, R-R — Rural Residential or B — Business Districts upon the approval of a special use — permit by the Town board.~~
- ~~B. — Not more than one (1) dish may be permitted for each property.~~
- ~~C. — Satellite television dish antennae may be located on the ground or on buildings in — the B — Business District but shall be restricted to ground locations in the A — Agricultural and R-R Rural Residential Districts.~~
- ~~D. — Satellite television dish antennae which are ground-mounted shall be secured on — a pad of poured concrete [of three thousand five hundred (3,500) pounds or — greater] which measures three (3) feet wide by three (3) feet long and four (4) — feet in depth. The frame of the satellite dish shall be attached to the pad by the — appropriate hardware (J bolt, super stud, et cetera) of a size equal to or greater — than five eights (5/8) of an inch in diameter. Dish antennae which are mounted — on buildings shall be adequately secured to resist potential wind damage.~~
- ~~E. — No dish antennae shall be more than twelve (12) feet in diameter and more than — sixteen (16) feet above the surface to which it is attached.~~

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- ~~F. No ground mounted dish antennae shall be located closer to the street or front lot line than the front of the building to which the dish is an accessory use within the required setbacks established for accessory uses for each district.~~
- ~~G. The required setbacks established for accessory uses for each district shall apply in regulating the location of satellite dish antennae.~~
- ~~H. All electrical wires shall be enclosed in either P.V.C. or rigid conduit and buried a minimum of eighteen (18) inches below the ground. The frame shall be grounded by means of an eight (8) foot grounding rod connected to the frame through Number 4 gauge copper wire. All circuits of one hundred ten (110) volts or larger shall be protected by a ground fault interrupter, unless a factory installed grounding unit is provided.~~
- ~~I. The location and design of a dish antennae shall attempt to reduce to a minimum the visual impact on surrounding properties through the use of architectural features, earth berms, screening, and/or landscaping that harmonizes with the elements and the characteristics of the property. The materials used in the construction of the antennae shall not be unnecessarily bright, shiny, garish or reflective.~~ **Resolution 7/10/1996**

SECTION 1114 ANIMAL WASTE MANAGEMENT SYSTEMS

- ~~A. Animal waste management systems, including aerobic lagoons, may be permitted in the A Agricultural District upon the approval of a special use permit by the Town Board.~~
- ~~B. All applications for special use permits for animal waste management systems, shall be submitted to the Wyoming County Soil and Water Conservation District for review and approval. The Town shall not consider an application for establishing an animal waste management system unless the proposal has been approved by the Soil and Water Conservation District Board and a letter to that effect is transmitted as part of the application for the special use permit.~~
- ~~C. Plans and specifications for waste management systems shall conform to the most current Soil Conservation Service standards and procedures. No component of an overall waste management system shall be installed until an overall waste management system has been planned and approved by the Town Board.~~
- ~~D. Waste should be used to the fullest extent possible by recycling it through soil and plants.~~

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- ~~E. Clean water should be excluded from concentrated waste areas to the fullest extent practical.~~
- ~~F. Manure shall be collected and safely spread on land, treated, or stored until it can be safely spread. Adequate storage shall be provided to allow spreading during favorable weather and at times compatible with crop management and available labor.~~
- ~~G. Polluted runoff and seepage from concentrated waste areas shall be intercepted and directed to storage or treatment facilities for future disposal or be directly applied to land in manner acceptable to the Soil and Water Conservation District.~~
- ~~H. Waste water from processing shall be collected and directly applied, stored, or treated prior to re use.~~
- ~~I. Adequate drainage, erosion control, and other soil and water management practices shall be incorporated to prevent system related problems and potential adverse impacts on nearby properties.~~
- ~~J. The minimum land area required for an overall systems shall be determined by the Soil and Water Conservation District. The overall system shall include sufficient land for proper use or disposal of waste at locations, times, rates and volumes that maintain desirable water soil, plant and other environmental conditions. Appropriate waste handling equipment shall be available for effective operation of the system.~~
- ~~K. The system should be outside major viewsheds to conserve visual resources. Vegetative screens and other methods should be provided, as appropriate, to improve visual conditions.~~
- ~~L. No manure or waste associated with such a system shall be stored outside of a fully enclosed building within three hundred (300) feet of any public street or property line.~~
- ~~M. System components shall be planned and installed in a sequence that insures that each will function as intended without being hazardous to others or to the overall system.~~
- ~~N. Safety features and devices shall be included in waste management systems, as appropriate, to protect animals and humans from drowning, dangerous gases, and other hazards. Fencing and warning signs shall be provided as necessary, to prevent livestock and others from using the facilities for other purposes. Safety features, fences and other devices shall be subject to approval of the Soil~~

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~~and Water Conservation District.~~

O. ~~Aerobic lagoons which include a discharge pipe may only be approved after an operating permit is approved by the Wyoming County Health Department.~~

P. ~~Wherever possible waste management systems shall be located where prevailing winds will carry odors away from residences and public areas.~~

Q. ~~Waste management systems shall not be located in areas of special flood hazard unless it is protected by dikes, levees or other means.~~

R. ~~The owner or operator shall be responsible for operating and maintaining the system. An operation plan shall be prepared for this use. The plan shall be approved by the Soil and Water Conservation District and shall provide specific details concerning the operation of each component. At a minimum the plan shall include:~~

~~1. Timing, rates, volumes, and locations for application of waste and, if appropriate, approximate number of trips for hauling equipment and an estimate of the time required.~~

~~2. Minimum and maximum operation levels for storage and treatment practices and other operations specific to the practice, such as estimated frequency of solids removal.~~

~~3. Safety warnings, particularly where there is danger of drowning or exposure to poisonous or explosive gases.~~

~~4. Maintenance requirements for each of the practices.~~

S. ~~The special permit issued shall become null and void if the system is operated in a manner which is contrary to any of the conditions of the provisions for either the issuance of the permit or the operations plan.~~ **LL No. 1/2007**

SECTION 1115 WIND ENERGY CONVERSION DEVICE/FACILITY

A. Intent - It is the purpose of the regulations of this Article to promote public health, safety and general welfare of the Town of Middlebury residents by addressing, in a careful manner, the establishment, placement, construction, enlargement and erection of Wind Energy Conversion Device/Facility on a comprehensive Town-wide basis by providing a discretionary framework for the establishment of the same. All measurements will be set forth in metric and English system. This framework is intended to do the following:

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1. Protect human life and health.
2. Address the visual, aesthetic and land use compatibility aspects of Wind Energy Conversion Device/Facility.
3. Encourage the location of Wind Energy Conversion Devices/Facilities in areas where adverse impacts on the community are minimized.
4. Encourage the configuration of Wind Energy Conversion Devices/Facilities in a way that minimizes the adverse visual impact of the same.
5. Enhance the provisions of Wind Energy Conversion Devices/Facilities regulations within the Town.
6. Minimize the total number of Wind Energy Conversion Devices/Facilities throughout the Town.
7. Maximize the positive fiscal impacts for the community and land owners and support the continued economic vitality of the agricultural community.

B. Design Requirements

1. Location - A Wind Energy Conversion Device/Facility may not be located within one thousand two hundred (1,200) feet of any State Forest, public park or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal or local government designation; or within one thousand (1,000) feet of a State or Federal identified wetland.
2. Set Backs
 - a. The tower or towers for a Wind Energy Conversion Device/Facility must meet the following set back requirements (all set back distances shall be measured from the center line of the wind turbine).
 - b. Every Wind Energy Conversion Device/Facility must be set back (as measured from the center of the base of the tower):
 - i. from the property line of the parcel on which the Wind Energy Conversion Device/Facility is located by a minimum distance of twelve hundred (1,200) feet, unless waived in writing, in the form of an easement that is recorded in the

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Wyoming County Clerk's Office, by the abutting landowner and an area variance is granted by the Zoning Board of Appeals.

- ii. from any residence or building that is on any parcel by a minimum distance of twelve hundred (1,200) feet, unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the owners of such structure and an area variance is granted by the Zoning Board of Appeals.
 - iii. from any public building that is on any parcel by a minimum distance of twelve hundred (1,200) feet or an area variance is granted by the Zoning Board of Appeals.
 - iv. from the right-of-way of any public road by a minimum distance of twelve hundred (1,200) feet or twice its total height, whichever is greater or an area variance is granted by the Zoning Board of Appeals.
3. Spacing and Density - A Wind Energy Conversion Device/Facility must be separated from any other Wind Energy Conversion Device/Facility, or adjacent Wind Energy Conversion Device/Facility by a minimum distance equal to twice the height of the Wind Energy Conversion Device/Facility and by a sufficient distance so that the Wind Energy Conversion Device/Facility does not interfere with the other Wind Energy Conversion Devices/Facilities.
4. Structure - A Wind Energy Conversion Device/Facility must be of monopole construction to the extent practicable. If monopole construction is not practicable, a Wind Energy Conversion Device/Facility must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a Wind Energy Conversion Device/Facility may be guyed. For any Wind Energy Conversion Device/Facility utilizing a guyed system, a minimum of twenty-five (25) feet from the guy anchor point distance to the property line of an adjacent parcel must be maintained.
5. Clearance - The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least thirty (30) feet.
6. Access and Safety

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- a. Security - A Wind Energy Conversion Device/Facility, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
 - b. Climbing Aids - Monopole Wind Energy Conversion Device/Facility shall have all climbing aids and any platforms locked and wholly inside the tower.
 - c. Operational Safety - Wind Energy Conversion Devices/Facilities shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
7. Lightning - All Wind Energy Conversion Devices/Facilities shall provide a continuous electrical path to the ground to protect the tower from lightning.
8. Access Roads - All Wind Energy Conversion Devices/Facilities shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.
9. Electrical Wires
 - a. Location - All electrical wires associated with a Wind Energy Conversion Device/Facility must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction section under Agricultural Mitigation).
 - b. Transmission Lines - All Wind Energy Conversion Devices/Facilities shall combine transmission lines and points of connection to local distribution lines.
 - c. Operational Safety - All Wind Energy Conversion Devices/Facilities shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.
10. Lighting - A Wind Energy Conversion Device/Facility and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and,

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whenever possible, be at the lowest intensity allowed. If more than one (1) lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

11. Buildings and Outdoor Storage - Any ancillary buildings and any outside storage associated with a Wind Energy Conversion Device/Facility must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.
12. Aesthetics and Visual Assessment
 - a. Appearance, Color, and Finish - The exterior surface of any visible components of a Wind Energy Conversion Device/Facility must be a nonreflective, neutral color. Wind Energy Conversion Devices/Facilities that are located within view, or within one (1) mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.
 - b. Visual Impact Assessment - The applicant shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed Wind Energy Conversion Device/Facility or any proposed modifications to any existing Wind Energy Conversion Device/Facility prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:
 - i. "Before and after" photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.
 - ii. Alternative Wind Energy Conversion Device/Facility designs.
 - iii. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory

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buildings and any other element of the Wind Energy Conversion Device/Facility as determined and directed by the Planning Board.

- iv. A viewshed map of the proposed Wind Energy Conversion Device/Facility with a radius of seven (7) miles from any portion of the Wind Energy Conversion Device/Facility.
 - v. An inventory of all aesthetic resources in the viewshed defined in item iv.
 - vi. The assessment of the visual impact shall also include, but not be limited to, an analysis of the lighting or illumination of the Wind Energy Conversion Device/Facility and assessment of any shadowing or other visual effect of the Wind Energy Conversion Device/ Facility relating to the level of natural or artificial illumination.
- c. Visual Impacts Mitigation Plan - The applicant may be required to prepare and implement a Visual Impacts Mitigation Plan to mitigate negative impacts on aesthetics of a proposed Wind Energy Conversion Device/Facility. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.
13. Signs – No wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device/Facility may be used to advertise or promote any product or service. A weather resistant sign plate no greater than two (2) square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Officer. No other work or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building or other structure associated with a Wind Energy Conversion Device /Facility so as to be visible from any public road.
14. Agriculture Mitigation - The following shall apply to construction areas for Wind Energy Conversion Devices/Facilities located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag and Markets) to develop an appropriate schedule for

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milestone inspections to assure that the goals are being met. For larger projects, the applicant shall hire an Environmental Monitor to oversee construction and restoration in agricultural fields.

a. Siting

- i. Minimize impacts to normal farming operations by locating structures along field edges where possible.
- ii. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- iii. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
- iv. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction must be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

b. Construction

- i. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- ii. Where necessary, culverts and water bars shall be installed to maintain natural drainage patterns.
- iii. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and lay down areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- iv. Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be

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stockpiled separate from other excavated material (rock and/or subsoil). At least fifty (50) feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.

- v. In cropland, hayland and improved pasture a minimum depth of forty-eight (48) inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six (36) inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero (0) to forty-eight inches (48), the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than twenty-four (24) inches below the soil surface.
- vi. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.
- vii. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
- viii. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.
- ix. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.
- x. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.

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- xi. Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.
- c. Restoration
- i. Restoration scheduling will be consistent with the seasonal limitations identified by Ag and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).
 - ii. Following construction, all disturbed agricultural areas will be decompacted to a depth of eighteen (18) inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.
 - iii. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
 - iv. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
 - v. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to

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preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

- vi. Following restoration, all construction debris will be removed from the site.

d. Three-Year Monitoring and Remediation

- i. The applicant will provide a monitoring and remediation period of no less than three (3) years immediately following the completion of initial restoration. The three (3) year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
- ii. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and New York State Ag and Markets.
- iii. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.
- iv. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of

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the remediation period will not terminate the applicant's responsibility to fully redress all project impacts.

- v. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.
- 15. Noise - Audible noise due to the operation of any part of a Wind Energy Conversion Device/Facility shall not exceed fifty (50) dBA for any period of time, when measured at any residence, school, hospital, church, public park or public library, unless the project developer has obtained a noise easement.
 - 16. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town annual proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
 - 17. Shadow Flicker
 - a. Shadow Flicker Map - Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas / locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
 - b. Shadow Flicker Duration - Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.

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18. Electromagnetic Interference (EMI) - All Wind Energy Conversion Devices/Facilities shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any Wind Energy Conversion/Device or the applicant shall mitigate any such interference.

19. Avian Analysis

- a. The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Devices/Facilities upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information or critical flyways.
- b. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.
- c. This analysis can be submitted as part of the application or can be included in a Draft Environmental Impact Statement (DEIS).

20. Height Limitation

- a. The maximum height for any device which is part of a Wind Energy Conversion Facility shall be four hundred fifty (450) feet measured as follows:
 - i. From the highest vertical point of the wind turbine when the turbine blade is in vertical position perpendicular to its base.
 - ii. Other maximum building structure height restrictions within other sections of the Zoning Ordinance are not applicable.

C. Site Plan

- 1. Wind Energy Conversion Devices/Facilities may not be constructed, erected, located, altered or used without first obtaining review, approval and a special use permit pursuant to this Section.
 - a. The site plan, as specified herein, for all Wind Energy Conversion Devices/Facilities must be reviewed by the Planning Board and its designated expert.

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- b. Upon completion of the Planning Board review of the Wind Energy Conversion Device/Facility site plan, the Planning Board shall render an advisory recommendation to the Town Board recommending approval, denial or conditional approval of the site plan.
 - c. The Town Board may then approve, deny or impose conditions on the Wind Energy Conversion Device/Facility site plan.
2. An applicant proposing a Wind Energy Conversion Device/Facility must submit the following site plan materials:
- a. Survey of the property showing existing features such as contours, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property, and vehicular access;
 - b. Site plan showing the location of proposed structures;
 - c. Preliminary layout plans, including the location of new access roads and transmission lines;
 - d. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
 - e. Anticipated construction schedule;
 - f. Description of operations (including anticipated regular and unscheduled maintenance); and
 - g. Storm Water Management Plan.
3. These site plan materials are required in addition to the items set forth in Article III, Section 306.
4. The Planning Board may waive these submission requirements if this information is included in a Draft Environmental Impact Statement (DEIS).
- D. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).

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E. Application Fee

1. To initiate the review process contemplated by this Section, including site plan review, an applicant for a Wind Energy Conversion Device/Facility shall remit an application fee to the Town in the amount of five hundred dollars (\$500.00) per megawatt of generating capacity for each anticipated device. Said sum shall not be refundable in whole or in part.
2. The applicant shall pay the fees and expenses of any consultant(s) used by the Planning Board or Town Board to assist in the review of the application.
3. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
4. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.

F. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.

G. Removal of Obsolete/Unused Devices/Facilities

1. Upon the original issuance of a special use permit for a Wind Energy Conversion Device/Facility, the applicant agrees to dismantle and remove the Wind Energy Conversion Device/Facility from the property when the Wind Energy Conversion Device/Facility ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the special use permit is revoked or not renewed.
2. The decision as to whether the project has been abandoned or the permit revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal.
3. To secure the applicant's performance to dismantle and remove the Wind Conversion Device/Facility once the same ceases to be used for the intended purpose, the following will be complied with:
 - a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town the sum of \$100,000.00 per Wind Energy Conversion Device/Facility (the

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"Escrow Fund") to be held in escrow by the Town pursuant to the terms of this ~~local~~ Law.

- b. The Town reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Wind Energy Conversion Device/Facility, said deposit shall be returned to the applicant upon satisfactory completion of a restoration inspection by the Town's Zoning Officer.
4. In the event that the Wind Energy Conversion Device/Facility is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Wind Energy Conversion Device/Facility dismantled and removed and charge the cost thereof against the Escrow Fund.
5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Wind Energy Conversion Device/Facility, the balance shall be returned to the applicant.
6. If the cost to dismantle and remove the Wind Energy Conversion Device/Facility in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this ~~local~~ Law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.

H. Maintenance and/or Performance Bond

- 1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said Wind Energy Conversion Device/Facility during its lifetime and provide for its removal.

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2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the Wind Energy Conversion Device/Facility and site.
3. In furtherance of the forgoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

I. Transfer of Device/Facility

1. No transfer of any Wind Energy Conversion Device/Facility, nor sale of the entity owning such device/facility shall occur without prior approval of the Town, which approval shall be granted upon:
 - a. The receipt of proof of the ability of the successor to meet all requirements of this ~~Local~~ Law; and
 - b. The written acceptance of the transferee of the obligations of the transferor under this ~~Local~~ Law.
2. No transfer shall eliminate the liability of an applicant or of any other party under this ~~Local~~ Law.

J. This Law is not intended to establish or create a right to operate Wind Energy Conversion Devices/Facilities but rather permits the Town Board to issue a special use permit to operate should it be determined to do so under the terms and conditions of said Law.

K. Before a special use permit can be issued by the Town Board, a Host Agreement shall be entered into by and between the applicant and the Town of Middlebury.

L. Before a special use permit can be issued by the Town Board, a Road Agreement shall be entered into by and between the applicant and the Town of Middlebury.

SECTION 1116 COMMERCIAL COMMUNICATIONS TOWER

No Commercial Communication Tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations. All measurements will be set forth in metric and English system.

A. Shared Use of Existing Towers and/or Structures

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1. In all instances, shared use of an existing tower and/or structure (i.e., another commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new Commercial Communication Tower.
2. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower.
3. The installation of a commercial communication antenna(s) on an existing structure located within the A-Agricultural District shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:
 - a. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,
 - b. The antenna(s) do not extend above such structure more than ten (10) feet, and
 - c. The applicant provides the necessary documentation to the Zoning Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
 - d. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

1. The Planning Board may, in its sole discretion, consider a new or altered (including towers or structures which are modified, reconstructed or changed) Commercial Communication Tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical.
 - a. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical.

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- b. Written request and responses for shared use shall be provided.
- 2. The applicant shall be required to submit a site plan in accordance with Section 306 for all Commercial Communication Towers that are proposed to be erected, moved, reconstructed, changed or altered.
 - a. Site plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section.
 - b. In addition to Section 306, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

- 1. The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing.
- 2. The applicant must provide a coverage/interference analysis and capacity analysis showing that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
- 3. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

- 1. Where shared usage of all existing towers or other structures is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses.

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2. Documentation and conditions shall be in accordance with Subsection B of this Section.
 3. Any new Commercial Communication Tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.
- E. New Tower at a New Location – The Planning Board may consider a new Commercial Communication Tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section
- F. Future Shared Usage of New Tower
1. The applicant must design a proposed Commercial Communication Tower to accommodate future demand for commercial broadcasting and reception facilities.
 2. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:
 - a. The number of Federal Communications Commission (FCC) licenses anticipated for the area;
 - b. The kind of tower site and structure proposed;
 - c. The number of existing and potential licenses without tower spaces;
 - d. Available spaces on existing and approved towers; and
 - e. Potential adverse visual impact by a tower designed for shared usage.
- G. Setbacks for New Towers
1. All proposed Commercial Communication Towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially

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all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

2. All Commercial Communication Tower bases must be located at a minimum setback from any property line at a distance at least two (2) times the full tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater.
3. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again, in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area.
4. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.
5. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Aesthetics and Visual Assessment

1. Appearance, Color, and Finish - The exterior surface of any visible components of a Commercial Communication Tower must be a nonreflective, neutral color. Commercial Communication Towers that are located within view of each other, or within one (1) mile of each other, must be of uniform design, including tower type, and color.
2. Visual Impact Assessment - The applicant shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed Commercial Communication Tower or any proposed modifications to existing Commercial Communication Tower prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:
 - a. "Before and after" photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites

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normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.

- b. Alternative Commercial Communication Tower designs.
 - c. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the Commercial Communication Tower as determined and directed by the Planning Board.
 - d. A viewshed map of the proposed Commercial Communication Tower with a radius of three (3) miles from any portion of the Commercial Communication Tower.
 - e. An inventory of all aesthetic resources in the viewshed defined in item iv of Article XI 12 (B).
 - f. The assessment of the visual impact shall also include, but not be limited to, an analysis of the lighting or illumination of the Commercial Communication Tower and assessment of any shadowing or other visual effect of the Commercial Communication Tower relating to the level of natural or artificial illumination.
3. Visual Impacts Mitigation Plan - The applicant may be required to prepare and implement a Visual Impacts Mitigation Plan to mitigate negative impacts on aesthetics of a proposed Commercial Communication Tower. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.
- I. New Tower Design
- 1. Alternate designs shall be considered for new towers, including lattice and single pole structures.
 - 2. Plans should show that the owner of the Commercial Communication Tower has agreed to permit other persons to attach other communication apparatus, which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment.

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3. The design of a proposed new tower shall comply with the following:
- a. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have.
 - b. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.
 - c. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two (2) additional antennae.)
 - d. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
 - e. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
 - f. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
 - g. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed Commercial Communication Tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
 - h. Space on communication towers shall be made available for public safety purposes (i.e., Wyoming County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

- 1. Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special use permit.

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2. Clear cutting of all trees in a single contiguous area exceeding twenty thousand (20,000) square feet shall be prohibited.

K. Screening

1. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property and from public sites known to include important views or vistas.
2. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required:
 - a. For all Commercial Communication Towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least eight (8) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities.
 - b. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival.
 - c. Plant height in these cases shall include the height of any berm.

L. Access

1. Adequate emergency service access shall be provided.
2. Maximum use of existing roads, public or private, shall be made.
3. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement.
4. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

- M. Parking - Parking shall be provided in accordance with Article X. No parking space shall be located in any required yard.

N. Fencing

1. Sites of proposed new Commercial Communication Towers and sites where modifications to existing towers are proposed shall be adequately

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enclosed by a fence-ten (10) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility.

2. Such security fencing shall surround the tower base as well as each guy anchor.
3. Fences shall be set back a minimum distance of twenty-five (25) feet from any property line.

O. Maintenance and/or Performance Bond

1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal.
2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site.
3. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/Unused Facilities

1. Upon the original issuance of a special use permit for a Commercial Communication Tower, the applicant agrees to dismantle and remove the Commercial Communication Tower from the property when the Commercial Communication Tower ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the special use permit is revoked or not renewed.
2. The decision as to whether the project has been abandoned or the permit revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal.
3. To secure the applicant's performance to dismantle and remove the Commercial Communication Tower once the same ceases to be used for the intended purpose, the following will be complied with:

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- a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town, per Commercial Communication Tower, in an amount to be determined by the Town's engineer and to be held in escrow (the "Escrow Fund") by the Town pursuant to the terms of this local Law.
 - b. The Planning Board reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Commercial Communication Tower, said deposit shall be returned to the applicant.
4. In the event that the Commercial Communication Tower is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Commercial Communication Tower dismantled and removed and charge the cost thereof against the Escrow Fund.
 5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Commercial Communication Tower, the balance shall be returned to the applicant.
 6. If the cost to dismantle and remove the Commercial Communication Tower is in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
 7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local Law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.
- Q. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.

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- R. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
- S. Lighting - A Commercial Communication Tower may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.
- T. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).
- U. All Commercial Communication Towers will be subject to a bi-annual inspection by the Zoning Officer unless said requirement is waived by the Planning Board.

SECTION 1117 JUNKYARDS

- A. Special Use Permit and Certificate of Approval Required - No person or corporation shall operate, establish or maintain a junkyard until they have obtained a special use permit to operate a junkyard business and have obtained a certificate of approval for the location of such junkyard.
- B. Application for Special Use Permit and Certificate of Approval - Application for a special use permit and certificate of approved location shall be made, in writing, to the Town Board of the Town of Middlebury. Said application shall be accompanied by a certificate from the Zoning Officer that a proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of the Town's Zoning Law. The application shall contain a description of the land to be included within the junkyard.
- C. Hearing – A hearing on the application shall be held not less than two (2) nor more than four (4) weeks from the date of the receipt of the application by the Town Board. Notice of the hearing shall be given to the applicant by mail, postage prepaid to the address given in the application and shall be published once in the official newspapers of the Town. Such publication shall be not less than seven (7) days before the date of the hearing.

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- D. Special Use Permit Requirements - At the time and place set for hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a special use permit to operate, establish or maintain the junkyard. In considering such application, the Town Board shall take into consideration the suitability of the applicant with reference to his or her ability to comply with the fencing requirements or other reasonable regulations governing the proposed junkyard, to any record of convictions for any type of larceny or receiving of stolen goods and to any other matter within the purpose of this section.
- E. Location Requirements - At the time and place set for hearing, the Town Board shall hear from the applicant and all other persons wishing to be heard on the application for a certificate of approval for the location of a junkyard. In passing upon the same, it shall take into account, after proof of legal ownership or right to such use of the property for the special use permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke or of other causes.
- F. Aesthetic Considerations - At the hearing regarding location of the junkyard, the Town Board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the Town Board may consider collectively the type of road serving the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as reasonable availability of other suitable sites for the junkyard.
- G. Grant or Denial of Application; Appeal - After the hearing, the Town Board shall, within two (2) weeks, make a finding as to whether or not the application should be granted, giving notice of its finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the special use permit, including a certificate of approved location, shall be forthwith issued to remain in effect until the following April 1. Approval shall be personal to the applicant and not assignable. Special use permits shall be renewed thereafter upon payment of the annual special use permit fee without hearing, provided that all provisions of this section are complied with during the special use permit period, the junkyard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The

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determination of the Town Board may be reviewed under Article 78 of the Civil Practice Law and Rules.

- H. ~~Special Use Permit Fee - The annual special use permit fee shall be two hundred fifty dollars (\$250.00), to~~ **special use permit fee shall** be paid at the time the application is made and annually thereafter in the event of renewal. In the event that the application is not granted, the fee shall be returned to the applicant. The Town Board, in addition to the special use permit fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the special user permit conditional upon the payment of the same.
- I. Fencing - A junkyard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junkyard or when the applicant or its agent shall be within. Such fence shall be erected not nearer than fifty (50) feet to a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junkyard except as removal shall be necessary for the transportation of the same in the reasonable course of the business. All wrecking and other work on such motor vehicles and parts ~~and all burning of the same~~ within the vicinity of the junkyard shall be accomplished within the enclosure.
- J. Established Junkyards - Any unlicensed junkyard existing as of the effective date of this Law and any motor vehicle storage areas which have been established on land not used in connection with another business as of the effective date of this Law shall have sixty (60) days from the effective date of this Law to remove all unlicensed, unused, wrecked, damaged, abandoned or discarded motor vehicles that are in a condition such that they could not be legally operated on a public highway.
- K. Proximity to Public Buildings - Notwithstanding any of the foregoing provisions of this section, no junkyard hereafter established shall be permitted to operate such yard or any part thereof within five hundred (500) feet of a church, school, hospital, public building or place of public assembly.
- ~~L. Penalties for Offenses - Violators of any of the portions of this section shall be guilty of an offense punishable by a fine not exceeding one hundred dollars (\$100.00), and each week that such violation is carried on or continues shall constitute a separate violation.~~

SECTION 1118 COMMERCIAL RECREATION

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- A. Process - An applicant may apply to the Town Board for a special use permit to establish a Commercial Recreation area in an Agricultural (A) District. Public and commercial recreation facilities can include, but are not limited to, swimming facilities, sports fields, motor cross tracks, golf courses, gun clubs and firing ranges.**
- B. Conditions - The following conditions are intended to ensure that the Commercial Recreation area is compatible with surrounding land uses:**
- 1. A Commercial Recreation use is subject to Site Plan Review and approval of the same by the Planning Board as outlined in Section 306 of this Law.**
 - 2. Noise shall be kept at a level that is not a nuisance to adjacent properties. *If said noise cannot be abated through the construction of a buffer or muffler, said use is not permitted.***
 - 3. Adequate parking shall be provided as set forth in Section 1000. Such off street parking shall not be located less than ten (10) feet from any property line.**
 - 4. Off street parking shall be provided in accordance with Article X.**
 - 5. The lot size, yard, area and height requirements shall conform to the schedule of this Law.**
 - 6. No sign shall be permitted except in accordance with the provisions contained in Article X of this Law.**
 - 7. A remote location is required so that the operation will not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent properties.**
 - 8. The Town Board may require, as a condition of the special use permit, that the applicant install and maintain a buffer strip around the operation if it is determined that such condition is a reasonable mitigation factor.**
 - 9. For safety reasons, the Town Board may limit the hours of operation of some Commercial Recreation uses to daylight hours only. Other lighting requirements may be stipulated.**
 - 10. Any other conditions that the Town Board determines are a**

reasonable condition to mitigate any nuisance of the operation.

SECTION 1119 BED & BREAKFAST

- A. Process - An applicant may apply to the Town Board for a special use permit to establish a Bed & Breakfast in an Agricultural District (A) and Rural Residential District (R-R).**
- B. Conditions - The following conditions are intended to ensure that the Bed and Breakfast is secondary to the residential use and that it is compatible with the residential character of the neighborhood.**
- 1. No Bed and Breakfast establishment shall have more than six (6) registered guests at any one given time.**
 - 2. The Bed and Breakfast establishment must be conducted within a dwelling which is a bona fide residence of the principal practitioner.**
 - 3. No sign shall be permitted except in accordance with the provisions of Article X.**
 - 4. Off-street parking shall be provided as follows:**
 - a. at least two (2) spaces for the family residing on the premises plus;**
 - b. not less than one (1) additional space for each room available for guest reservation.**

SECTION 1120 RAISING OF FUR BEARING ANIMALS, SWINE AND/OR POULTRY ON LESS THAN TEN (10) ACRES IN A RURAL RESIDENTIAL DISTRICT

- A. Intent - Due to various agricultural practices now in existence, it is necessary to preserve public health and safety with the reduction of animal waste and limited agricultural practices on parcels of land that may be inferior in size to support such uses. The specific merits of a proposal to raise fur bearing animals, swine and/or poultry on parcels less than ten (10) acres in Rural Residential Districts needs to be addressed and properly managed with an efficient, economical and predicable process to respond to the farmers' concerns while ensuring the ability to have local issues examined.**

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- B. This type of farming operation is included in the definition of a “farm” as defined in Article II of this Law.**
- C. Said proposed activity is a “farm operation” as defined by Agriculture Markets Law, §301, subdivision 11 and is located in a State certified, county adopted agricultural district upon the approval of a special use permit by the Town Board.**
- D. The farming operation shall be a “closed system” with the bringing in of animal feed and the removal of animal wastes from the property. No feed crops for animals shall be raised and no animal wastes shall be applied to the property.**
- E. No manure composting on site.**
- F. No farm type structures shall be placed in front of the primary dwelling.**
- G. Prior to the issuance of a permit, the Zoning Officer shall require site plan approval by the Planning Board pursuant to this section which is in lieu of the Site Plan Review set forth in Article III, Section 306 of this law.**
 - 1. Site Plan Process:**
 - a. Sketch of the parcel on a location map (i.e., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.**
 - b. Show the existing features of the site including land and water areas, water or sewer systems and the approximate location of all existing structures on or immediately adjacent to the site.**
 - c. Show the proposed location and arrangement of buildings and uses on the site, including means of ingress and egress, parking and circulation of traffic.**
 - d. Sketch of any proposed building, structure or sign, including exterior dimensions and elevation of front, side and rear views. Include any available blueprints, plans or drawings.**
 - e. Provide a description of the project and a narrative of the intended use of such proposed building, structures or signs, including any anticipated changes in the existing topography**

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and natural features of the parcel to accommodate the changes.

- i. Include the name and address of the applicant and any professional advisors.
 - ii. If the applicant is not the owner of the property, provide authorization of the owner.
- f. If any new structures are going to be located adjacent to a stream or wetland, provide a copy of the floodplain map and wetland map that corresponds with the boundaries of the property and include the location of any new structures therein.
- g. Proper nutrient and manure management plans. The applicant shall submit a plan for animal feeding and waste disposal, i.e.: agreement with a neighboring farm, etc.
- h. List of the type and number of animals to be harbored on the property with a narrative as to how animals will be pastured/grazed; exercised; and protected from the public.

SECTION 1121 CLUSTER RESIDENTIAL DEVELOPMENT

Cluster residential development of one (1) family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 863 of the Laws of 1963, in the Agricultural and Rural Residential Districts of the Town, subject to the issuance of a special use permit and provided that the following conditions are observed:

- A. The project shall encompass a minimum land area of ten (10) acres.
- B. The developer shall dedicate to permanent open space no less than twenty-five (25) percent of the total project area.
- C. The developer shall have received informal conditional approval of the Town Board of the design and arrangement of streets, lots, open spaces and other elements of the project prior to filing the special use permit application.
- D. The requirements of this Zoning Law insofar as overall density, minimum front, side and rear yard areas for the outer boundaries of the entire

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project, maximum building height and maximum lot coverage are as specified in Schedule I - Area and Yard Requirement of this Zoning Law. All other area requirements of this Zoning Law may be modified by the Town Board.

SECTION 1122 HOME BASED BUSINESS

- A. Findings; Statement of Policy - Recognizing the fact that many residents of the Town of Middlebury currently maintain home occupations/businesses, or may choose to do so at some point in the future, the Town has determined to provide a mechanism for permitting such uses, subject to appropriate review and the implementation of mitigation measures where appropriate.**

The Town Board recognizes that Town residents historically have operated small businesses from their homes, which provide services to the community and finds that these businesses have not impacted negatively on the appearance and character of these agricultural and residential districts. Conversely, the Town recognizes that unrestricted use of residentially zoned properties for nonresidential purposes carries with it the potential for conflicts with and detrimental impacts on the purposes and character of the areas zoned for residential and agricultural uses. In the Board's judgment, it finds that in order to maintain the economic viability of the Town, to maintain the rural quality of life and in the interests of the welfare of the residents, home occupations/businesses should be permitted.

In order to further the benefits of home occupations/businesses while mitigating the potential detrimental off-site impacts of the same, the Town has enacted these regulations.

Recognizing that different home occupations/businesses exhibit varying potentials for generating off-site impacts, the Town adopts three (3) tiers of businesses for the purposes of establishing review procedures and approval conditions. The three (3) tiers are: (1) Home Occupations Minor; (2) Home Occupations Major; and (3) Home-Based Businesses.

See Section 1123 of this Article for Home Occupations Major regulations and Section 1008 of Article X for the Supplementary Regulations governing Home Occupations Minor.

- B. Home-Based Businesses**

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1. **Permitted District - Home-Based Businesses** are permitted in the Agricultural (A) Districts only, with the issuance of a special use permit and provided that the following standards are satisfied.
2. **Permitted Structure - Home-Based Businesses** are permitted within a single-dwelling unit or in a building or structure accessory to a dwelling unit, with frontage along any State, County or Town Road that is not designated for "seasonal use." Access may not be provided by a private road. No more than one (1) home-based business shall be permitted on each property.
3. **Limitations or Thresholds -** Recognizing that the primary purposes of residential and agricultural districts is not the accommodation of business uses, the burden of proof in demonstrating compliance with these regulations in order to develop and maintain a home-based business shall be upon the applicant. The applicant shall bear the burden of satisfactorily demonstrating that the home-based business will conform with the following standards:
 - a. **Lot size -** The minimum required lot size for a home-based business is five (5) acres.
 - b. **Extent of use -** The total gross floor area of the home-based business in an accessory building shall not exceed seventy-five hundred (7,500) square feet in area.
 - c. **Neighborhood character -** The appearance of the property and the occupation within the residence shall not be conducted in a manner that would cause the premises to differ significantly from other properties in the neighborhood either by the use of lighting or by the emission of noises, odors or vibrations. All accessory buildings shall be of a building type that is consistent with the appearance of the principal dwelling and the surrounding area or neighborhood.
 - d. **Employees on site -** No more than eight (8) employees or assistants in addition to the members of the family occupying such dwelling may be engaged on the premises in the home-based business at any given time.
 - e. **Hours of operation -** The home-based business shall be conducted in such a manner that the majority of the clients, customers and others coming to do business at the site of the

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home-based business, shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m.

- f. **Outdoor storage - materials and equipment -** Materials and equipment actively used in connection with the home-based business may be stored outdoors, but shall be buffered from public rights-of-way and neighboring properties by intervening land form and/or vegetation or fencing through all seasons of the year and stored in a manner such that they do not pose a nuisance to adjacent property owners. No outdoor storage or materials or equipment shall be permitted in the front yard of the premises or less than fifty (50) feet from any property boundary.
- g. **Construction vehicles and equipment -** Not more than four (4) construction vehicles or pieces of construction equipment may be used in connection with the home-based business. No such vehicles or equipment shall be parked in the required front or side yards of the property unless properly buffered.
- h. **Deliveries and shipping -** No more than ten (10) pickups or deliveries per week, other than regular mail, commercial mail service and overnight delivery service, shall be permitted. All pickups and deliveries shall occur between the hours of 7:00 a.m. and 9:00 p.m.

SECTION 1123 HOME OCCUPATION MAJOR

- A. **Findings; Statement of Policy -** Recognizing the fact that many residents of the Town of Middlebury currently maintain home occupations/businesses, or may choose to do so at some point in the future, the Town has determined to provide a mechanism for permitting such uses, subject to appropriate review and the implementation of mitigation measures where appropriate.

The Town Board recognizes that Town residents historically have operated small businesses from their homes, which provide services to the community and finds that these businesses have not impacted negatively on the appearance and character of these agricultural and residential districts. Conversely, the Town recognizes that unrestricted use of residentially zoned properties for nonresidential purposes carries with it the potential for conflicts with and detrimental impacts on the purposes and character of the areas zoned for residential and agricultural uses. In the Board's judgment, it finds that in order to maintain the economic

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viability of the Town, to maintain the rural quality of life and in the interests of the welfare of the residents, home occupations/businesses should be permitted.

In order to further the benefits of home occupations/businesses while mitigating the potential detrimental off-site impacts of the same, the Town has enacted these regulations.

Recognizing that different home occupations/businesses exhibit varying potentials for generating off-site impacts, the Town adopts three (3) tiers of businesses for the purposes of establishing review procedures and approval conditions. The three (3) tiers are: (1) Home Occupations Minor; (2) Home Occupations Major; and (3) Home-Based Businesses.

See Section 1122 of this Article for Home-Based Businesses regulations and Section 1008 of Article X for the Supplementary Regulations governing Home Occupations Minor.

B. Home Occupations Major

1. **Permitted District - Home Occupations Major** are permitted in Agricultural (A) Districts only, with the issuance of a special use permit and provided that the following standards are satisfied.
2. **Permitted Structure - Home Occupations Major** are permitted within a single-dwelling unit, or in a building or structure accessory to a dwelling unit, located in any district. No more than one (1) Home Occupations Major shall be permitted for each residential property.
3. **Required Procedures - A site plan review** is required by the Town Planning Board. No additional public hearing shall be required, unless the Town's Planning Board determines that there is a need to hold such a hearing. The site plan must show the location of the business, including floor plans indicating the portion of the principal and accessory buildings to be used for the business, the location of any vehicles and equipment to be parked outdoors, and any outdoor areas proposed for storage or display of goods or supplies. The above listed procedures are in addition to all regulations set forth in Article III, Section 303.
4. **Limitations or Thresholds - Recognizing that the primary purposes of residential and agricultural districts are not the accommodation of business uses, the burden of proof in demonstrating compliance**

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with these regulations in order to develop and maintain a home occupation shall be upon the applicant. In addition to all of the limitations applicable to the district in which it is located, no Home Occupations Major shall be permitted unless it complies with the following restrictions. The applicant shall bear the burden of satisfactorily demonstrating that the Home Occupations Major will conform with all of the following items:

- a. **Employees on Site - No more than two (2) employees or assistants in addition to the members of the family occupying such dwelling may be engaged on the premises in the Home Occupations Major at any given time.**
- b. **Outdoor Storage of Materials and Equipment - Materials and equipment actively used in connection with the Home Occupations Major shall be stored indoors to the extent practicable. Where such storage cannot be reasonably provided, the materials and equipment shall be buffered from public rights-of-way and neighboring properties by intervening landforms, fencing and/or vegetation through all seasons of the year and stored in a manner that does not visually detract from the appearance of the neighborhood and community and such storage does not pose a nuisance to adjacent property owners. No outdoor storage of materials or equipment shall be permitted in the front yard of the premises or less than fifty (50) feet from any property boundary.**
- c. **Commercial vehicles - Not more than three (3) vehicles used in connection with Home Occupations Major may be on the premises.**
- d. **Heavy vehicles - No more than one (1) heavy vehicle used in connection with the Home Occupations Major may be stored outside. No such vehicles shall be parked in the required front yard (twenty-five (25) feet of the R.O.W.) or side yards (within ten (10) feet of side lot lines) of the property. Additional heavy vehicles may be stored in an enclosed garage.**
- e. **Signage - One sign, not to exceed four (4) square feet in area per side, shall be permitted to identify the home occupation. No sign shall have more than two printed sides. This sign may not be animated and may be illuminated only during business hours.**

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- f. **Parking** - Any need for parking generated by the Home Occupations Major shall be met on-site and not in the required front yard.
 - g. **Number of clients** - The Home Occupations Major shall be conducted in such a manner that at any one time the maximum number of clients/customers and others at the site of the Home Occupations Major is not greater than four (4) persons.
 - h. **Hours of operation** - The Home Occupations Major shall be conducted in such a manner that the majority of the deliveries, pickups, clients, customers and others coming to do business at the site of the Home Occupations Major, shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m.
 - i. **Hazardous Materials** - No highly toxic, explosive, flammable, combustible, corrosive, radioactive or similar hazardous materials shall be used, stored, or manufactured on the premises in amounts exceeding those which are typically found in normal residential use.
5. **Use of Accessory Structures** - A home occupation use must be conducted wholly within the residential dwelling on the parcel, except that accessory structure, such as shed, detached garages, and barns, may be used for unheated storage of materials for the business.
6. **Floor Area** - A home occupation may not use more than thirty (30) percent of the gross floor area of the dwelling for business purposes.

SECTION 1124 PARKING OF A RECREATIONAL VEHICLE

- A. The temporary parking of recreational vehicle, as defined in Article II herein, *for the purposes of habitation* may be allowed as a special permit use in ~~any zone~~ *the Agriculture and Rural Residential* districts upon the approval of a special use permit issued by the Town Board.
- B. The special use permit allows for the temporary parking of a recreational vehicle for use by a relative or friend of the applicant.
- C. The special use permit is for short term use, more than two (2) weeks and less than five (5) months per year.

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- D. The recreational vehicle must have proper electric, water and sewer hookups.
- E. When approved by the Town Board, the special use permit is valid for a period of three (3) years. The special use permit can be renewed, upon required of the applicant and subsequent approval of the Town Board.
- F. The requirement to hold a public hearing for the issuance of a special use permit for the parking of a recreation vehicle is at the discretion of the Town Board.
- G. *These regulations do not apply to the storage of a recreational vehicle by an owner.*

SECTION 1125 ADULT USES

- A. *Findings; Statement of Policy – It is recognized that buildings and establishments operated as sexually oriented businesses have serious objectionable characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Middlebury, it is necessary to establish reasonable and uniform regulations for sexually oriented, adult use businesses within the Town of Middlebury.*
- B. **Designation as Regulated Uses**
 - 1. *The regulation of sexually oriented, adult use businesses is necessary to prevent deterioration and degradation of the vitality of the Town of Middlebury before a problem develops, rather than in response to an existing problem. It is recognized that for some uses which, because of their nature, have serious objectionable characteristics when several of them are concentrated under certain circumstances, which produce a deleterious effect upon adjacent areas, special regulations is necessary to ensure that adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods. The primary reason for regulation is to prevent concentration of these uses in any one area which could create adverse neighborhood affects.*
 - 2. *It is not the intent or purpose of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the Constitution of the United States or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market, nor is it the intent or effect of*

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this section to condone or legitimize the distribution of objectionable materials.

3. ***All commercial adult uses and adult establishments are subject to the regulations in this section and each such adult use shall obtain a special use permit prior to locating said business in the Town of Middlebury.***

C. Restrictions

1. ***No more than one (1) of the adult use shall be permitted on any single lot in the Town.***
2. ***The distance provided herein 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 business is to be located to the nearest point of the parcel of property or the land use district boundary line from which the sexually oriented business is to be separated.***
 - a. ***The property line of a parcel where said adult uses are located shall not be within five hundred (500) feet of any residential zoning district.***
 - b. ***The property line of a parcel where said adult uses are located shall not be within five hundred (500) feet of any boundary of any town, village or hamlet.***
 - c. ***The property line of a parcel where said adult uses are located within five hundred (500) feet of any property lines of a school, church or other place of religious worship, day-care center, park or playground or other lot containing another use where minors congregate.***
 - d. ***The property line of a parcel where said adult uses are located within five hundred (500) feet of any property located in a historical district, listed on the National Register of Historic Places or designated as a National Historic Landmark.***
 - e. ***The property line of a parcel where said adult uses are located shall not be within one thousand (1,000) feet of the property lines of a lot containing another such adult use.***

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3. ***All adult bookstores and adult entertainment establishments shall be conducted in an enclosed building. Regardless of location or distance, no one who is passing by an enclosed building having a use governed by these provisions shall be able to visually see any specified anatomical area or any specified sexual activity by virtue of any display which depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign window or other opening.***
4. ***The exterior appearance of any building containing an adult use shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood.***
5. ***No audio or video transmission of these adult uses, either by broadcast, telephone, satellite, microwave or other electronic transmission, to off-site locations shall be permitted.***
6. ***Any mercantile establishments which has adult books, magazines and other periodicals, films, videotapes, slides, DVD's, computer generate images or programs, novelties, and any other adult wares for sale or rent as an accessory and not substantial or significant portion of its wares or sales shall:***
 - a. ***Have no more than one (1) separate area dedicated to adult wares portioned off from the floor area dedicated to the primary use.***
 - b. ***Such portion of the floor are designated for adult wares shall be completely separated from the primary use area by means of completely opaque continuous barriers of substantial construction at least seven (7) feet tall, with an entry with self-closing completely opaque door(s) covering the complete opening of the entryway so that not adult wares are visible to casual viewing by minors. Such entries and exits to areas used for adult wares shall be located to allow supervision of the doorways to preclude minors from accessing adult use sales, rental and storage areas.***
 - c. ***Any accessory area used for sales or rental of adult wares shall not be part of the entry to or exit from the primary use area(s).***

D. Registration

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1. ***The owner of a building or premises, his agent for the purpose of managing or controlling rents or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register the following information with the Town Clerk of the Town of Middlebury:***
 - a. ***The address of the premises.***
 - b. ***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.***
 - c. ***The name of the business or establishment subject to the provisions of this chapter.***
 - d. ***The name(s) and addresses of the owner, the beneficial owner and the major stockholder(s) of the business or the establishment subject to the provisions of this chapter.***
 - e. ***The date of the initiation of the adult use.***
 - f. ***The nature of the adult use.***
 - g. ***If the premises or building is leased, a copy of said lease.***
 2. ***It is a violation of this chapter for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult use without having properly registered said adult use with the Town Clerk.***
- E. ***Display of Registration - The owner, manager 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.***
- F. ***Prohibition Regarding Public Observance - No adult use shall be conducted in any manner that permits 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 registered as an adult use. This provision shall apply to any display, decoration, sign, show, window or other opening.***
- G. ***Special Use Permit***

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1. ***No use as described in this chapter shall be established until the issuance of a special use permit by the Zoning Officer of the Town. Applications for such special use permit shall be in writing to the Zoning Officer and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use, which is proposed, and such additional information as shall be required by the Zoning Officer.***
2. ***The Planning Board shall call a public hearing for the purpose of considering the request for a special use permit. At least ten (10) days' notice of the time and place of the public hearing shall be given by the publication of a notice in a newspaper of general circulation in the Town, indicating the general nature of the public hearing and the fact that those persons interested therein may be heard at the time and place of such hearing.***
3. ***A special use permit issued under the provisions of this section shall not be transferable.***