

## Appendix 7-1



FILED JUL - 6 1987

*AS Stiff*

(Please Use this Form for Filing your Local Law with the Secretary of State)

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

~~County~~  
~~City~~  
Town  
~~Village~~

of Greenwood

Local Law No. # 1 of the year 19 87

A local law for FLOOD DAMAGE PREVENTION

(General title)

as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36.

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

~~County~~  
~~City~~  
Town  
~~Village~~

of Greenwood, Steuben County, NY as follows:

- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

## SECTION 2.0 DEFINITIONS

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

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

"Area of shallow flooding" means a designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, AI-99, V, VO, VE, or VI-30. It is also commonly referred to as the base floodplain or 100-year floodplain.

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

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

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

"Building" means any structure built for support, shelter, or enclosure for occupancy or storage.

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

"Coastal high hazard area" means the area subject to high velocity waters including, but not limited to, hurricane wave wash. The area is designated on a FIRM as Zone VI - 30, VE, VO or V.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

"Elevated building" means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

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

- (1) the overflow of inland or tidal waters;

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

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

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation data is provided.

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

Flood Insurance Study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevations of the base flood.

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

Floodway - has the meaning as "Regulatory Floodway".

Floor means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

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

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

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

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Mean Sea Level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

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

"National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference for establishing elevations within the flood plain.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this Law.

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

"100-year Flood" - has the same meaning as "Base Flood."

"Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 4.3-2 of this Law.

"Sand dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Start of construction" means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property, and shall include land preparation, such as clearing, grading, and filling; installation of streets and/or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers, and building materials.

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

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, excluding land values, either:

- (1) before the improvement or repair is started; or
- (2) if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

SECTION 3.0  
GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES

This local law shall apply to all areas of special flood hazards within the jurisdiction of Town of Greenwood.

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

- (1) The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the Town of Greenwood, of Stenben County, New York", dated 1-3-75 + 9-3-82, 1982, with accompanying Flood Insurance Rate Maps is hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and FIRM are on file at First State Bank, Canister, N.Y.

(OR)

- (2) The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Hazard Boundary Map (FHBM), or Flood Insurance Rate Map (FIRM) No. \_\_\_\_\_ dated \_\_\_\_\_ is hereby adopted and declared to be a part of this Local Law. The FHBM or FIRM is on file at \_\_\_\_\_

3.3 ~~INTERPRETATION~~, CONFLICT WITH OTHER LAWS

This Local Law is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986 and shall supercede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.

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

3.4 SEVERABILITY

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

3.5 PENALTIES FOR NON-COMPLIANCE

No structure shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this Local Law and any other applicable regulations. Any infraction of the provisions of this Local Law by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this Local Law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Greenwood

from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this Local Law for which the developer and/or owner has not applied for and received an approved variance under Section 6.0 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

### 3.6 WARNING AND DISCLAIMER OF LIABILITY

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

## SECTION 4.0 ADMINISTRATION

### 4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR

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

### 4.2 ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in Section 3.2. Application for a Development Permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

#### 4.2-1 APPLICATION STAGE.

The following information is required where applicable:

- (a) Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures;
- (b) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
- (c) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in Section 5.1-3(1);
- (d) Certificate from a licensed professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing criteria in Section 5.2-2; and
- (e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.



## 4.2-2 CONSTRUCTION STAGE.

Upon placement of the lowest floor, or flood-proofing by whatever means, it shall be the duty of the permit holder to submit to the Local Administrator a certificate of the as-built elevation of the lowest floor, or flood-proofed elevation, in relation to mean sea level. The as-built certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, the flood proofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same. Any further work undertaken prior to submission and approval of the certificate shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

## 4.3 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

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

## 4.3-1 PERMIT APPLICATION REVIEW

- (1) Review all development permit applications to determine that the requirements of this local law have been satisfied.
- (2) Review all development permit applications to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
- (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this local law, "adversely affects" means physical damage to adjacent properties. A hydraulic engineering study may be required of the applicant for this purpose.
  - (i) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this local law.
  - (ii) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (4) Review all development permits for compliance with the provisions of Section 5.1-5, Encroachments.

## 4.3-2 USE OF OTHER BASE FLOOD AND FLOODWAY DATA

When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to Section 5.1-4(4) in order to administer Section 5.2, SPECIFIC STANDARDS and Section 5.3 FLOODWAYS.

## 4.3-3 INFORMATION TO BE OBTAINED AND MAINTAINED

- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor including basement or cellar of all new or substantially improved

structures, and whether or not the structure contains a basement or cellar.

- (2) For all new or substantially improved floodproofed structures:
  - (i) obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
  - (ii) maintain the floodproofing certifications required in Sections 5.1 and 5.2.
- (3) Maintain for public inspection all records pertaining to the provisions of this local law including variances, when granted, and Certificates of Compliance.

#### 4.3-4 ALTERATION OF WATERCOURSES

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, NY 10278.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

#### 4.3-5 INTERPRETATION OF FIRM, FIRM OR FIRM BOUNDARIES

The Local Administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.

Base flood elevation data established pursuant to Section 3.2 and/or Section 4.3-2, when available, shall be used to accurately delineate the area of special flood hazards.

The Local Administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the area of special flood hazards when base flood elevations are not available.

#### 4.3-6 STOP WORK ORDERS

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop work order by the Local Administrator. Disregard of a stop work order shall be subject to the penalties described in Section 3.5 of this Local Law.
- (2) All floodplain development found noncompliant with the provisions of this law and/or the conditions of the approved permit shall be subject to the issuance of a stop work order by the Local Administrator. Disregard of a stop work order shall be subject to the penalties described in Section 3.5 of this Local Law.

#### 4.3-7 INSPECTIONS

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

## 4.3-8 CERTIFICATE OF COMPLIANCE

- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a Certificate of Compliance has been issued by the Local Administrator that the building or land conforms to the requirements of either the Development Permit or the approved variance.
- (2) All other development occurring within the area of special flood hazard will have upon completion a Certificate of Compliance issued by the Local Administrator.

All certificates shall be based upon the inspections conducted subject to Section 4.3-7 and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

SECTION 5.0  
PROVISIONS FOR FLOOD HAZARD REDUCTION

## 5.1 GENERAL STANDARDS

In all areas of special flood hazards the following standards are required:

## 5.1-1 ANCHORING

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

## 5.1-2 CONSTRUCTION MATERIALS AND METHODS

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

## 5.1-3 UTILITIES

- (1) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### 5.1-4 SUBDIVISION PROPOSALS

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than either 50 lots or 5 acres.

#### 5.1-5 ENCROACHMENTS

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood carrying capacity of the area of special flood hazards set forth in section 4.3-1(3), Permit Review. This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to Section 4.3-2 or Section 5.1-4(4) and no floodway has been determined the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to Section 4.3-2, the requirements of Section 5.3 FLOODWAYS, shall apply.

#### 5.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 3.2(1) BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD and Section 4.3-2, USE OF OTHER BASE FLOOD DATA, the following standards are required:

##### 5.2-1 RESIDENTIAL CONSTRUCTION

New construction and substantial improvements of any resident structure shall:

- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.

- (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

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

(ii) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and

(iii) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

#### 5.2-2 NONRESIDENTIAL CONSTRUCTION

New construction and substantial improvements of any commercial, industrial or other non-residential structure, together with attendant utility and sanitary facilities, shall either: have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or be floodproofed to the base flood level.

- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

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

(ii) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and

(iii) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

- (2) If the structure is to be floodproofed:

(i) a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(ii) a licensed professional engineer or licensed land surveyor shall certify the specific elevation (in

relation to mean sea level) to which the structure is floodproofed.

The Local Administrator shall maintain on record a copy of all such certificates noted in this section.

#### 5.2-3 CONSTRUCTION STANDARDS FOR AREAS OF SPECIAL FLOOD HAZARDS WITHOUT BASE FLOOD ELEVATIONS

- (1) New construction or substantial improvements of structures including manufactured homes shall have the lowest floor (including basement) elevated at least 2 feet above the highest adjacent grade next to the proposed foundation of the structure.
- (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
  - (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - (ii) the bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
  - (iii) openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

#### 5.3 FLOODWAYS

Located within areas of special flood hazard are areas designated as floodways (see definition, Section 2.0). The floodway is an extremely hazardous area due to high velocity flood waters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by Section 4.3-2, all encroachments including fill, new construction, substantial improvements, and other development are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

### SECTION 6.0 VARIANCE PROCEDURE

#### 6.1 APPEALS BOARD

- (1) The Town Board as established by law shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The Town Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Town Board may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

- (4) In passing upon such applications, the Town Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
- (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) the importance of the services provided by the proposed facility to the community;
  - (v) the necessity to the facility of a waterfront location, where applicable;
  - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (vii) the compatibility of the proposed use with existing and anticipated development;
  - (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
  - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
  - (xi) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Section 6.1(4) and the purposes of this local law, the Town Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
- (6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

## 6.2 CONDITIONS FOR VARIANCES

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

- (2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this local law.
- (3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - (i) the criteria of subparagraphs 1, 4, 5, and 6 of this Section are met;
  - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall only be issued upon receiving written justification:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk.

Be it enacted this 12<sup>th</sup> day of May, 1987 by the  
Town of Greenburgh of  
Steuwen County, New York, to be effective  
May 12<sup>th</sup> 1987.

Kerry P. O'Brien  
Roger Mills

Earl Spencer  
Burdette Hulce  
John Helgeson

Kerry P. O'Brien - Supervisor  
Roger Mills

Earl Spencer  
Burdette Hulce  
John Helgeson

SEAL

ATTEST.

CLERK



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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1987

County  
of the City of Greenwood was duly passed by the Town Board  
Town (Name of Legislative Body)  
Village  
on May 12 1987 in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1987

County  
of the City of Greenwood was duly passed by the Town Board  
Town (Name of Legislative Body)  
Village  
on May 12 1987 ~~not disapproved~~ and was approved by the Supervisor  
repassed after disapproval Elective Chief Executive Officer \*  
and was deemed duly adopted on May 12 1987, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1987

County  
of the City of Greenwood was duly passed by the Town Board  
Town (Name of Legislative Body)  
Village  
on May 12 1987 ~~not disapproved~~ and was approved by the Supervisor  
repassed after disapproval Elective Chief Executive Officer \*  
on May 12 1987. Such local law was submitted to the people by reason of a  
mandatory referendum, and received the affirmative vote of a majority of the qualified electors voting  
permissive general  
thereon at the special election held on May 12 1987, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1987

County  
of the City of Greenwood was duly passed by the Town Board  
Town (Name of Legislative Body)  
Village  
on May 12 1987 ~~not disapproved~~ and was approved by the Supervisor  
repassed after disapproval Elective Chief Executive Officer \*  
on May 12 1987. Such local law being subject to a permissive referendum and no  
valid petition requesting such referendum having been filed, said local law was deemed duly adopted on  
May 12 1987, in accordance with the applicable provisions of law.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of § 36 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the ~~special~~ <sup>general</sup> election held on \_\_\_\_\_ 19 \_\_\_\_\_ became operative.

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

I hereby certify that the local law annexed hereto, designated as Local Law No. \_\_\_\_\_ of 19 \_\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the Electors at the General Election of November \_\_\_\_\_, 19 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

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

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

Kerry P. O'Brien Supervisor  
Clerk of the County legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

Date: May 12, 1987

(Seal)

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

STATE OF NEW YORK

COUNTY OF STEARSEN

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

James P. Burd  
JAMES P. BURD Signature  
TOWN ATTORNEY  
Title

Date: 6-9-87

County  
City of GREENWICH  
Town  
Village

---

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

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

**Town of Greenwood**

**Local Law No. 1 of the year 2009**

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

**Be enacted by the Town Board of the**

**Town of Greenwood as follows: (See attached)**

STATE OF NEW YORK  
DEPARTMENT OF STATE

**FILED**

Aug. 3 2009

MISCELLANEOUS  
& STATE RECORDS



**SECTION 1.0  
STATUTORY AUTHORIZATION AND PURPOSE**

**1.1 FINDINGS**

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

**1.2 STATEMENT OF PURPOSE**

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

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

**1.3 OBJECTIVES**

The objectives of this local law are:

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

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

## **SECTION 2.0 DEFINITIONS**

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

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

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

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

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

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

**"Building"** see "Structure"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 3.0  
GENERAL PROVISIONS**

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

This local law shall apply to all areas of special flood hazard within the jurisdiction of the  
Town of Greenwood.

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

The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency (COMPLETE ONE THROUGH FIVE AS NECESSARY, RENUMBER SEQUENTIALLY AND CROSS OUT OR DELETE UNUSED SUBSECTIONS):

- ~~(X)~~ ~~Flood Insurance Rate Map (single panel) No. \_\_\_\_\_, whose effective date is \_\_\_\_\_.~~
- (1) ~~(2)~~ Flood Insurance Rate Map (multiple panels) Index No. 2009-LL1, whose effective date is SEPTEMBER 3, 1982.
- ~~(X)~~ ~~A scientific and engineering report entitled "Flood Insurance Study, \_\_\_\_\_ of \_\_\_\_\_, New York, \_\_\_\_\_ County" dated \_\_\_\_\_.~~
- ~~(X)~~ ~~Flood Boundary and Floodway Map (single panel) No. \_\_\_\_\_, whose effective date is \_\_\_\_\_.~~
- ~~(S)~~ ~~Flood Boundary and Floodway Map (multiple panels) Index No. \_\_\_\_\_, whose effective date is \_\_\_\_\_.~~

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

GREENWOOD TOWN HALL, 2686 ST. RT. 248, GREENWOOD, NY 14839

**3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS**

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

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

### **3.4 SEVERABILITY**

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

### **3.5 PENALTIES FOR NON-COMPLIANCE**

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

### **3.6 WARNING AND DISCLAIMER OF LIABILITY**

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

## **SECTION 4.0 ADMINISTRATION**

### **4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR**

The Town Board of the Town of <sup>Greenwood</sup> is hereby appointed Local Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

### **4.2 THE FLOODPLAIN DEVELOPMENT PERMIT**

#### **4.2-1 PURPOSE**

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is

constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 3.2, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

#### 4.2-2 FEES

All applications for a floodplain development permit shall be accompanied by an application fee of \$ 50.00. In addition, the applicant shall be responsible for reimbursing the Town of Greenwood for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500.00 to cover these additional costs.

#### 4.3 APPLICATION FOR A PERMIT

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

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

- (6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- (7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

#### **4.2 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR**

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

##### **4.4-1 PERMIT APPLICATION REVIEW**

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

- (1) Review all applications for completeness, particularly with the requirements of sub-section 4.3, APPLICATION FOR A PERMIT, and for compliance with the provisions and standards of this law.
- (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 5.0, CONSTRUCTION STANDARDS and, in particular, sub-section 5.1.1, SUBDIVISION PROPOSALS.
- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.

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

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

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

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Fed-

eral, State or other source, including data developed pursuant to paragraph 4.3(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.

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

#### **4.4-3 ALTERATION OF WATERCOURSES**

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

#### **4.4-4 CONSTRUCTION STAGE**

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

#### **4.4-5 INSPECTIONS**

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

#### **4.4-6 STOP WORK ORDERS**

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

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

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

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

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

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



## SECTION 5.0 CONSTRUCTION STANDARDS

### 5.1 GENERAL STANDARDS

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

#### 5.1-1 SUBDIVISION PROPOSALS

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

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

#### 5.1-2 ENCROACHMENTS

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

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

## 5.2 STANDARDS FOR ALL STRUCTURES

## 5.2-1 ANCHORING

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

### 5.2.2 CONSTRUCTION MATERIALS AND METHODS

- (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) For enclosed areas below the lowest floor of a structure within Zones A-1, A-30, AE, or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

- (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
- (ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

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

## RESULTS

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at or above the

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

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

### 5.3 RESIDENTIAL STRUCTURES

#### 5.3-1 ELEVATION

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

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

### 5.4 NON-RESIDENTIAL STRUCTURES

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

- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure together with attendant utility and sanitary facilities, shall either:
  - (i) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
  - (ii) be floodproofed so that the structure is watertight below two feet above the base flood elevation with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (2) Within Zone AO, new construction and substantial improvements of non-residential structures shall:
  - (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
  - (ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 5.4(1)(ii).
- (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 5.4(1)(ii), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

## **5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES**

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

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
  - (i) be on site fewer than 180 consecutive days,
  - (ii) be fully licensed and ready for highway use, or

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

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

- (2) A manufactured home that is placed or substantially improved in Zones AI-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- (4) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in Section 3.2 (at least two feet if no depth number is specified).

## SECTION 6.0 VARIANCE PROCEDURE

### 6.1 APPEALS BOARD

- (1) The Board of Appeals as established by the Town of Greenwood shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Board of Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
  - (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (iv) the importance of the services provided by the proposed facility to the community;

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

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

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

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

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

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

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

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

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

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

## 6.2 CONDITIONS FOR VARIANCES

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

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

(i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure".

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

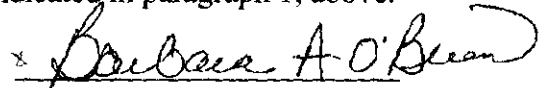
- (3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - (i) the criteria of subparagraphs 1, 4, 5, and 6 of this Section are met;
  - (ii) the structure or other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

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2009 of the Town of Greenwood was duly passed by the Town Board on July 7, 2009 in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

  
Town Clerk

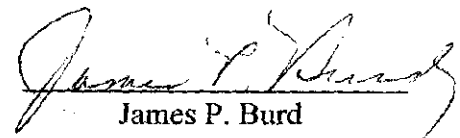
(Seal)

Date: 7/14/09

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

STATE OF NEW YORK  
COUNTY OF STEUBEN

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

  
James P. Burd

Greenwood Town Attorney  
Town of Greenwood  
Date: July 14, 2009



Be it enacted this 17<sup>th</sup> day of July, 2009 by the Town Board of the Town of Greenwood,  
Steuben County, New York, to be effective August 1, 2009.

Roger A. Mills

James V. Kysfal

George J. Gonsky

Robert J. Wimmer

SEAL

---

ATTEST Barbara A. O'Brien CLERK



## Local Law Filing

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

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

☐ County ☐ City ☒ Town ☐ Village  
(Select one.)

of Greenwood

FILED  
STATE RECORDS

FEB 15 2017

DEPARTMENT OF STATE

Local Law No. 1 of the year 20 17

A local law to Regulate Wind Energy Facilities  
(Insert Title)

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

☐ County ☐ City ☒ Town ☐ Village  
(Select one.)

of Greenwood

as follows:

### Section 1. Title.

This Local Law may be cited as the "Amended Wind Energy Facility Law of the Town of Greenwood, New York."

### Section 2. Purpose.

The Town Board of the Town of Greenwood adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through Wind Turbine Generators (WTGs), and to regulate the placement of such systems so that public health, safety and welfare will not be jeopardized.

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

### Section 3. Authority

The Town Board of the Town of Greenwood enacts this Local Law under the authority granted by:

1. Article IX of the New York State Constitution, Section 2(c)(6) and (10).
2. New York Statute of Local Governments, Section 10 (1) and (7).
3. New York Municipal Home Rule Law, Section 10 (1) (i) and (ii) and Section 10 (1)(a)(6), (11), (12), and (14).
4. New York Town Law Section 130 (1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of Streets and Highways), (7-a) (Location of Driveways), (11) (Peace, good order and safety), (15) (Promotion of public welfare), (15-a) (Excavated Lands), (16) (Unsafe Buildings), (19) (Trespass), and (25) (Building lines).
5. New York Town Law, Section 64 (17-a) (Protection of aesthetic interests), (23) (General Powers).

### Section 4. Definitions

As used in this Local Law, the following terms and conditions shall have the meanings indicated:

**AGRICULTURAL OR FARM OPERATIONS** – means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation” as defined in subdivision thirteen of this section and “timber Processing” as defined in subdivision fourteen of this section. Such farm operations may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

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

**RESIDENCE** – means any dwelling suitable for year-round habitation existing in the Town of Greenwood on the date an application is received. A residence may be part of a multi-dwelling or multi-purpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

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

**SOUND PRESSURE LEVEL** – means the level which is equaled or exceeded a stated percentage of time. An L<sub>10-50</sub> dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded, only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind generators (IEC 61400-11), or other accepted procedures.

**SITE** – The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

**SMALL WIND TURBINE GENERATOR** – (“Small WTG”) – A wind turbine generator consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power at that location.

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of the WTG including blades.

**WIND TURBINE GENERATOR** (“WTG”) – A machine which converts the kinetic energy of the wind into electricity available for use beyond that used by the machine (commonly known as a “wind turbine” or “windmill”).

**WIND ENERGY FACILITY** – Any WTG, Small WTG, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND MEASUREMENT TOWER** – A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**WIND ENERGY PERMIT** – A permit granted pursuant to this Local Law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

#### **Section 5. Findings.**

- A. The Town Board of the Town of Greenwood declares that:
1. Wind energy is an abundant, renewable and nonpolluting energy source of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
  2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at that location can be reduced.
  3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
  4. Wind turbines may represent significant potential aesthetic impacts because of their size, lighting, and shadow effects, if not properly sited.
  5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
  6. Wind turbines may present a risk to bird and bat populations if not properly sited.
  7. Wind turbines may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
  8. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.
  9. If improperly sited, wind turbines can interfere with certain types of communications.

#### **Section 6. Permits Required; Transfer; Modifications**

- A. **Permit Requirements:**
1. No Wind Energy Facility shall be constructed or operated in the Town of Greenwood except in compliance with this Local Law.
  2. No WTG shall be constructed or operated in the Town of Greenwood except with a Wind Energy Facility Permit issued pursuant to this Local Law.
  3. No Wind Measurement Tower shall be constructed in the Town of Greenwood except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
  4. No Small WTG shall be constructed or operated in the Town of Greenwood except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- B. **Applicability.** This Local Law shall apply to all areas of the Town of Greenwood.
- C. **Agricultural Use Exemption.** No permit or other approval shall be required under this Chapter for a WTG utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one time its Total height from a property line and two times its Total height from any *permanent* structure on property not owned by the applicant, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with Article II of this Local Law, but shall not require a height variance. Prior to the construction of a WTG under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
- D. **Transfer.** Transfer of any Wind Energy Facility or Wind Energy Permit to an entity other than the applicant to whom the permit was issued shall require approval of the Town, which approval shall be granted upon



LOCAL LAW NO. 1 OF 2017  
Town of Lyons, Wayne County

LOCAL LAW TO AMEND THE TOWN FLOOD PREVENTION LAW  
TO INCORPORATE THE FLOOD MAPS AND STUDIES OF THE  
AREA FORMERLY CONSTITUTING THE VILLAGE OF LYONS

Be it enacted by the Town Board of the Town of Lyons as follows:

**Section 1.**

Section 3.2 of Town of Lyons Local Law 1-1988 is hereby amended to read in its entirety as follows:

The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- (1) Flood Insurance Rate Map (multiple panels): 360891 000-0002, effective March 16, 1983;
- (2) Flood Boundary and Floodway map (multiple panels): 360891 0001-002, effective March 16, 1983;
- (3) Flood Insurance Rate Map (multiple panels): 361226 0001-0003 B, effective September 7, 1979; and
- (4) A scientific and engineering report entitled "Flood Insurance Study, Village of Lyons, New York, Wayne County", dated September 16, 1982.

The above documents are hereby adopted and declared to be part of this Local Law and are on file at the Lyons Town Hall, 43 Phelps Street, Lyons, New York 14489.

**Section 2.**

The Village of Lyons Flood Damage Prevention law, as codified in Section 20.42 of the Village of Lyons Code, is hereby repealed in accordance with Section 789 of the New York State General Municipal Law.

**Section 3.**

If any clause, sentence, paragraph, section or article of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the proceeding in which such adjudication shall have been rendered.

**Section 4. Effective Date.**

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



written acceptance of a duly qualified transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability neither of an applicant nor of any other party under this Local Law.

- E. Facility Modifications. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (i) there will be no increase in Total Height; (ii) no change in the location of the WTG; (iii) no additional lighting or change in facility color; and (iv) no increase in noise produced by the WTG.

#### **Section 7. Applicability**

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed after the effective date of this Local Law.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law, provided, however, that
1. Any such existing Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
  2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

#### **Section 8. Reserved for Future Use**

#### **Section 9. Reserved for Future Use.**

### **Article II**

#### **Wind Turbine Generators (WTG)**

#### **Section 10. Applications for Wind Energy Permits for Wind Turbine Generators**

- A. Application Contents. An application for a Wind Energy Permit for an individual WTG shall include the following:
1. Applicant Information. Name, address, telephone number of applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing submission of the application.
  3. Adjacent Owners. A list of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
  4. Parcel Information. Address, or other property identification, of each proposed Tower location, including tax map section, block and lot number.
  5. Project Description. A description of the project, including the number and maximum rated capacity of each WTG.
  6. Plot Plans. A set of plot plans containing sufficient detail to clearly describe the following:
    - (a) Property lines and physical dimensions of the Site;

- (b) Locations of all proposed facilities, including WTG, access roads, electrical lines, substations, storage or maintenance units, and fencing;
  - (c) Locations of Residences and other major existing structures on the Site and within five hundred (500) feet of the Site boundaries;
  - (d) Locations of parcels adjoining the Site;
  - (e) Locations of public roads on the Site;
  - (f) Locations of all public utility lines on the Site;
  - (g) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed WTG location equal to the Tower Height and the setback distances specified in Section 15B.
7. Wind Turbine Information. One drawing or other set of information may be submitted for each WTG of the same type and Total height. For each type of WTG proposed, the application shall include:
- (a) A vertical drawing of the WTG showing Total Height, turbine dimensions, tower and turbine colors, distance between ground and lowest point of any blade, location of climbing pegs, and access doors.
  - (b) Make, model, picture and manufacturer's specifications, including information on noise levels during WTG operation.
  - (c) Manufacturer's Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
8. Landscaping Plan. A plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added.
9. Lighting Plan. A plan showing any FAA-required lighting and other proposed lighting.
10. Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include: (i) the anticipated life of the WTG; (ii) the estimated decommissioning plan in current dollars; (iii) how said estimate was determined; (iv) the method of ensuring that funds will be available for decommissioning and restoration; (v) the method that the decommissioning cost will be kept current; (vi) the manner in which the WTG will be decommissioned and the Site restored.
11. Complaint Resolution Plan. The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve the complaint.
12. Construction Information. An applicant shall include information relating to the construction/installation of the wind energy conversion facility as follows:
- (a) A construction schedule describing commencement and completion dates; and
  - (b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. EAF. Completed Part 1 of the full EAF as required by SEQRA.
14. Signed Statement. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.
- B. Positive Declaration. If the applicant agrees in writing in the application that the proposed WTG may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
- C. Environmental Studies. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted to the Town Board for its use in reviewing the application:
- (1) Visual Impact Assessment. A visual impact assessment (VIA) of the proposed WTG as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. The VIA shall include: (i) color photographs of the proposed Site from at least two locations accurately depicting the existing and proposed conditions, and (ii) a map showing locations where the proposed WTG could be visible.

- (2) Noise Study. A noise analysis documenting the noise levels associated with the proposed WTG.
- (3) Shadow Study. A study on potential shadows from the WTG. The study shall identify locations where shadows could be caused by the WTG and the expected durations of the shadows at these locations.
- (4) Communications Impacts. An assessment of potential interference of the proposed WTG with microwave, radio, television, personal communication systems and other wireless communication.
- (5) Fire Protection Plan. A fire protection and emergency response plan, created in consultation with the fire department having jurisdiction over the proposed Site.

## **Section 11. Application Review Process.**

- A. Pre-Application Meeting. Applicants may request a pre-application meeting with the Town Board or with any consultants prior retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B. Escrow Agreement. The Town may require the applicant to fund an escrow agreement to cover the amount by which the Town's cost to review the applicant's applications exceed the application fees paid by the applicant.
- C. Application Submittal. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be paid at the time of application submission.
- D. Application Completion Review. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application.
  - (1) Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
  - (2) If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WTGs proposed is increased.
- E. Board Receipt of Applications. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall submit the application to the Town Board.
- F. Public hearing. The Town Board shall hold at least one public hearing on the application.
  - (1) Notice of the public hearing shall be given by first class mail to the property owners within 500 feet of the boundaries of the proposed WTG by the applicant, and a notice of public hearing shall be posted and published in the Town's official newspaper no less than ten nor more than twenty days before any hearing. Where any hearing is adjourned by the Town Board to hear additional comments there shall be further posting of notice and news release of such adjournment. The applicant shall prepare and submit to the Town such notices and mail the Notice of Public hearing as approved by the Town, and shall submit a combined affidavit of service listing each mailing. An affidavit of publication is to be provided by the official newspaper for the Town. The assessment roll of the Town shall be used to determine mailing addresses.
  - (2) The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.
- G. County Planning Board Notice. Notice of the project shall also be given when applicable, to the Steuben County Planning Board, if required by General Municipal Law Sections 239-l and 239-m.
- H. SEQRA Review. WTG applications shall be deemed Type I projects under SEQRA. The Town may conduct the SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings.
- I. SEQRA Findings. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement is prepared, there shall be issued a Statement of Findings, which Statement may also serve as the Town's decision on the applications if adopted by the Town.
- J. Application Decision. Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of a public hearing, and the completion of the SEQRA process, the Town Board

may approve, approve with conditions, or deny the applications, in accordance with the standards of this Article.

## **Section 12. Standards for Wind Energy Facilities.**

The following standards shall apply to all Wind Energy Facilities, unless specifically waived by the Town Board as part of a Wind Energy Permit:

- A. Collection Lines. All power collection lines from the Tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. WTG Height. The maximum Total height of any WTG shall be 600 feet.
- C. Antennae Co Location. No television, radio or other communications antennae may be affixed or otherwise made part of any WTG, except pursuant to the Town Code. Applications may be jointly submitted for WTG and communications facilities.
- D. Advertising. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- E. WTG Lighting. No WTG shall be lit except to comply with FAA requirements, lights will be red or orange of color. Developers of Wind Energy Facilities shall install an aircraft detection lighting system if feasible and approved by the FAA.
- F. Visual Impact Mitigation. Applicants shall use measures to reduce the visual impact of the WTG to the extent possible.
  - (1) WTGs shall use tubular towers.
  - (2) WTGs shall be finished in a single, non-reflective matte finished color.
  - (3) A WTG within a multiple WTG project shall be constructed using WTGs whose appearance, with respect to the other WTGs, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry and rotational speeds.
- G. Guy Wires. The use of guy wires for WTGs is disfavored. A WTG using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
- H. Microwave Links. No WTGs proposed in any Wind Energy Facilities Permit shall be located such that a portion of a WTG blade or towers passes through the axis of a microwave communications path licensed by the FCC and operating on the date of the application.
- I. Waste removal. Solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
- J. Clearing. Wind Energy Facilities shall be designated to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
- K. Wildlife. A WTC shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
- L. Wetlands. WTFs shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- M. Storm Water. Storm water run-off erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- N. Construction Times. Construction of WTFs during non-daylight hours shall not generate nuisance noises, and any construction during non-daylight hours will require approval by the Town Board.

## **Section 13. Required Safety Measures**

- A. Controls. Each WTG shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. Minimum Blade Height. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.

- C. Signs. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. The Town Board may require additional signs based on Safety needs.
- D. Climbing Pegs. No climbing pegs or tower ladders shall be located less than twelve (12) feet from the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. Access Control. WTGs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
- F. Dust Control. The applicant will ensure that dust control measures are implemented during the construction of the WTG.

#### **Section 14. Roads and Traffic**

- A. Traffic Routes. Construction and delivery vehicles for WTGs and Wind Energy Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (i) minimizing traffic impacts from construction and delivery vehicles; (ii) minimizing WTG related traffic during times of school bus activity; (iii) minimizing wear and tear on local roads; (iv) minimizing impacts on local business operations; and (v) controlling dust exposures from construction traffic. Wind Energy Permit conditions may limit WTG-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- B. Road Remediation. The applicant shall be responsible for remediation of roads damaged upon or during the construction or completion of a WTG. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant.

#### **Section 15. Sound Levels and WTG Setbacks**

- A. Sound Levels. The statistical sound pressure level generated by a WTG shall not exceed  $L_{10} - 50$  dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 6 dBA.
- B. Setbacks. Each WTG shall be located with the following minimum setbacks, as measured from the center of the WTG:
  - (1) 1,400 feet from off-Site residences, measured from the exterior of such residence.
  - (2) 1.1 times the WTG Total Height from the nearest Site boundary property line
  - (3) 1.1 times the WTG Total Height from the right-of-way of all public roads
  - (4) 1.1 times the WTG Total Height from above-ground utilities, unless waived by the utility companies.
  - (5) 1.5 times the WTG Total Height from off-Site occupied and permanent structures

#### **Section 16. Noise and Setback Easements.**

- A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver will be granted from such requirement by the Town Board in the following circumstances:
  - (1) Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (i) allow noise levels to exceed the maximum limits otherwise allowed or (ii) setbacks less than required; and
  - (2) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon the completion of the

decommissioning of the benefited WTG in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WTG.

- B. Waivers granted under this Section differ from waiver requests under Article IV of this Local Law in that no Article IV waiver is required if a waiver is given under this Section, and an Article IV waiver must be sought rather than a waiver under this Section if the adjoining property owner will not grant an easement pursuant to this Section.

#### **Section 17. Issuance of Wind Energy Permits**

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and other pre-construction conditions of this Local Law.
- C. The decision of the Town Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

#### **Section 18. Limitations on Approvals, Easements on Town Property**

- A. Wind Flow. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
- B. Easements on Town Property. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

#### **Section 19. Permit Revocation; Abatement**

- A. Operation. A WTG shall be maintained in operational condition at all times. Subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions.
- B. Violations of Permit Conditions. Should a WTG violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after the written notice from the Town Board to cure any deficiency, and the Town Board may grant extensions of the 90 day cure period.
- C. Public Hearing and Remedial Action. Notwithstanding any other abatement provision under this Local Law, if the WTG is not brought into permit compliance after said notice, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and to present evidence, including a plan to come into compliance, (i) order either remedial action within a particular timeframe, or (ii) order revocation of the Wind Energy Permit for the WTG and require the removal of the WTG within 90 days. If the WTG is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Fund to remove the WTG.
- D. Inoperative WTG. If any WTG remains non-functional or inoperative for a continuous period of one (1) year, the applicant agrees that, without further action by the Town Board, the applicant shall remove the WTG.

- (1) This provision shall not apply if the applicant demonstrates to the Town Board that it has been making good faith efforts to restore the WTG to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after a public hearing.
  - (2) WTG non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. Upon request of the Town Board, the applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from an individual WTG necessary to prove the WTG is functioning, which reports may be redacted as necessary to protect proprietary information.
- E. WTG Removal and Remediation. WTG removal shall include removal of all above-ground equipment, removal of foundations to a depth of three (3.0) feet below grade, restoration of soil conditions, and restoration of vegetation to be consistent and compatible with surrounding vegetation.
- F. Decommissioning Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of inoperative WTGs, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning fund requirements shall be fully funded before a building permit is issued.

### Article III

#### Wind Measurement Towers

##### Section 20. Wind Site Assessment

The Town Board acknowledges that prior to construction of a WTG, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. The installation of Wind Measurement Towers, also known as meteorological ("Met") towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

##### Section 21. Applications for Wind Measurement Towers

- A. Applications. An application for a Wind Measurement Tower shall include:
- (1) Applicant Information. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as the original signature of the applicant authorizing the representation.
  - (2) Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
  - (3) Site Information. The address of each proposed tower location, including tax map section, block and lot number.
  - (4) Map. A map showing proposed location of the Wind Measurement Tower and any roads, parcel boundaries or structures within one times the height of the wind measurement tower.

##### Section 22. Standards for Wind Measurement Towers.

- A. Setback. The distance between a Wind Measurement Tower and the property line shall be at least one times the height of the Wind Measurement Tower. Sites for a Wind Measurement Tower can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Permit Duration. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board.

### Article III

#### Small WTG

#### Section 23. Purpose and Intent.

The purpose of this Article is to provide standards for Small WTGs designed for home, farm and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety and community welfare.

#### Section 24. Applications.

- A. Applications for Small WTG Wind Energy permits shall include:
1. Applicant Information. Name, address, telephone number of the applicant. If the application is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed application and (ii) authorizing the submission of the application.
  3. Site Information. Address of each proposed tower location, including tax map section, block and lot number.
  4. Height Information. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
  5. Electrical Drawing. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention Code.
  6. Electric Use. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
  7. Utility Notice. Written evidence that the electric utility provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
  8. Visual Analysis. A visual analysis of the Small WTG as installed, which may include a computerized photographic simulation, demonstrating the visual impact from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

#### Section 25. Development Standards.

All Small WTGs shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

- A. Lot Size. A system shall be located on a lot a minimum of one acre in size. However, this requirement can be met by multiple owners submitting a joint application.
- B. Number. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one for the purposes of this Article.
- C. Use. Small wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
- D. Height. Tower heights may be allowed as follows:
- (a) 65 feet or less on parcels between one and five acres.
  - (b) 80 feet or less on parcels of five or more acres.
  - (c) The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of federal regulations regarding installations close to airports.
- E. Output. The maximum turbine power is limited to 10 K W.



- F. Color. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
- G. Visual impact. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- H. Lighting. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- I. Electric Lines. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- J. Electromagnetic Interference. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- K. Signs. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- L. Access Control. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - (a) Tower-climbing apparatus located no closer than 12 feet from the ground.
  - (b) A locked anti-climb device installed on the tower.
  - (c) A locked, protective fence at least six feet in height that encloses the tower.
- M. Anchors. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
- N. Access Roads. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
- O. Code Compliance. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
- P. Controls. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

## Section 26. Standards.

A Small Wind Energy System shall comply with the following standards:

- A. Setbacks. A Small WTG shall not be located closer to a property line than 1.1 times the Total Height of the Small WTG and 1.5 times to the nearest off-site permanent structure.
- B. Noise. Except during short-term events including utility outages and severe wind storms, a Small WTG shall be designed, installed, and operated so that noise generated by the system shall not exceed 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

## Section 27. Abatement.

- A. Operation. All Small WTGs shall be maintained in good condition and in accordance with all requirements of this section.
- B. Removal. A Small WTG which is not used for a continuous period of one (1) year shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit.

## Article IV

### Waivers

#### Section 28. Waivers.

- A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town. The Town Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties; the benefit to the suppliant, feasible alternatives, and the scope of the request.
- B. The Town Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

## Article V

### Miscellaneous

#### Section 29. Fees.

- A. Wind Energy Permits. Non-refundable application fees shall be as follows:
  - (1) WTG Wind Energy Permit: \$50.00 per megawatt of rated maximum capacity.
  - (2) Wind Measurement Towers Wind Energy Permit: \$200.00 per tower.
  - (3) Small WTG Wind Energy Permit: \$150.00 per Small WTG.
  - (4) Wind Measurement Tower Wind Energy Permit renewals: \$50.00 per tower.
- B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$25.00 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or a certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans and certifications, or conduct inspections as agreed by the parties.
- C. Host Community Agreements. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into host community agreements with the applicant to compensate the Town for expenses or impacts on the community.

#### Section 30. Enforcement; Penalties and Remedies for Violations.

- A. Staff. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Penalties. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or who is in non-compliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who will knowingly assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$500.00 per week per violation up to four weeks, and then if continuing, up to \$1,000.00 per week per violation. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. In addition to fines, the Town may institute a civil proceeding to collect civil penalties in the amount of \$500.00 for each violation and each week such violation continues shall be deemed a separate violation.
- C. Other Remedies. In case of any violation or threatened violation of any of the provisions of this Local Law, in addition to other remedies and penalties herein provided, the Town may issue any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

**Section 31. Severability.**

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

**Section 32. Effective Date.**

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



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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2017 of the ~~(County)(City)(Town)(Village)~~ of Greenwood was duly passed by the Greenwood Town Board on February 9 20 17, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the ~~(County)(City)(Town)(Village)~~ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

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

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

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

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

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

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

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

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

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

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

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

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

*Barbara A. O'Brien*

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

Date:

2/9/2017

