

ARTICLE I  
**Enactment and Application**

**§ 120-1. Title.**

This chapter shall be known and may be cited as the "Town of Eaton Land Use Law."

**§ 120-2. Enactment; authority.**

The Town Board of the Town of Eaton in the County of Madison under the authority of Article 16 of the Town Law and § 10 of the Municipal Home Rule Law of New York State hereby ordains, enacts and publishes the following law.

**§ 120-3. Purpose.**

The purposes of this chapter and the land use districts and regulations herein are to preserve the character of and provide for the orderly growth of the Town and its hamlets; to encourage the most appropriate use of land; to protect and conserve the value of property; to prevent the overcrowding of land; and to promote the health, safety and general welfare of the public.

**§ 120-4. Application of regulations.**

Except for existing uses and other facilities as herein provided:

- A. No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, extended or put in place unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building shall hereafter be erected, altered or put in place to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller bordering yards than specified for the district in which such building is located (see Table I.<sup>1</sup>).
- C. No part of a yard or other open space around any building required in conformity with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.

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1. Editor's Note: Table I is located at the end of this chapter.

## ARTICLE II Terminology

### § 120-5. Word usage.

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "lot" includes the word "plot;" the word "building" includes the word "structure;" and the word "shall" is intended to be mandatory. "Occupies" or "used" shall be considered as though followed by words "or intended, arranged or designed to be used or occupied."

### § 120-6. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY STRUCTURE OR BUILDING** — Any detached structure or building which is subordinate to and whose use is incidental to the use of the principal structure or building on the same lot or on an adjoining lot under the same ownership. All accessory structures and buildings must conform to setback and yard requirements of the district in which they are located.

**ANIMAL HOSPITAL** — Any structure under veterinary supervision for the treatment of sick or injured animals.

**BUILDING AREA** — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

**BUILDING, FARM** — Any building used for the housing of agricultural equipment, produce, livestock or poultry or customary processing of farm products, and provided that such building is located on, operated in conjunction with and is necessary to the operation of the farm.

**BUILDING HEIGHT** — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING LINE** — The line of that face of the building nearest the front line of the lot. This face includes sun parlors, covered porches whether enclosed or unenclosed (but does not include steps) and any overhang. In the case of a cantilevered building, the building line shall coincide with the most protected surface.

**BUILDING OR STRUCTURE** — Anything constructed, erected or installed either on or in the ground or which is attached to something on or in the ground which encloses or covers space, including, but not necessarily limited to, silos, livestock slurry storage tanks, platforms, towers, tents, sheds and storage bins, garden houses and gazebos and excluding only boundary walls and fences.

**BUILDING OR STRUCTURE, PRINCIPAL OR MAIN** — A building or structure in which is conducted the principal use of the lot on which it is located.

**BUSINESS OR COMMERCIAL** — See "commercial or business."

**CAMP, DAY** — Any land including any building thereon used for any assembly of persons

for what is commonly known as "day camp" purposes, whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

**CAMPGROUND** — A parcel of land used or intended to be used, let or rented for occupancy by persons utilizing trailers, tents, campers or other such forms of recreational dwellings.

**CAMP, SEASONAL** — Land on which is located one cabin, camping trailer, shelter or other accommodation suitable for seasonal or temporary living purposes, exclusive of mobile dwellings, primarily for the use of the owner.

**CERTIFICATE OF COMPLIANCE** — A certificate issued by the proper officer of the Town certifying that the building, structure, system or land alteration and proposed use thereof complies with the provisions of this chapter as of the date of issuance.

**CLUB, MEMBERSHIP** — An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes which are not conducted primarily for gain, provided that they are not operating any vending machines or merchandising or commercial activities except required generally for the membership and purposes of such club.

**CLUSTER DEVELOPMENT** — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of an open space as part of the subdivision plan.

**CODE ENFORCEMENT OFFICER** — The Town of Eaton Code Enforcement Officer, or such other person as may be designated or appointed by the Eaton Town Board to administer and/or enforce the provisions of this chapter.

**COMMERCIAL OR BUSINESS** — Of or pertaining to a purchase, sale or transaction involving the disposition of any article, substance, commodity or service; the maintenance or conduct of offices, professions or recreational or amusement enterprises conducted for profit; and also the renting of rooms, business offices and sales display rooms and premises.

**COVERAGE** — That percentage of the plot or lot area covered by the building area.

**DOMESTIC PETS** — Animals that by custom have been adapted or tamed to live in intimate association with people and which normally live in the same dwelling unit as their owner. Domestic pets include, but are not necessarily limited to, dogs, cats, guinea pigs, hamsters, gerbils, rabbits and certain fish, turtles and birds. For the purposes of this chapter, horses and other equine animals, as well as all breeds of swine, animals customarily existing in a wild environment, any other animal customarily relied upon by people as a food source, and all animals kept for a commercial use or purpose are not considered to be a domestic pets.

**DUMP** — A lot of land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

**DWELLING, MULTIFAMILY** — A building or portion thereof containing three or more dwelling units and used for occupancy by three or more families living independently of each other.

**DWELLING, ONE-FAMILY** — A detached building containing one dwelling unit only and intended for the use of a single-family.

**DWELLING, SEASONAL** — A building such as a cabin, shelter or other accommodation suitable only for seasonal living quarters, exclusive of a mobile dwelling.

**DWELLING, TWO-FAMILY** — A detached building containing two dwelling units.

**DWELLING, UNIT** — A building or a portion of a building designed or used as the permanent living quarters for one or more families. The term "dwelling" shall not be deemed to include automobile courts, rooming houses, tourist homes, motels, hotels or temporary camps.

**FAMILY** — One or more persons who live together in one dwelling unit and maintain a common household. A family may consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption, and may also include domestic servants and occasional guests.

**FARM** — Any parcel containing five or more acres of land which is normally used for gain in the raising of agricultural products, including crops, livestock, poultry, dairy products, orchards, horticultural nurseries and tree plantations, maple sugar and stabled animals. It includes necessary farm buildings and structures within the prescribed limits and the storage of equipment used.

**GARAGE, PRIVATE** — An accessory building used in conjunction with a principal building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

**GARAGE, PUBLIC** — Any garage other than a private garage, available to the public, operated for gain and which is used for storage, repair, rental, servicing or equipping of automobiles or other motor vehicles.

**HOME BUSINESS** — Any use customarily carried on in a dwelling unit or in an accessory structure by a member of the family living in the dwelling unit and not more than four other nonfamily employees, which use is secondary to the residential purpose of the dwelling and produces no offensive noises, vibration, smoke, dust, odors, heat or glare or outside storage of equipment and/or materials used in the home business.

**HOSPITAL** — Unless otherwise specified, the term "hospital" shall be deemed to include, without limitation, sanitariums, sanatoriums, preventoriums, clinics, rest homes, convalescent homes, nursing homes and any other place for the diagnosis, treatment or other care of ailments, and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments.

**HOTEL, MOTEL, TOURIST HOME** — A building or buildings in which overnight accommodations are provided for transient guests for compensation.

**INDUSTRY OR INDUSTRIAL** — Includes storage, manufacture, preparation, process or repair of any article, substance or commodity and the conduct of the industrial trade, but shall not mean such preparation, processing or repair as are customarily applied to articles, substances or commodities in retail businesses or trade for on-the-premises transactions.

**INSTITUTION** — A building occupied by a nonprofit establishment for public use.

**JUNKYARD** — Land used for the collecting, storage and sale of waste paper, rags, scrap metal or discarded material or for the collecting, dismantling, storage and salvaging of two or more motor vehicles, either unlicensed or not in operating condition. Motor vehicles registered on a seasonal basis are exempt from this definition.

**KENNEL** — Any premises on which four or more dogs over four months of age are kept for commercial care.

**LANDSCAPED AREA** — Any non-built-upon area of grass, agricultural fields, pasture, woodlot, forest, standing or flowing water maintained in healthy condition.

**LOT** — A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this chapter. No area shall be counted as accessory to more than one main building or use, and no area necessary for compliance with the open space requirements for one main building or use shall be included or counted in the calculation of the open space accessory to any other main building or use.

**LOT AREA** — An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public road right-of-way shall not be included in calculating lot area.

**LOT DEPTH** — The mean distance between the front and rear lot lines, measured in the general direction of the side lines of the lot.

**LOT LINES** — The property lines bounding the lot.

**LOT, THROUGH** — An interior lot having frontage on two parallel or approximately parallel roads.

**LOT, WIDTH** — The mean width of a lot measured at right angles to its depth.

**MOBILE DWELLING (MOBILE HOME)** — A structure, which is transportable in one or more sections, built on a permanent chassis and designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities, and including the plumbing, heating, air-conditioning and electrical systems contained therein. A prefabricated dwelling not built on a permanent chassis or sectional dwelling not built on a permanent chassis and all travel trailers, truck campers and motor dwellings shall not be considered mobile dwellings. Mobile dwellings used for nondwelling purposes are included in this definition.

**MOBILE DWELLING PARK (TRAILER PARK OR MOBILE DWELLING PARK)** — A parcel of land under single ownership or management which has been planned and improved for the placement of at least two mobile dwellings, except that farmers who maintain no more than two mobile dwellings for hired help or family members whose employment is principally related to the farm are not classified as a "mobile dwelling park."

**NONCONFORMING BUILDING** — Any building which contains a use permitted in the district in which it is located, but which does not conform to the district regulations for front, side or rear yards; maximum height; lot coverage; minimum habitable area per dwelling unit; off-street parking or loading; or landscaping, screening or fencing requirements.

**NONCONFORMING LOT** — A lot of record existing at the date of the passage of this chapter which does not conform to the minimum lot area, width, depth or frontage standards of the district in which it is situated.

**NONCONFORMING USE** — Any use of any building, structure or land existing at the time of enactment of this chapter which does not conform to the use regulations of the district in which it is situated.

**PARKING SPACE OR PARKING SPACE UNIT** — An off-street space available for the parking of one motor vehicle and having an area of not less than 200 square feet exclusive of passageways or driveways, and having direct access to a road, highway or alley.

**PLAT** — A map, plan or layout of a city, town, section or subdivision indicating the location and boundaries of individual properties.

**PUBLIC WATER/PUBLIC SEWER** — A water or sewage system which is owned and operated by a government authority or by a utility company or a sewer district adequately controlled by a government authority.

**RESTAURANT** — Any establishment, however designated, at which food is regularly sold for consumption on the premises to patrons seated within an enclosed building or elsewhere on the premises. However, a snack bar or refreshment stand at a public, semipublic or community pool, playground, playfield or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

**RIGHT-OF-WAY** — The line determining the road or highway public limit of ownership. Also, an easement established for passage across land.

**SIGN** — Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public; each display surface shall be considered to be a sign.

**SIGN, ON-PREMISES** — Any sign related to a business or profession conducted or to a commodity or service sold or offered upon the premises where such sign is located.

**SITE PLAN** — Maps and detailed descriptive text required for any proposed development so designated by the Planning Board (see § 120-33).

**SPECIAL FLOOD HAZARD AREA** — That area along a waterway designated and mapped by the Federal Emergency Management Agency under the Flood Disaster Protection Act of 1973, as subject to flooding that could damage buildings, structures and accessory installations in that area.

**SPECIAL PERMIT** — A permit allowing one of a number of specifically listed land uses, issued following a Planning Board review of the suitability of such a use, at a particular location, with regard to various explicit standards and subject to compliance with an approved site plan and such further conditions as the Planning Board may set.

**STABLE, PRIVATE** — An accessory building in which horses are kept for private use and not for hire, remuneration or sale.

**STABLE, PUBLIC** — A building in which any horses are kept for remuneration, hire or sale.

**STREET LINE** — The outer boundary lines of a right-of-way used for vehicular traffic, whether public or private.

**SWAMPS, WETLANDS** — Areas with permanent or seasonal standing water or those so designated by the United States Army Corps of Engineers or New York State Department of Environmental Conservation.

**USE, ACCESSORY** — A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building.

**USE, PRINCIPAL** — The specific purpose for which land or a building is designated, arranged,

intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

**UTILITIES, COMMUNITY** — Community facilities for water supply and distribution, sewage collection and disposal, storm drainage, owned and operated by a private owner, semipublic agency or a public agency, for three or more dwellings or establishments.

**UTILITIES, PUBLIC AND/OR SEMIPUBLIC** — Distribution points, transmission lines and stations, substations, storage yards, garages and other central buildings and/or related uses for the operation and provision of public and semipublic power, fuel, water and communications service licensed by the Public Service Commission.

**VARIANCE, AREA** — A legally permitted modification of this chapter to allow for different dimensions in the area coverage of a specific parcel of land.

**VARIANCE, USE** — A legally permitted modification of this chapter to allow a different use of a specific parcel of land or of a specific structure.

**YARD, FRONT** — An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the edge of the highway right-of-way and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the nearest point of the front line of the building and the road right-of-way. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard. The front yard must be free of any man-made building or structure. The only exception is some types of permitted roadside stands.

**YARD, REAR** — An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot, or the road right-of-way if there is a roadway, and the nearest point of the rear line of the main building. Accessory buildings may be built on the rear yard, unless the lot is a through lot.

**YARD, SIDE** — An open unoccupied space on the same lot with the principal building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a "side line."

**ARTICLE III**  
**Districts and Boundaries**

**§ 120-7. Establishment of districts.**

The Town of Eaton has three existing districts:

<b>Code</b>	<b>Full Name</b>
ARC	Agricultural/ Residential/ Commercial District
ARC2	Agricultural/ Residential/ Commercial District No. 2 (with mobile home exclusion)
RD-2	Residential District No. 2

**§ 120-8. Land Use Map.**

The land use districts are shown, defined and bounded on the map entitled "Town of Eaton Land Use Map," which, with all explanatory matter thereon, is hereby made a part of this chapter. The map shall be on file in the Town Clerk's office.

**§ 120-9. Land Use Schedule.**

The Land Use Schedule shows, for all districts, the permitted minimum requirements for lot sizes, road frontage, yard setbacks and maximum building heights.<sup>2</sup>

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**2. Editor's Note: Table I, Land Use Schedule, is located at the end of this chapter.**



ARTICLE IV  
**Land Use Districts**

**§ 120-10. Agricultural/Residential/Commercial District (ARC).**

The purpose of this district is to preserve farm lands and adjoining settlements as long as possible, to provide for separate residences of all kinds and to invite all other uses, under certain controls, in order to assure the livelihood and enjoyment of those who live there.

A. Principal uses permitted.

- (1) Single-family dwellings built on a foundation, excluding mobile dwellings.
- (2) Two-family dwellings built on a foundation, excluding mobile dwellings.
- (3) Farm and farm buildings for related agricultural activities.
- (4) On a farm, either two one-family dwellings; one-family dwelling and one mobile dwelling; or two mobile dwellings for close relatives or hired hands (mobile dwellings on a farm are subject to site plan review under § 120-33 of this chapter).

B. Accessory uses permitted.

- (1) Private garages with floor space not to exceed 1,500 square feet. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
- (2) Off-street parking.
- (3) Customary accessory structures (storage sheds, playhouses, greenhouses, etc.) with floor space not to exceed 1,500 square feet. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
- (4) Accessory buildings necessary to the principal use and which do not include any activity commonly conducted as a separate business and which do not exceed 1,500 square feet in floor area. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
- (5) Customary farm buildings located on the same parcel as the principal use.
- (6) Animal shelters for domestic pets properly maintained and stables for equine animals.
- (7) Other structures such as private swimming pools and fireplaces.
- (8) Customary home businesses or professional offices conducted by the residents.
- (9) Roadside stands for the sale of seasonal farm produce or homemade items. Such stands shall be set back at least five feet from the edge of the road right-of-way, provide safe off-street parking for at least three motor vehicles and include a driveway that permits vehicles to enter the road without backing onto it.
- (10) The keeping of animals for 4-H and similarly organized youth groups (approval is conditional upon a letter from the project supervisor certifying participation in the 4-H or other organizations' program).

- (11) Wildlife conservation and harvesting.
  - (12) Noncommercial fishing and hunting preserves.
  - (13) Nonintensive, noncommercial, outdoor recreation.
- C. Uses requiring a special permit.
- (1) Multifamily housing.
  - (2) Mobile dwellings, which are to be considered individually by the Planning Board. Under any circumstances, the same lot size and dimensional requirements as are set forth on Table I for single-family units will apply.<sup>3</sup>
  - (3) Mobile dwelling parks.
  - (4) Garages and all accessory buildings larger than 1,500 square feet in planar area. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
  - (5) Churches and other similar places of worship, parish houses, convents and similar facilities of religious groups.
  - (6) Business, commercial and professional establishments.
  - (7) Day camps, campgrounds, bed-and-breakfast operations, guest or vacation homes for pay and private clubs.
  - (8) Commercial outdoor recreation, such as ski runs, snowmobile parks, miniature and full-size golf courses, driving ranges, race tracks, parks, playgrounds, play fields or similar facilities.
  - (9) Development within one-hundred-year floodplains as designated by the federal government; or within wetlands as defined by the United States Army Corps of Engineers.
  - (10) Development of steep slopes, defined as areas with slopes exceeding 15%, as shown on the maps incorporated in the Land Use and Natural Resources Inventory of the Town of Eaton, as prepared by the Madison County Planning Department in 1988.
  - (11) Public recreation areas, including parks, playgrounds and playfields.
  - (12) Public buildings, libraries, museums and public and nonprofit private schools accredited by the State Education Department.
  - (13) Hospitals, nursing homes and other health care facilities.
  - (14) Colleges and private schools, including nursery schools and day-care centers.
  - (15) Public utility uses.
  - (16) Industrial and manufacturing enterprises.

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3. Editor's Note: Table I, Land Use Schedule, is located at the end of this chapter.

- (17) Keeping animals other than domestic pets on a property which is less than five acres in size. Permit is renewable annually without fee and without a public hearing if no complaints have been received for that location.
- (18) Temporary installation of one separate dwelling unit for the care of disabled or elderly family members related by blood or marriage.

### § 120-11. Agricultural/Residential/Commercial District No. 2 (ARC2).

The purpose of this district is to preserve the value of property and residences, similar to the ARC District, except for the exclusion of mobile dwellings. All dwellings constructed in the district shall comply with the New York State Uniform Code requirements for site-constructed buildings.

#### A. Principal uses permitted.

- (1) Single-family dwellings, which shall be built on-site on a foundation of cast-in-place concrete or masonry block, or other foundation design approved under the New York State Uniform Code, or on a poured concrete slab, and shall be constructed in the place of the intended use of the building. New dwellings shall have a total living space floor area of no less than 900 square feet (not including basement space).
- (2) Two-family dwellings, which shall be built on-site on a foundation of cast-in-place concrete or masonry block, or other foundation design approved under the New York State Uniform Code, or on a poured concrete slab, and shall be constructed in the place of the intended use of the building. New dwellings shall have a total living space floor area of no less than 1,800 square feet (not including basement space).
- (3) Farm and farm buildings for related agricultural activities.
- (4) On a farm, two single-family dwellings conforming to the requirements contained in Subsection A(1).

#### B. Accessory uses permitted.

- (1) Private garages.
- (2) Customary accessory structures not to exceed 1,500 square feet. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
- (3) Animal shelters for domestic pets properly maintained and stables for equine animals.
- (4) Other structures such as private swimming pools, fireplaces and decks.
- (5) Customary farm buildings located on the same parcel as the principal use.
- (6) Off-street parking.
- (7) Roadside stands for the sale of seasonal farm produce or homemade items. Such stands shall be set back at least five feet from the road right-of-way, provide safe off-street parking for at least three motor vehicles and include a driveway that permits vehicles to enter the road without backing into it.

- (8) Customary home businesses or professional offices conducted by the residents.
- (9) Wildlife conservation and harvesting.
- (10) Fishing and hunting preserves.
- (11) Nonintensive, noncommercial outdoor recreation.
- (12) Accessory buildings necessary to the principal use and which do not include any activity commonly conducted as a separate business.
- (13) The keeping of animals for 4-H and similarly organized youth groups (approval is conditional upon a letter from the project supervisor certifying participation in the 4-H or other organization's program).

C. Uses requiring a special permit.

- (1) Multifamily housing.
- (2) Churches and other similar places of worship, parish houses, convents and other similar facilities or religious groups.
- (3) Business, commercial and professional establishments.
- (4) Day camps, guest or vacation homes for pay and private clubs.
- (5) Commercial outdoor recreation such as ski runs, campgrounds, driving ranges or any such facility.
- (6) Development in special flood hazard areas designated by the Federal Government, swamps, wetlands, streams, lakes, steep slopes (greater than 15%) and in agricultural districts certified by the New York State Department of Agriculture and Markets.
- (7) Public recreation areas, including parks, playgrounds and playfields.
- (8) Public utility uses.
- (9) Keeping animals other than domestic pets on a property which is less than five acres in size. The permit is renewable annually without fee and without an additional public hearing if no complaints have been received on that location.

**§ 120-12. Residential District No. 2 (RD-2). [Amended 1-10-2005 by L.L. No. 1-2005 ]**

The purpose of this district is to provide for summer and year-round housing in and around waterfront property, with a minimum of nuisance caused by different land uses.

A. Principal uses permitted.

- (1) One-family dwellings built on a foundation.
- (2) Two-family dwellings built on a foundation.
- (3) Farms and farm buildings for related agricultural activities.

B. Accessory uses permitted. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**

- (1) Private garages (except not permitted in the rear yard of a lakefront lot).
- (2) Customary accessory structures not to exceed 1,500 square feet (except not permitted in the rear yard of a lakefront lot).
- (3) Animal shelters for domestic pets properly maintained.
- (4) Private swimming pools and fireplaces.
- (5) Off-street parking (except not permitted in the rear yard of a lakefront lot).
- (6) Customary farm structures related to the principal agricultural use (except not permitted in the rear yard of a lakefront lot).

C. Uses requiring a special permit.

- (1) Home businesses, provided that they are carried on by residents of the premises entirely within the principal residence structure on the premises in conjunction with the residential use of the premises, and with no exterior evidence of the business, except one sign.
- (2) Accessory structures over 1,500 square feet. **[Amended 7-14-2020 by L.L. No. 1-2020 ]**
- (3) Public utility uses.
- (4) Development within one-hundred-year floodplains as designated by the federal government; or within wetlands as defined by the United States Army Corps of Engineers.
- (5) Development of steep slopes, defined as areas with slopes exceeding 15%, as shown on the maps incorporated in the Land Use and Natural Resources Inventory of the Town of Eaton, as prepared by the Madison County Planning Department in 1988.
- (6) Expansion of any existing nonconforming use, such as rental of cottages and other commercial activities.

ARTICLE V  
**Supplementary Regulations**

**§ 120-13. Additional regulations for all lots.**

This article provides for the safety of the occupants of buildings and of those who use the roads. Those who build, buy, use, repair or remodel any buildings shall observe the standards published by New York State under the Model Housing Code, the Uniform Fire Prevention and Building Code, the State Code for Construction and Installation of Mobile Homes and all other applicable codes.

**§ 120-14. Obstruction of vision.**

On a corner lot, there shall be no obstruction of vision creating a safety hazard for anyone using the intersecting roads. The determination of an appropriate "clear zone" shall be made by the Code Enforcement Officer and County or Town Highway Superintendent.

**§ 120-15. On-premises parking space for vehicles.**

The following minimum parking spaces shall be provided on the premises:

- A. One- and two-family dwelling units: two per dwelling unit.
- B. Multifamily dwelling unit: two per dwelling unit plus one extra for service and guests for each three dwelling units.
- C. Hotels, motels, tourist homes and boardinghouses: one per guest room, plus one per staff based on maximum staffing expected, plus one for service.
- D. Other businesses: one per 100 square feet of customer floor space, or as required by conditions of the special permit.
- E. Public assembly, government buildings and outdoor recreation: as required by conditions of the special permit.

**§ 120-16. Performance standards.**

In all districts, any use that endangers the health, safety or welfare of any person is prohibited. The Planning Board, through the special permit process, shall decide whether proposed uses meet reasonable standards for such purposes. Such standards may apply to noise, odor, dust, dirt, smoke, noxious gases, building vibrations, excessive outside lighting, dangerous glare or other impairment of vision, contamination of soil and open water systems and other physical conditions.

**§ 120-17. Storage of flammable liquids, chemicals and explosives.**

The design, construction, maintenance and operation of storage facilities for flammable liquids, chemicals and explosives shall comply with all applicable state and federal laws, codes and regulations.

**§ 120-18. Junkyards.**

- A. Commercial junkyards. Operation of a junkyard for commercial use requires a special permit, as well as a junkyard license.
- B. Screening. New and existing junkyards visible from an adjacent public road shall be screened on all sides by a fence and/or evergreen trees to provide a visual barrier not less than six feet high. Any man-made barrier, including a fence, shall not be closer to the lot line than specified for other business or commercial structures in the Land Use Schedule.

#### **§ 120-19. Extraction of topsoil, sand, gravel or stone.**

Operation of a mine for other than personal, noncommercial use constitutes a business and requires a special permit. All land owners shall comply with the New York State Mined Land Reclamation Law (Chapters 1043 and 1044)<sup>4</sup> which requires that operators who mine more than 1,000 tons of minerals from the earth within 12 successive calendar months must obtain a permit for such operations from the New York State Department of Environmental Conservation.

#### **§ 120-20. Conservation of steep slopes.**

The construction of new buildings, roads and other facilities on slopes of 15% or more grade (15% equals a 11/2 foot rise in 10 feet horizontal distance) shall require a special permit, and a performance bond or other security may be required. Logging on such areas shall comply with New York State Department of Environmental Conservation regulations.

#### **§ 120-21. Public utilities and services.**

All new construction and erection of public utilities and services, except hookups to single customers from existing facilities, require the granting of a special permit. This applies to, but is not limited to, those utilities that furnish power, fuel, water, communications and such public services as fire, police, solid waste disposal and premises for government agencies.

#### **§ 120-22. Buildings and sites of historic or natural value.**

All buildings and sites that are now or hereafter designated by the Town Board as sites of historic or natural value shall require a special permit before alteration or destruction.

#### **§ 120-23. Nonconformities.**

For purposes of this section, a nonconformity is defined as any structure, lot or use, which does not conform to the regulations as set forth in this chapter for the district in which it is situated, but which lawfully existed prior to the enactment of this chapter or any revision or amendment thereto, and which is maintained after the effective date thereof, although it does not conform to the use or area regulations of the district in which it is located.

- A. Policy. It is the intent of this section to permit nonconformities to continue, but not encourage their survival, where such nonconformities do not endanger the public health, safety and welfare.

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4. Editor's Note: See Environmental Conservation Law § 23-2703 et seq.

- B. Nonconforming uses. All lawful uses existing at the time of the enactment or amendment of this chapter may be continued even if such uses do not conform with the provision of this chapter, provided that:
- (1) No nonconforming use shall be extended, expanded or enlarged into any building or lot, or portions thereof, not used for such purposes at the effective date of adoption or amendment of this chapter without a special permit. However, a nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of the enactment or amendment of this chapter.
  - (2) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter without a special permit.
  - (3) If any such nonconforming use ceases for any reason for a period of one year or more, such use shall not be reestablished without a special permit. Intent to reestablish or resume a nonconforming use shall not confer the right to do so. In case of a nonconforming business or commercial use, if the structure remains closed for business for a period of one year or more, the nonconforming use shall be regarded as ceased. Any previously issued special permit in conjunction with this section shall also cease.
  - (4) No such nonconforming use shall be restored or structurally altered in any way that will increase its degree of nonconformance without a special permit. A nonconforming use may be structurally altered or renovated so as to decrease its degree of nonconformance.
  - (5) Any nonconforming building or use, if changed to conform to the requirements of this chapter, shall not thereafter be changed back to a nonconforming building or use.
- C. Nonconforming buildings. A nonconforming building may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that action does not increase the degree of or create any new nonconformity. A building which contains a use allowed in its district by special permit may be repaired, structurally altered, moved, reconstructed or enlarged after review and issuance of a new special permit, provided that the action does not increase the degree of or create any new nonconformity.
- D. Nonconforming lots. Any lot which was duly approved prior to this chapter and which has an area less than required by this chapter may be used for any permitted purpose if:
- (1) The owner, on the effective date of this chapter, has no adjoining land which would permit the owner to make the lot conforming, and if all other zoning and planning requirements are satisfied; or
  - (2) The owner obtains a variance pursuant to the provisions of Article VII for any setback, frontage, lot coverage or other requirement of this chapter (other than lot size) which can not be met. Such a variance may only be granted if the applicant demonstrates that all requirements of New York State law relating to residential lots (such as percolation, sewage disposal and water supply) can be satisfied.
- E. Creation of nonconforming lots by reduction of lot area. No nonconforming lot shall be created where no nonconforming lot existed prior to the passage of this chapter. No lot shall



be so reduced in area that the total area, yard setbacks, lot width, frontage, coverage or other requirements of this chapter shall be less than herein prescribed for each land use district without a variance. The provisions of this section shall not apply when part of a lot is taken for a public purpose.

ARTICLE VA  
**Telecommunications Towers**  
[Added 10-13-2011 by L.L. No. 1-2011 ]

**§ 120-23.1. Title.**

The provisions of this article shall be referred to as the "Telecommunications Tower Regulations of the Town of Eaton."

**§ 120-23.2. Purpose.**

The purpose of these supplemental regulations is to promote the health, safety and general welfare of the residents of the Town, to provide standards for the safe provision of telecommunications services consistent with applicable federal and state regulations, and to protect the natural features and aesthetic character of the Town of Eaton. The provisions of these regulations do not apply to amateur radio service equipment and facilities intended and used solely for personal, noncommercial purposes. Nor are these regulations intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services consistent with current federal regulations.

**§ 120-23.3. Definitions.**

As used in this article, the following terms shall be defined as follows:

**ACCESSORY FACILITY** — An accessory facility serves the principal use, is subordinate in area, extent and purpose to the principal use, and is located on the same lot as the principal use. Examples of such facilities include transmission equipment, electrical generators and storage sheds.

**ANTENNAE** — A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include, but not be limited to, radio navigation, radio, television, wireless and microwave communications. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

**TELECOMMUNICATIONS TOWER or TOWER** — A structure on which transmitting and/or receiving antenna(e) used in connection with a commercial enterprise are located.

**§ 120-23.4. Application of special use regulations.**

- A. No telecommunications tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with these regulations.
- B. The applicant shall demonstrate with a reasonable degree of certainty that the proposed location and height for the telecommunications tower is necessary to meet the frequency reuse and spacing needs of the system, and to provide adequate service coverage in the Town.
- C. Exceptions to these regulations are limited to:

- (1) New uses which are accessory to residential uses and;
  - (2) Lawful or approved uses existing prior to the effective date of these regulations.
- D. Where these regulations conflict with other laws and regulations of the Town of Eaton, the more restrictive shall apply, except for telecommunications tower height restrictions, which are governed by the following special use permit standards.

### **§ 120-23.5. Special use permit standards.**

#### **A. Site plan.**

- (1) An applicant shall be required to submit a site plan showing all existing and proposed structures and improvements, including access roads and driveways, and shall include grading plans for new facilities and access roads and driveways. The site plan shall also include documentation on the intent and capacity of the proposed use, as well as a justification for the height of any tower or antennae, and justification for any land or vegetation clearing required.
- (2) Additionally, the Planning Board shall require that the site plan include a completed SEQR visual environmental assessment form addendum (visual EAF) and a landscaping plan addressing other standards listed within this article with particular attention to visibility from key viewpoints within and outside of the Town as identified in the visual EAF. The Planning Board may require submission of a more detailed visual analysis based on the results of the visual EAF.

#### **B. Shared use.**

- (1) At all times, shared use of existing towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on preexisting structures other than towers shall generally be preferred over the construction of new towers. An applicant shall be required to present a competent report inventorying existing towers and other structures within a practical distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other preexisting structures as an alternative to a new construction.
- (2) An applicant intending to share use of an existing tower shall be required to document consent from the existing tower owner to shared use. The applicant shall substantiate that all potential issues created by the shared use, including but not necessarily limited to structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes, including real property acquisition or lease required to accommodate shared use, have been adequately addressed.
- (3) In the case of new towers, the applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from owners of existing towers and other facilities, as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.

- C. Setbacks. Towers and antennae shall be erected only to such height as is technically necessary to accomplish the purpose they are to serve. Front, rear, and side setback

requirements from property lines and any structures shall be the height of the tower plus 10%, or the front, side, and rear yards otherwise required in the district, whichever is greater. Additional setbacks may be required by the Planning Board to contain on-site ice fall or debris from tower failure and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts, including guy wire anchors, and all accessory facilities.

D. Visibility.

- (1) All towers and accessory facilities shall be sited to have the least adverse visual effect on the environment.
- (2) Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding tree line and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding tree line unless other standards are required by the FAA. In all cases, structures offering slender silhouettes (i.e., monopoles or guyed towers) shall be preferable, except where alternate structures offer greater capacity for future shared use. Towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
- (3) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

E. Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible. Clear-cutting of trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

F. Screening. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

G. Access and parking. An access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Public road standards may be waived by the Planning Board in meeting the objectives of this subsection.

H. Signs. Signs shall not be permitted on towers, antennae, or related accessory facilities, except

for signs displaying owner contact information and/or safety instructions. There shall be a maximum of two such signs, and shall not exceed five square feet in area per sign.

- I. Utility connections to towers and accessory facilities shall be underground.
- J. Towers and related facilities shall be maintained in good working condition and repair. Towers shall be inspected annually by a professional engineer, licensed in the State of New York, for structural integrity and continued compliance with these regulations. A copy of the inspection report, including findings and conclusions, shall be submitted to the Town's Code Enforcement Officer no later than December 31 of each year.
- K. Abandonment. A telecommunications tower that is not used for 36 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the 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 permit shall constitute grounds for the revocation of the approval by the Town. In addition, failure to remove an obsolete or unused tower in accordance with this section shall be a violation of this section and subject to fine and/or imprisonment or both. Any and all structures, guy cables and/or enclosures accessory to such telecommunications tower shall also be removed. The site shall be restored to as natural a condition as possible.
- L. Authority to impose conditions.
  - (1) The Planning Board shall have the authority to impose such reasonable conditions and restrictions upon the special use permit and/or site plan approval as may be directly related to the achievement of the purposes envisioned by this article with respect to the proposed telecommunications tower and facilities.
  - (2) Such conditions shall include provisions for dismantling and removal of towers and accessory facilities upon abandonment of use, including posting of a financial bond of security.

ARTICLE VB  
**Residential Wind Energy Facilities**  
[Added 10-13-2011 by L.L. No. 1-2011 ]

**§ 120-23.6. Title.**

The provisions of this article shall be referred to as the "Residential Wind Energy Facilities Regulations of the Town of Eaton."

**§ 120-23.7. Purpose.**

The purpose of this article is to provide standards for residential wind energy conversion systems with maximum generating capacity of 100 kilowatts or less designed for on-site home and/or farm use and that are primarily used to reduce on-site consumption of utility power (hereinafter "RWECS"). The intent of this article is to encourage the development of RWECS and to protect the public health, safety, and community welfare.

**§ 120-23.8. Special permit requirement.**

No person, firm, or corporation being the owner or occupant of any land or premises within the Town of Eaton shall use or permit the use of said land or premises for the construction of a RWECS without obtaining a special permit and site plan approval therefor as hereinafter provided.

**§ 120-23.9. Applications to Planning Board.**

All applications for a special permit and site plan approval for the construction of a RWECS to be used to generate electrical energy shall be determined by the Planning Board. Each application for a special permit and site plan approval shall be accompanied by:

- A. A complete plan, drawn to scale, showing the design and location of the facility on the site;
- B. The location of all structures, power lines or other utility lines within a radius equal to 150% of the proposed structure height from ground to tip of any rotating blades;
- C. Dimensions and sizes of the various structural components of the support tower's construction;
- D. Manufacturer's data sheets and such other information as may be necessary to fully describe the make, model, features, generating capacity of the proposed facilities and the manufacturer's installation specifications and recommendations.
- E. Certification by a registered professional engineer or manufacturer's certification that the tower was designed to withstand wind load requirements for structures as set forth in the New York State Building Code.
- F. No experimental, home-built, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure, and a determination by the Planning Board of appropriate setback distances on the basis of that documentation.

**§ 120-23.10. Regulations.**

The following restrictions and standards apply to all residential wind energy facilities:

- A. Placement of facilities on site.
  - (1) Maximum height shall be determined on a case-by-case basis as hereafter specified.
  - (2) Facilities may be placed in rear or side yards but shall not be placed in front yards.
  - (3) Property line setback requirements include guy wires or cables.
  - (4) No individual tower facility shall be installed in any location that would substantially detract from or block the view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way, publicly owned land within the Town of Eaton, privately owned land within the Town of Eaton or that extends beyond the border of the Town of Eaton.
- B. Setbacks. All portions of the facility, including support and accessory facilities, shall be set back a distance from all residential structures and property lines equal to 150% of the maximum height of the proposed facilities, including the maximum height of any rotating blades.
- C. A maximum of one RWECS facility shall be permitted per parcel, except wind energy conversion systems for farms. Each parcel upon which a RWECS is located must include a principal used residential structure. A maximum of three RWECS facilities shall be allowed to support the agricultural purposes on any farm actively used for agricultural production.
- D. Access control to facilities.
  - (1) Windmills may be designed as either a monopole or lattice structure.
  - (2) A monopole shall have a lockable door.
  - (3) Windmills will have an anti-climbing device within a minimum height of 12 feet from the ground surface.
- E. Signage. The type and placement of warning signs shall be determined on an individual basis as safety needs dictate. No advertising signs will be permitted.
- F. Safety.
  - (1) All power lines connecting the RWECS facilities to public utility interconnection equipment shall be located underground and installed by certified professionals and must meet all applicable national, state and local electrical codes.
  - (2) All turbines shall have an overspeed control device built in by the manufacturer.
  - (3) All turbines shall be shielded at the alternator and the cables shall be armored to prevent any electromagnetic interference with radio, cell phone, and other electromagnetic signal transmissions.
  - (4) All guy wires and cables shall be marked with high-visibility orange or yellow sleeves

from the ground to a point 10 feet above the ground.

- G. Color. Towers and rotating blades shall be painted white or gray or another nonreflective, unobtrusive color. No advertising or commercial logos or insignias may be visible on the structure(s).
- H. Height. The RWECS shall not exceed the total minimum height established by the New York State Energy Research and Development Authority ("NYSERDA") for grant funding at a wind speed of 10 miles per hour.
- I. Noise. The level of noise produced during operation of a windmill shall not exceed 50 dba, as measured at the property lines owned by anyone other than the site owner, as those boundaries exist at the time of the special permit application. The applicant will be required to submit technical data proving such performance standard to the satisfaction of the Planning Board as to this requirement.
- J. Lighting. No RWECS shall be artificially lighted, unless so required by the FAA.
- K. Removal of vegetation. The construction of a RWECS shall only remove the natural vegetation necessary for the construction, operation, and maintenance of the system.
- L. Abandonment. A RWECS, or any portion thereof, that is not used for 12 successive months 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 permit for the facility shall constitute grounds for the revocation of all permit approvals by the Town. In addition, failure to remove an obsolete or unused facility in accordance with this section shall be a violation of this section. If said abandoned facility is not dismantled and removed within six months of abandonment, the Town may dismantle and remove said facility, and the cost of removing the facility shall be a lien of the property, and, if unpaid by the owner, said expense shall be added to the property owner's tax bill. Any and all structures, guy wires, cables and/or enclosures accessory to such facility shall also be removed. The site shall be restored to as natural a condition as possible.

#### **§ 120-23.11. Imposition of conditions by Planning Board.**

In granting approval, the Planning Board may impose other conditions and restrictions deemed necessary for the maintenance and safety of such towers and/or necessary to minimize any adverse effect or impact of the proposed use on neighboring properties.



ARTICLE VC  
**Commercial Wind Energy Facilities**  
[Added 10-13-2011 by L.L. No. 1-2011 ]

**§ 120-23.12. Title.**

The provisions of this article shall be referred to as the "Commercial Wind Energy Facilities Regulations of the Town of Eaton."

**§ 120-23.13. Purpose.**

The purpose of this article is to provide standards for commercial wind energy conversion systems with maximum generating capacity exceeding 100 kilowatts (hereinafter "CWECs"). The intent of this article is to encourage the development of commercial wind energy conversion systems and to protect the public health, safety, and community welfare.

**§ 120-23.14. Special permit requirements.**

No person, firm, or corporation being the owner or occupant of any land or premises within the Town of Eaton shall use or permit the use of said land or premises for the construction of a CWECs except in conformance with these regulations and only upon first obtaining a special permit and site plan approval therefor as herein provided.

**§ 120-23.15. Regulations.**

The following lot size, dimension and construction standards apply to all CWECs facilities:

- A. Minimum lot size shall be five acres.
- B. Minimum road frontage shall be 450 feet.
- C. Minimum lot depth shall be 450 feet.
- D. Maximum structure height shall be as determined by the Planning Board in the course of its special permit review.
- E. Setbacks.

- (1) The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and all surrounding street and property lines, overhead utility lines, any dwellings, and any other generation units, aboveground transmission facilities, and separate meteorological facilities, shall be equal to no less than 1.5 times the proposed structure height plus the rotor radius. The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds that the following circumstances apply:

- (a) The property line in question:

- [1] Separates two properties that are both part of a commercial wind-powered electricity generation facility; and

[2] Either:

- [a] Both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed on them as part of the project under review; or
- [b] The owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of, the easement area is appropriately restricted.

- (2) No experimental, home-built, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure, and a determination by the Planning Board of appropriate setback distances on the basis of that documentation.
- F. No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- G. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
- H. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board's approval as it applies to existing residential uses within 2,000 feet of each tower for which such strobe lighting is proposed.
- I. No individual tower facility shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way or publicly owned land within the Town of Eaton, or that extends beyond the border of the Town of Eaton.
- J. Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.
- K. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- L. The minimum distance between the ground and any part of the rotor blade system shall be 30 feet.

- M. All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.
- N. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit site.
- O. Prior to issuance of a building permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation and transmission facility.

**§ 120-23.16. Additional application requirements.**

In addition to the site plan materials otherwise listed in this article, the following material shall be submitted to the Planning Board for the Board's special permit review of applications for commercial wind power electricity generation and/or transmission facilities:

- A. Digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project. Scale used shall depict three-mile radius as no smaller than 2.7 inches, and the base map used shall be a published topographic map showing cultural features.
- B. No fewer than four and no more than the number of proposed individual wind turbines plus three, color photos, no smaller than three inches by five inches taken from locations within a three-mile radius from it and to be selected by the Planning Board, and computer enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from these locations.
- C. Manufacturer's data sheets and such other information as may be necessary to fully describe the make, model, features, generating capacity of the proposed facilities and the manufacturer's installation specifications and recommendations.
- D. A civil engineer's report summarizing the local roads that will be used for access to the site both during and after construction of the facility, including an assessment of the likelihood of damage that may be caused to public roads as a result of the construction and operation of the facility. The Planning Board shall have authority to require the posting of financial security by the applicant to ensure the repair and/or reconstruction of any and all public roads, or portions thereof, damaged as a consequence of the construction and/or operation of the facility.

**§ 120-23.17. Abandonment.**

Any CWECS facility, or portion thereof, that is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the 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 permit(s) shall constitute grounds for the revocation of the permit(s) by the Town. In addition, failure to remove an obsolete or unused tower in accordance

with this section shall be a violation of this section and subject to fine and/or imprisonment or both. Any and all structures, guy cables and/or enclosures accessory to such CWECs shall also be removed, and the site shall be restored to as natural a condition as possible.

ARTICLE VI  
**Existing Supplemental Regulations**

**§ 120-24. General.**

Ordinances, laws and other forms of regulations which deal with specific land uses in the Town of Eaton exist or may be enacted by the Town Board. In addition, ordinances, laws and other forms of regulations enacted by Madison County and New York State affect land use in the Town. This chapter shall be enforced in concert with these regulations. As of the date of enactment of this chapter, these regulations include the following (this is not necessarily to be considered an all-inclusive list):

- A. Subdivision regulations (Chapter 165, Subdivision of Land).
- B. Sanitary Local Law (Chapter 150, Sewers).
- C. Mobile Dwelling Park Law for the Township of Eaton (Chapter 130, Mobile Homes).
- D. Flood Damage Prevention Local Law (Chapter 95, Flood Damage Prevention).
- E. Administration and enforcement of the New York State Uniform Fire Prevention and Building Code Local Law (Chapter 90, Fire Prevention and Building Construction).
- F. Madison County solid waste laws and regulations.
- G. General Municipal Law § 136, Regulation of Automobile Junkyards (New York State statute enforced by the Town) (see Chapter 110, Junkyards).
- H. Town of Eaton Dog Control Law (Chapter 55, Article I, Dogs).

ARTICLE VII  
**Administration and Enforcement**

**§ 120-25. Enforcement.**

This chapter shall be enforced by the Code Enforcement Officer.

**§ 120-26. Fees.**

The Town Board of the Town of Eaton shall, by resolution set, and from time to time amend, the fees that shall be charged for Planning Board applications and Board of Appeals applications. The fee schedule shall be available for inspection at the Town Clerk's office.

**§ 120-27. Building permits.**

No building or structure shall be erected, put in place, or have structural modifications constructed until the Code Enforcement Officer has issued a building permit certifying that it meets all the requirements of this chapter. Building permit application procedures are set forth in Chapter 90, Fire Prevention and Building Construction.

**§ 120-28. Certificate of compliance procedure.**

- A. A certificate of compliance shall be applied for coincident with the application for a building permit. A certificate shall also be applied for prior to beginning a change of use of an existing building or structure or a vacant parcel on which new construction will occur.
- B. No real property and no building, structure or system hereafter erected, altered or extended shall be used or changed in use until a certificate of compliance shall have been issued by the Code Enforcement Officer stating that the real property, building, structure or system and/or proposed use thereof complies with the provisions of this chapter. Said certificate shall be issued within 10 days after the real property, use, erection and/or alteration shall have been inspected and found to comply with the provisions of this chapter.
- C. The Town Clerk shall maintain a record of all certificates, and copies shall be furnished upon request and upon payment of the requisite copying fee, to be set from time to time by resolution of the Town Board.

**§ 120-29. Driveways.**

The location of a new driveway for ingress and egress to Town, county and state roadways shall be cleared with the appropriate highway department for approval of the location, and their recommendations concerning appropriate stormwater management structures must be complied with.

**§ 120-30. Board of Appeals; variances.**

- A. Appointment of a Board of Appeals. The Town Board hereby affirms the existence of the Board of Appeals of the Town of Eaton, consisting of five members, and having all the authority conferred upon a Board of Appeals pursuant to Article 16 of the Town Law. Its

purpose is not to make laws but to interpret the law and to provide flexibility where needed and justified in the application of this chapter.

B. Powers and duties of the Board of Appeals.

(1) The Board of Appeals shall have the following powers and duties:

- (a) Upon appeals of decisions by the Code Enforcement Officer, to decide questions involving interpretation of any provision of this chapter.
- (b) To grant use variances upon application, if justified.
- (c) To grant area variances upon application, if justified.

(2) Decisions of the Board of Appeals shall be made within 90 days from the time that the complete application has been filed with the Board. Decisions shall be by motion and vote of the Board, and shall contain a full statement of findings of fact in the minutes of the Board.

C. Application procedure. An appeal for interpretation of a decision made by an officer of the Town on any part of this chapter or a request for a variance may be made to the Town Clerk or to the Code Enforcement Officer. In reply, the Town Clerk will furnish an application form and instructions, along with a statement of the standards to be followed and the procedure, including a public hearing, required by law. When the application form is filled in and returned to the Town Clerk, along with the prescribed fee, it will be given to the Board of Appeals within one week.

D. Variances.

- (1) A variance is a legal permit for a modification of some part of this chapter to meet an individual hardship. "Hardship" does not refer to a personal hardship of the property owner/user. Rather, "hardship" refers to the inability of the property to be used for a permitted use or to the inability to meet the lot area and/or dimensional requirements.
- (2) If a use or construction authorized by a variance has not been started and continued within one year, the Board of Appeals may revoke the variance and require a new application.
- (3) When a variance is granted, the Board of Appeals may prescribe conditions to be observed in order to protect the health, safety or welfare of the public, to preserve the general character of the neighborhood and to minimize possible detrimental effects on nearby property.

E. Granting of variances.

- (1) The Board of Appeals shall act in strict accordance with the procedure specified by state law and by this chapter. All applications made shall be in writing on forms prescribed by the Board. Every application shall refer to the specific provision of the law involved, the details of the variance being applied for and the grounds on which it is claimed that the variance should be granted.

- (2) Each application shall include a site plan of the proposed use or construction to enable the Board of Appeals to evaluate development constraints inherent in the property and the proposed use's or construction's compatibility with the existing uses in its vicinity and with the purpose of this chapter. Upon the granting of any variance, the submitted site plan, with any modifications required by the Board, shall become a part of the record on which future compliance with the terms of the variance shall be based.
  - (3) Written notice setting forth the general nature of the variance application and the date of the public hearing shall be forwarded by first-class mail by the Town Clerk to owners of real property within the Town of Eaton at those addresses as appear on the Town tax roll in use at the time of mailing for owners of property located adjacent to and/or within 500 feet of the property parcel(s) which is the subject of the proposed variance.
- F. Standards for granting variances. No variance for modification of the strict application of any provision of this chapter shall be granted by the Board unless it finds the following:
- (1) Use variances.
    - (a) For use variances, no use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable regulations and restrictions contained in this and supplemental land use regulations have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under those regulations for the particular district where the property is located, that:
      - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
      - [2] The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
      - [3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and
      - [4] The alleged hardship has not been self-created.
    - (b) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
  - (2) Area variances.
    - (a) For area variances, in making its determination, on each application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether:
      - [1] An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area



variance;

- [2] The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - [3] The requested area variance is substantial;
  - [4] The proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
  - [5] The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (b) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (3) Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

### **§ 120-31. Planning Board.**

The Town Board hereby affirms the existence of the Town of Eaton Planning Board consisting of five members and having all the authority conferred pursuant to Article 16 of the Town Law. Specifically, the Planning Board shall have the following powers and duties:

- A. To issue or deny special permits required by this chapter.
- B. To undertake planning activities allowed by Town Law or as requested by the Town Board.
- C. Subdivision review and approval.

### **§ 120-32. Special permits.**

- A. Generally.
  - (1) A special permit gives some means of control of proposed new uses of land and buildings which are compatible with land uses permitted by right by this chapter as long as the conditions applicable to special permit uses are satisfied. Specifically, it gives the Planning Board the opportunity to determine whether such proposed new development (in the particular location, at the particular scale and of the particular site design contemplated) will create special problems which can be corrected or effectively minimized by specially devised conditions or which call for denial of permission.
  - (2) When a special permit is granted, the Planning Board may prescribe conditions to be

observed in order to ensure adherence to the standards specified in Subsection D and § 120-33B.

- (3) No special permit shall be granted with respect to any property or any use on or for which a violation currently exists. (Nonconforming uses as outlined in § 120-23 are not considered violations of this chapter.)
  - (4) Unless extended by the Planning Board, if a use or construction authorized by a special permit has not been started within one year, the special permit will expire.
- B. Application procedure. A request for a special permit may be made to the Town Clerk or to the Code Enforcement Officer. In reply, the Town Clerk will furnish an application form and instructions, along with a statement of the standards to be followed and the procedure, including a public hearing, required by law. When the application form is filled in and returned to the Town Clerk, along with the prescribed fee, it will be given to the Planning Board to be acted on at the next applicable meeting.
- C. Granting of special permits.
- (1) An application to the Planning Board for a special permit shall be accompanied by one set of preliminary site plans and other descriptive matter to show clearly the intentions of the applicant. These documents shall become a part of the record to determine if the proposed special use meets the requirements of this chapter.
  - (2) All special permits require formal site plan approval as set forth in § 120-33A, B and C.
  - (3) Written notice setting forth the general nature of the special permit application and the date of the public hearing shall be forwarded, by first-class mail, by the Town Clerk to those addresses as appear on tax rolls in use at the time of mailing for owners of real property within the Town of Eaton at those addresses as appear on the Town tax roll in use at the time of mailing for owners of property located adjacent to and/or within 500 feet of the parcel(s) which is the subject of the proposed special permit.
- D. Standards for granting special permits. The Planning Board shall review the special permit application to assure that it accords with the following:
- (1) Location, size and use of structure, nature and intensity of operations involved, size of site in relation to it, and the location of the site with respect to roads giving access to it are such that it will be in harmony with orderly development of the district.
  - (2) Location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair their value.
  - (3) The special use shall not conflict with any master plan or part thereof.
  - (4) Operations of any special use shall not be more objectionable to nearby properties than would be the operations of any permitted use.
  - (5) A special permit shall not be issued for a use on a property where there is an existing violation of this chapter.

- (6) Off-street parking, loading facilities and vehicle ingress and egress to the special use shall be such as not to interfere with existing vehicular and pedestrian traffic patterns as they adjoin the property.
- (7) The special use shall have no significant adverse effect on off-site stormwater runoff, erosion of soil, or sedimentation of watercourses and water bodies.
- (8) The special use shall have no adverse effect on the quality of the Town's sources of groundwater or of the water of its lakes, ponds, wetlands or streams.
- (9) Special permits may have an expiration date determined by the Planning Board. Renewal shall be contingent on findings of the Code Enforcement Officer that any conditions originally imposed by the Planning Board have been, and continue to be, complied with.
- (10) The use shall not have an adverse effect on the agricultural industry of the area.
- (11) The use shall be in strict compliance with the supplemental requirements of Article VI pertaining to flood damage prevention (see Chapter 95, Flood Damage Prevention) or any subsequent flood hazard control law adopted by the Town.
- (12) The Planning Board may impose additional standards on the special use to provide adequate safeguards to protect the health, safety or general welfare of the public, to preserve the general character of the neighborhood in which such proposed special use is to be placed and to minimize possible detrimental effects of use on adjacent property.

### **§ 120-33. Site plan reviews.**

The Planning Board, at a regularly scheduled or specially called public meeting of the Board, shall review and approve, disapprove or approve with modifications, all site plans for a special permit, and all site plans otherwise required to be reviewed.

- A. Submission of site plan and supporting data. A site plan and supporting data for a special permit approval shall be submitted to the Planning Board. The owner shall submit a site plan and supporting data as required and shall include all or a portion of the following information presented in drawn form and accompanied by a written text. The amount of information required will depend on the scope of the proposal and shall be determined by the Planning Board. Simple, small-scale and noncontroversial projects generally will require only minimal information. Large-scale, complex proposed projects may require the completion of special studies to provide the necessary information.
  - (1) A survey of the property, showing existing features of the property, including contours, large trees, buildings, structures, streets, utility easements, rights-of-way, land use, land use district and ownership of surrounding property.
  - (2) A site plan showing proposed lots, blocks, building locations and land use areas.
  - (3) Traffic circulation, parking and loading spaces and pedestrian walks.
  - (4) Landscaping plans, including site grading, landscape design and open areas.

- (5) Preliminary architectural drawings for buildings to be constructed, including floor plans, exterior elevations and sections.
- (6) Preliminary engineering plans, including road improvements, storm drainage system, public utility extensions, water supply and sanitary sewer facilities.
- (7) Engineering feasibility studies of any anticipated problems which might arise due to the proposed development, as required by the Planning Board.
- (8) Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.
- (9) A description of the proposed uses, including hours of operation, number of employees, expected volume of business and type and volume of traffic expected to be generated.
- (10) As required under New York State Environmental Quality Review Act (SEQR), a full or short environmental assessment form (EAF) shall be submitted if the proposed action is a Type I or an unlisted action, respectively.

B. Site plan approval.

- (1) The Planning Board shall review the site plan and supporting data before approval, rejection or approval with modifications and/or stated conditions to assure that any site plan approval accords with the following:
  - (a) Harmonious relationship between proposed uses and existing adjacent uses.
  - (b) Maximum safety of vehicular circulation between the site and road network.
  - (c) Adequacy of interior circulation, parking and loading facilities, with particular attention to vehicular and pedestrian safety.
  - (d) Adequacy of landscaping and setbacks in regard to achieving maximum compatibility and protection to adjacent residential districts.
- (2) Should changes or additional facilities be required by the Planning Board, final approval of the site plan shall be conditional upon the satisfactory compliance by the owner with the changes or additions.
- (3) Any owner wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

C. Performance bond as a condition of site plan approval. The Planning Board may require, as a condition of site plan approval, that the owner file a performance bond or other legal security in such amount as they determine to be in the public interest to ensure that the proposed development will be built in compliance with the accepted plans.

**§ 120-34. Changes and amendments.**

- A. Regulations, districts and boundaries established by this chapter may be amended or repealed after official notice has been given and a public hearing has been held by the Town Board as required by the Town Law and Madison County Planning Department review received in

certain cases as mandated in Article 12-B, § 239-m, of the General Municipal Law.

- B. Each petition requesting a change of land use regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate with the Town Board or the Code Enforcement Officer and accompanied by the required fee.
- C. If a public hearing is scheduled at least 35 days before the date of the public hearing, the Town Board shall transmit to the Planning Board a copy of the proposed amendment or change, with supporting documents and notice of hearing. The Planning Board shall submit its recommendations within 35 days. The lack of a response within this period will be interpreted as a recommendation of approval from the Planning Board.
- D. The Planning Board may require a site plan of the proposed development for which a change of land use district is sought to assist them in their understanding of the case.
- E. The Town Board shall hold a public hearing within 60 days of the submission date of any adequately completed petition as required by this section.

#### **§ 120-35. Referral to County Planning Agency.**

- A. Under §§ 239-l, 239-m and 239-n of Article 12B of the New York State General Municipal Law, all requests for variances and special permits shall be referred to the Madison County Planning Department for its recommendation if the property in question is within 500 feet of:
  - (1) The boundary of any city, village or town;
  - (2) The boundary of any existing or proposed county or state park or other recreation area;
  - (3) The right-of-way of any existing or proposed county or state road or highway;
  - (4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
  - (5) The existing or proposed boundary of any county- or state-owned land which a public building or institution is situated; or
  - (6) The boundary of a farm operation located in a state-certified agricultural district, as defined by Article 25AA of the Agriculture and Markets Law, except that this subsection shall not apply to the granting of area variances.
- B. Failure to refer those requests to the Madison County Planning Department before local action is complete may invalidate any local decision.

#### **§ 120-36. Penalties for offenses.**

- A. Any person may file a complaint about a violation of this chapter. Such complaints must be in writing, signed and filed with the Code Enforcement Officer, the Town Clerk or the Town Board. The Code Enforcement Officer shall investigate promptly and take the appropriate action to satisfy that complaint.
- B. Any violation of this chapter as determined by the Code Enforcement Officer must be

reported to the offender by the Code Enforcement Officer or the Town Board, with the date by which the violation must be corrected.

- C. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Each weeks' continued violation shall constitute a separate additional violation.
- D. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure of land is used or any land is divided into lots, blocks or sites in violation of this article or of any ordinance or other regulation made under authority conferred thereby, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

#### **§ 120-37. Stop-work orders.**

- A. Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is proceeding without permit or is otherwise in violation of the provision of this chapter or is not in conformity with any of the provisions of the application, plans or specifications on the basis of which a permit was issued or is being conducted in an unsafe and dangerous matter, he shall notify either the owner of the property or the owner's agent or the person, firm or corporation performing the work to immediately suspend all work. In such instance, any and all persons shall immediately suspend all related activities until the stop-work order has been duly rescinded.
- B. Such stop-work order shall be in writing on a form prescribed by the Code Enforcement Officer and shall state the reasons for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the Code Enforcement Officer or that of a duly authorized designee and shall be prominently posted at the work site.

#### **§ 120-38. Appearance tickets.**

Upon resolution of the Town Board of the Town of Eaton specifically so designating, the Code Enforcement Officer shall have authority, pursuant to Article 150 of the New York Criminal Procedure Law, to issue appearance tickets as defined therein for the purpose of enforcing the local law.

#### **§ 120-39. State Supreme Court Review.**

Pursuant to the Town Law of the State of New York §§ 267 and 274-a, any person or persons

jointly or severally aggrieved by any decision of the Board of Appeals, the Planning Board or any officer of the Town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding must be instituted by the aggrieved party within 30 days after the filing of that decision in the office of the Town Clerk.

**§ 120-40. Enforcement.**

The provisions of this chapter shall be strictly enforced by the Code Enforcement Officer.