

ROOT

2012 TOWN CODE

5th Version
April 2012

Code
of the
Town of Root

COUNTY OF MONTGOMERY
STATE OF NEW YORK

OFFICIALS
OF THE
TOWN OF ROOT

Town Hall
1048 Carlisle Road
Sprakers, New York 12166
Telephone: 518/673-2752

2012

JOHN THAYER	Supervisor
GARY KAMP	Councilman
JOHN VAN KERSEN	Councilman
EVELYN LINDLEY	Councilwoman
LUEMMA QUACKENBUSH	Councilwoman

DONALD OESER	Highway Superintendent
HON. THOMAS ERIKSEN	Town Justice

ROBERT HARRIS	Sole Assessor
---------------	---------------

ROBERT M. SUBIK, ESQ.
Town Attorney

LAUREL (SHERRIE) ERIKSEN
Town Clerk

PREFACE

The Town of Root has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Town Board ordered the following codification of the town's legislation.

Contents of Code

The various chapters of the Code contain all currently effective legislation (local laws, ordinances and certain resolutions) of a general and permanent nature enacted by the Town Board of the Town of Root, including revisions or amendments to existing legislation deemed necessary by the Town Board in the course of the codification.

Division of Code

The code is divided into parts. Part I, Administrative Legislation, contains all town legislation of an administrative nature, namely that dealing with the administration of government, that establishing or regulating municipal departments and that affecting officers and employees of the municipal government and its departments. Part II, General Legislation, contains all other town legislation of a regulatory nature. Items of legislation in this part generally impose penalties for violation of their provisions, whereas those in Part I do not.

Grouping of Legislation and Arrangement of Chapters

The various items of legislation are organized into chapters, their order being an alphabetical progression from one subject to another. Wherever there are two or more items of legislation dealing with the same subject, they are combined into a single chapter. Thus, for example, all legislation pertaining to the regulation of streets and sidewalks may be found in Part II, in the chapter entitled "Streets and Sidewalks." In such chapters, use of Article or Part designations has preserved the identity of the individual items of legislation.

Table of Contents

The Table of Contents details the alphabetical arrangement of material by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, titles of the several Articles of Parts are listed beneath the chapter title in order to facilitate location of the individual item of legislation.

Reserved Chapters

Space has been provided in the Code for the convenient insertion, alphabetically, of later enactments. In the Table of Contents such space appears as chapters entitled “(Reserved).” In the body of the Code, reserved space is provided by breaks in the page-numbering sequence between chapters.

Pagination

A unique page-numbering system has been used, in which each chapter forms an autonomous unit. One hundred pages have been allotted to each chapter, and the first page of each is the number of that chapter followed by the numbers “01.” Thus, Chapter 6 begins on page 601. Chapter 53 on page 5301, etc. By use of this system, it is possible to add or to change pages in any chapter without affecting the sequence of subsequent pages in other chapters, and to insert new chapters without affecting the existing organization.

Numbering of Sections

A chapter-related section-numbering system is employed, in which each section of every item of legislation is assigned a number which indicates both the number of the chapter in which the legislation is located and the location of the section within that chapter. Thus, the first section of Chapter 6 is § 6-1, while the fourth section of Chapter 53 is § 53-4. New sections can then be added between existing sections using a decimal system. Thus, for example, if two sections were to be added between §§ 53-4 and 53-5, they would be numbered as §§ 53-4.1 and 53-4.2.

Scheme

The Scheme is the list of section titles which precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the Scheme titles are repeated as section headings in the text.

Histories

At the end of the Scheme in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived, including the enactment number (e.g., ordinance number, local law number, bylaw number, resolution number, etc.), if pertinent, and the date of adoption. In the case of chapters containing Parts or Articles derived from more than one item of legislation, the source of each Part or Article is indicated in the History. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

Codification Amendments and Revisions

New chapters adopted or sections amended or revised during the process of codification are specifically enumerated in chapter Histories with reference to “Ch. 1, General Provisions,” where the legislation adopting this Code and making such revisions will appear after final enactment. Sections so amended or revised are also indicated in the text by means of Editor’s Notes referring to the chapter cited above.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are used in the text to provide supplementary information and cross-references to related provisions in other chapters.

Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this Code is reserved for such legislation and for any other material that the community may wish to include.

Index

The Index is a guide to information. Since it is likely that this code will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemental and revised from time to time as new legislation is added to the Code.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or complete new additions, should be adopted as amending the Code. In doing so, existing material that is not being substantively altered should not be renumbered. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g. a new section between §§ 45-5 and 45-6 should be designated § 45-5.1). New chapters should be added in the proper alphabetical sequence in the appropriate division or part (e.g. Part I, Administrative Legislation, or Part II, General Legislation), utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the table of contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the table of contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 46 and 46 should be designated Chapter 45A). New Articles may be inserted between existing Articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" Articles (e.g., a new Article to be included between Articles XVI and XVII should be designated Article XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with § 45-30 and Article XVII begins with § 45-31, Article XVIA should contain §§ 45-30.1 through 45-30.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgement

The codification of the legislation of the Town of Root reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of a community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. That last major comprehensive revision of the Town Code was produced by the General Code Publishers Corp. in 1988. Since that time, there have been several additions and revisions. Over a three (3) year period, the Code Revision Committee has conducted an in-depth, comprehensive review of the existing Code and has produced an Omnibus Amendments to the Town Code for incorporation and inclusion in the Code Book. As was noted in the 1988 Edition, the writers Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public." It is in that spirit that the Code Revision Committee presented its work to the Town Board with the hope that it will contribute significantly to the efficient administration of the local government.

TABLE OF CONTENTS

PART I

ADMINISTRATIVE LEGISLATION

CHAPTER	PAGE
1. General Provisions	101
Article I Adoption of Code	
2. (Reserved).....	201
3. (Reserved).....	301
4. (Reserved).....	401
5. Assessors	501
6. (Reserved).....	601
7. (Reserved).....	701
8. (Reserved).....	801
9. Ethics, Code of	901
Article I Board of Ethics	
Article II Standards of Conduct	
10. (Reserved).....	1001
11. (Reserved).....	1101
12. (Reserved).....	1201
13. (Reserved).....	1301
14. (Reserved).....	1401
15. (Reserved).....	1501
16. (Reserved).....	1601
17. (Reserved).....	1701
18. (Reserved).....	1801
19. Salaries and Compensation	1901
20. (Reserved).....	2001
21. (Reserved).....	2101
22. (Reserved).....	2201

ROOT CODE

CHAPTER		PAGE
23.	(Reserved).....	2301
24.	Assessors	2401
25.	(Reserved)	2501
26.	(Reserved)	2601
27.	(Reserved)	2701
PART II		
GENERAL LEGISLATION		
28.	Assemblies	2801
29.	(Reserved)	2901
30.	(Reserved)	3001
31.	(Reserved)	3101
32.	(Reserved)	3201
33.	Dogs	3301
	Article I Retention of Seized Dogs	
	Article II Dog Control	
34.	Kennel Law	3401
35.	Dumps and Refuse Disposal	3501
36.	Dwellings and Sanitation	3601
37.	Land Subdivision Regulations	3701
38.	(Reserved)	3801
39.	Fire Prevention and Building Code, Uniform	3901
40.	(Reserved)	4001
41.	(Reserved)	4101
42.	(Reserved)	4201
43.	Flood Damage Prevention	4301
44.	(Reserved)	4401
45.	Assessors	4501

ROOT CODE

CHAPTER	PAGE
46. (Reserved)	4601
47. (Reserved)	4701
48. (Reserved)	4801
49. Games of Chance	4901
50. (Reserved)	5001
51. (Reserved)	5101
52. (Reserved)	5201
53. Junkyards and Junk Dealers	5301
54. (Reserved)	5401
55. (Reserved)	5501
56. (Reserved)	5601
57. (Reserved)	5701
58. (Reserved)	5801
59. Mobile Homes	5901
60. (Reserved)	6001
61. (Reserved)	6101
62. (Reserved)	6201
63. (Reserved)	6301
64. (Reserved)	6401
65. Records, Public Access to	6501
66. (Reserved)	6601
67. (Reserved)	6701
68. (Reserved)	6801
69. (Reserved)	6901
70. (Reserved)	7001

ROOT CODE

CHAPTER	PAGE
71. Streets and Sidewalks	7101
Article I Notification of Defects	
72. (Reserved)	7201
73. Telecommunications Towers, Antennae & Related Facilities .	7301
74. Wind Energy Conversion System	7401
75. (Reserved)	7501
76. (Reserved)	7601
77. Taxation	7701
78. (Reserved)	7801
79. (Reserved)	7901
80. (Reserved)	8001
81. Underground Registry	8101
82. (Reserved)	8201
83. (Reserved)	8301
84. (Reserved)	8401
85. Vehicles, Abandoned	8501
86. (Reserved)	8601
87. (Reserved)	8701
88. (Reserved)	8801
89. (Reserved)	8901
90. Zoning Board of Appeals	9001
91. (Reserved)	9101
92. (Reserved)	9201
93. (Reserved)	9301

APPENDIX

INDEX

PART 1

ADMINISTRATIVE LEGISLATION

+++++

CERTIFICATION

TOWN OF ROOT

Office of the Town Clerk

I, LAUREL ERIKSEN, Town Clerk of the Town of Root, hereby certify that the chapters contained in this volume are based upon the original local laws, ordinances and certain resolutions of the Town Board of the Town of root and that said local laws ordinances and resolutions, as revised and codified, renumbered as to sections and rearranged into chapters, constitute the Code of the Town of Root, County of Montgomery, State of New York, as originally adopted by local law of the Town Board on November 1, 1989; and as modified by the Omnibus Amendments to the Town of Root Code of Ordinances adopted in April 2012.

Given under my hand and the Seal of the Town of Root, County of Montgomery, State of New York, this _____ day of _____ 2012, at Sprakers, New York.

s/LAUREL ERIKSEN

Town Clerk

+++++

Chapter 1
GENERAL PROVISIONS

ARTICLE I

Adoption of Code

- § 1-1. Legislative intent.
- § 1-2. Distribution of local laws, ordinances and resolutions.
- § 1-3. Repeal of enactments not included in Code.
- § 1-4. Enactments saved from repeal; matters not affected.
- § 1-5. Severability.
- § 1-6. Copy of Code on file.
- § 1-7. Amendments in Code.
- § 1-8. Code book to be kept up-to-date.
- § 1-9. Sale of Code book; supplementation.
- § 1-10. Penalties for tampering with Code.
- § 1-11. Changes in previously adopted legislation.
- § 1-12. When effective.

[HISTORY: Adopted by the Town Board of the Town of Root: Art. I, II-1-1989 as L.L. No. 1-1989. Amendments noted where Applicable.]

ARTICLE I

Adoption of Code

[Adopted 11-1-1989 as L.L. No. 1-1989]

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

§ 1-1. Legislative intent.

The local laws, ordinances and resolutions of the Town of Root referred to in § 1-2 of this local law shall be known collectively as the "Code of the Town of Root," hereafter termed the "Code," and the various parts and sections of such local laws, ordinances and resolutions shall be distributed and designated as provided and set forth in § 1-2 of this local law.

GENERAL PROVISIONS

§ 1-2. Distribution of local laws, ordinances and resolutions.

Derivation Table

(Sections providing for severability of provisions, repeal of conflicting legislation and effective dates which are covered by provisions of Chapter 1, Article I, have been omitted from the Code, and such sections are indicated as "omitted" in the table which follows.)

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Ch. 5, Assessors	L.L. No. 1-1971	4-7-71
§ 5-1	Sec. 1	Adopted 4-23-12 by L.L. No. 1 of 2012
§ 5-2	Sec. 2	
Ch. 9, Ethics, Code of Article I, Board of Ethics	Res.	9-2-70
§ 9-1	Sec. 1	Adopted 4-23-12 by L.L. No. 1 of 2012
§ 9-2	Sec. 2	
Article II, Standards Of Conduct	Res.	9-2-70
§ 9-3	Sec. 1	
§ 9-4	Sec. 2	
§ 9-5	Sec. 3	
§ 9-6	Sec. 4	
§ 9-7	Sec. 5	Amended at time of Adoption of Code
§ 9-8	Sec. 6	
Omitted	Sec. 7	
Ch. 33, Dogs		
Article I, Seized Dogs	L.L. No. 1-1980	8-13-80
§ 33-1	Sec. 1	
§ 33-2	Sec. 2	
§ 33-3	Sec. 3	
Omitted	Sec. 4	
Article II, Dog Control	L.L. No. 1-1986	9-3-86
§ 33-4	Sec. 1	
§ 33-5	Sec. 2	
§ 33-6	Omitted	
§ 33-7	Sec. 4	
§ 33-8	Sec. 5	
§ 33-9	Sec. 6	
§ 33-10	Sec. 7	
§ 33-11	Sec. 8	

GENERAL PROVISIONS

New Number (chapter, title, Article, section)	Old Number (source)	Adoption Amendment Date
§ 33-12	Sec. 9	
Omitted	Sec. 10	
Omitted	Sec. 11	
§ 33-13	Sec. 12	
Omitted	Sec. 13	
Ch. 34, Kennel Law		Adopted 4-23-12by L.L. No. 1-2012
§34-1		
§34-2		
§34-3		
§34-4		
§34-5		
§34-6		
§34-7		
Ch. 35, Dumps and Refuse Disposal		Adopted 4-23-12by L.L. No. 1-2012
§35-1		
§35-5		
Ch. 36, Dwellings and Sanitation		Adopted 4-23-12by L.L. No. 1-2012
§36-3		
§36-4		
§36-5		
§36-8		
Ch. 39, Fire Prevention and Building Code, Uniform		Adopted 10-7-87 by L.L. No. 3-1987
§ 39-1	Sec. 1	
§ 39-2	Sec. 2	
§ 39-3	Sec. 3	
§ 39-4	Sec. 4	
§ 39-5	Sec. 5	
§ 39-6	Sec. 6	
§ 39-7	Sec. 7	
§ 39-8	Sec. 8	
§ 39-9	Sec. 9	
§ 39-10	Sec. 10	
§ 39-11	Sec. 11	
§ 39-12	Sec. 12	
§ 39-13	Sec. 13	
Omitted	Sec. 14	
Omitted	Sec. 15	
Ch. 43, Flood Damage Prevention		Adopted 4-1-87by L.L. No. 1-1987
§ 43-1	1.1	
§ 43-2	1.2	
§ 43-3	1.3	

GENERAL PROVISIONS

§ 43-4	2.0	
§ 43-5	3.1	
Omitted	3.2(1)	
§ 43-6	3.2(2)	
§ 43-7	3.3	
Omitted	3.4	
§ 43-8	3.5	
§ 43-9	3.6	
§ 43-10	4.1	Amended 2-3-88 by L.L. No. 1-1988
§ 43-11	4.2	
§ 43-12	4.3	
§ 43-13	5.1	
§ 43-14	5.2	
§ 43-17		Adopted 4-23-12 by L.L. No. 1-2012

New Number (chapter, title, Article, section)	Old Number (source)	Adoption Amendment Date
§ 43-15	5.3	
§ 43-16	6.1	Amended 2-3-88 by L.L. No. 1-1988
§ 43-17	6.2	
Omitted	6.3	
Omitted	6.4	
Ch. 49, Games of Chance		Amended 8-5-81 by L.L. No. 1-1981
§ 49-1	Sec. 1	
§ 49-2	Sec. 2	
§ 49-3	Sec. 3	
§ 49-4	Sec. 4	
§ 49-5	Sec. 5	
§ 49-6	Sec. 6	
Omitted	Sec. 7	
Omitted	Sec. 8	
Ch. 53, Junkyards and Junk Dealers		Amended 9-7-88 L.L. No. 2-1988
§ 53-1	Sec. 1	
§ 53-2	Sec. 2	
§ 53-3	Sec. 3	
§ 53-4	Sec. 4	Adopted 4-23-12 by L.L. No. 1-2012
§ 53-5	Sec. 5	
§ 53-6	Sec. 6	
§ 53-7	Sec. 7	Adopted 4-23-12 by L.L. No. 1-2012
Omitted	Sec. 8	
Omitted	Sec. 9	

GENERAL PROVISIONS

Omitted	Sec. 10	
Ch. 59, Mobile Homes		Adopted 6-3-87by L.L. No. 2-1987
§ 59-1	Sec. 1	
§ 59-2	Sec. 2	
§ 59-3	Sec. 3	
§ 59-4		Adopted 4-23-12by L.L. No. 1-2012
§ 59-5	Sec. 5	
§ 59-6	Sec. 6	
§ 59-7		Adopted 4-23-12by L.L. No. 1-2012
§ 59-8	Sec. 8	
§ 59-9	Sec. 9	
§ 59-10	Sec. 10	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption Amendment Date
§ 59-11	Sec. 11	
Omitted	Sec. 12	
Omitted	Sec. 13	
Ch. 65, Records, Public Access to		Adopted 5-3-78by L.L. No. 2-1978
§ 65-1	Sec. 1	
§ 65-2	Sec. 2	
§ 65-3	Sec. 3	
§ 65-4	Sec. 4	Amended at time of Adoption of Code
§ 65-5	Sec. 5	
§ 65-6	Sec. 6	
§ 65-7	Sec. 7	
§ 65-8	Sec. 8	
§ 65-9	Sec. 9	
Ch. 71, Streets and Sidewalks		
Article 1, Notification Of Defects	L.L. No. 1-1978	2-1-78
§ 71-1	Sec. 1	
§ 71-2	Sec. 2	Amended at time of Adoption of Code
§ 71-3	Sec. 3	
Omitted	Sec. 4	
Ch. 74, Wind Energy Conservation Systems		Adopted 4-23-12by L.L. No. 1-2012
§74.4		
§74.5		

GENERAL PROVISIONS

Ch. 81, Underground Registry	Res.	4-2-75
§ 81-1	First paragraph	
§ 81-2	Second paragraph	
§ 81-3	Third paragraph	
Ch. 85, Vehicles, Abandoned	Res.	1-3-68
§ 85-1	Sec. 1	
§ 85-2	Sec. 2	Amended at time of Adoption of Code

GENERAL PROVISIONS

§ 1-3. Repeal of enactments not included in Code.

All local laws, ordinances and resolutions of a general and permanent nature of the Town of Root in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local law as, ordinances and resolutions provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, resolutions rights and obligations, which are hereby expressly saved from repeal;

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Root prior to the effective date of this local law, or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Root, or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered prior to the effective date of this local law, brought pursuant to any legislative provision of the Town of Root.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Root.
- E. Any local law, ordinance or resolution of the Town of Root providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Root or any portion thereof.
- F. Any local law, ordinance or resolution of the Town of Root appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Root or other instruments or evidence of the town's indebtedness.
- G. Local laws, ordinances or resolutions authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The dedication of property.

GENERAL PROVISIONS

- J. Any local laws, ordinances or resolutions relating to salaries.
- K. Any legislation related to vehicles and traffic.
- L. Any legislation dealing with taxation and/or tax exemptions.
- M. Legislation regulating dumping and collection of refuse.
- N. Any legislation adopted subsequent to November 1, 1989.

§ **1-5. Severability.** If any clause, sentence, paragraph, section, Article or part of this local law or of any local law, ordinance or resolution cited in the table in § 1-2 hereof, or any local law, ordinance or resolution included in this Code through supplementation, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ **1-6. Copy of Code on file.** A copy of the Code, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Root and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified to by the Town Clerk of the Town of Root by impressing thereon the Seal of the Town of Root, and such certified copy shall remain on file in the office of said Town Clerk to be made available to persons desiring to examine the same during all times while the said Code is in effect.

§ **1-7. Amendments to Code.** Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Root," or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, in the loose-leaf book containing said Code, as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Town Board deems desirable.

§ **1-8. Code book to be kept up-to-date.**

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Root required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes or local laws,

GENERAL PROVISIONS

ordinances or resolutions until such change or local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code Book, Supplementation.

Copies of the Code may be purchased from the Town Clerk of the Town of Root upon the payment of a fee to be set by resolution of the Town Board, which may also arrange by resolution for the procedures for the periodic supplementation thereof.

§ 1-10. Penalties for tampering with Code.

Any person who, without authorization from the Town Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Town of Root, or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of Root to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than two hundred fifty dollars (\$250) or imprisonment for a term of not more than fifteen (15) days, or both.

§ 1-11. Changes in previously adopted legislation.

A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Root, as distributed and designated in the table in § 1-2 hereof, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one (1) or more of said pieces of legislation. It is the intention of the Town Board that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.

B. In addition, the following changes, amendments or revisions are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)¹

§ 1-12. When effective.

This local law shall take effect upon filing with the Secretary of State and State Comptroller as required by § 27 of the Municipal Home Rule Law.

¹ Editor's Note: Pursuant to § 1-11B, the following sections were amended §§ 9-7, 65-4, 71-2 and 85-2.

A complete description of each change may be found in L.L. No. 1-1989, on file in the office of the Town Clerk.

Chapter 5

ASSESSORS

§ 5-1. Assessor to be appointed.

§ 5-2. Approval at referendum.

[HISTORY: Adopted by the Town Board of the Town of Root 4-7-71 as L.L. No. 1-1971. Amendments noted where applicable.]

§ **5-1. Assessor to be appointed.** [Adopted 4-23-12 by L.L. No.1 of 2012]

A sole assessor to be appointed by the Town Board for a term of six (6) years.¹

§ **5-2. Approval at referendum.**

This chapter shall be submitted for approval of the electors of said Town of Root at a special election to be held as provided in § 1556 of the Real Property Tax Law.²

¹Editor's Note: [By Local Law No. ____ of 2004, adopted December 29, 2004, effective January 1, 2005.]

² Editor's Note: This chapter was approved at referendum 6-15-71.

PART II

GENERAL LEGISLATION

CHAPTER 9

ETHICS, CODE OF

ARTICLE I

Board of Ethics

- § 9-1. Board established.
- § 9-2. Powers and duties.

ARTICLE II

Standards of Conduct

- § 9-3. Purpose; effect on other laws.
- § 9-4. Definitions.
- § 9-5. Standards of conduct.
- § 9-6. Filing of claims.
- § 9-7. Copies to be distributed.
- § 9-8. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Root: Art. I, 9-2-70 by resolution; Art. II, 9-2-70 by resolution. Section 9-7 amended at time of adoption of Code; see Ch.1, general Provisions, Art. I. Other amendments noted where applicable.]

ETHICS, CODE OF

ARTICLE I

Board of Ethics

[Adopted 9-2-70 by resolution]

§ 9-1. **Board established.** [Adopted 4-23-12 by L.L No.1 of2012]

There is hereby established a Board of ethics consisting of five (5) members to be appointed by the Town Board, who shall serve without Compensation and at the pleasure of said Town Board. A majority of such members shall be persons other than officers or employees of the Town of Root, but shall include at least one (1) member who is an elected or appointed officer or employee of the Town of Root.

§ 9-2. **Powers and duties.**

The Board of Ethics shall have the powers and duties prescribed by Article 18 of the General Municipal Law and shall render advisory opinions to the officers and employees of the Town of Root with respect to Article 18 of the General Municipal Law and any Code of Ethics adopted pursuant to such Article, under such rules and regulations as the Board may prescribe. In addition, the Board may make recommendations with respect to the drafting and adoption of a Code of ethics, or amendments thereof, upon request of the Supervisor and/or Town Board of the Town of Root.

ARTICLE II

Standards of Conduct

[Adopted 9-2-70 by resolution]

§ 9-3. **Purpose; effect on other laws.**

Pursuant to the provisions of § 806 of the General Municipal Law, the Town Board of the Town of Root recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this Article to promulgate these rules of ethical conduct for the officers and the employees of the Town of Root. The rules of ethical conduct of this Article, as adopted, shall not conflict with, but shall be in addition to, any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 9-4. **Definitions.** As used in this Article, the following terms shall have the meanings indicated:

INTEREST – A pecuniary or material benefit accruing to a municipal officer or employee, unless the context otherwise requires.

ETHICS, CODE OF

MUNICIPAL OFFICER OR EMPLOYEE – An officer or employee of the Town of Root, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a “municipal officer or employee” solely by reason of being a volunteer fireman or civil defense volunteer, except a Chief Engineer or Assistant Chief Engineer.

§ 9-5. Standards of conduct. Every officer or employee of the Town of Root shall be subject to and abide by the following standards of conduct:

A. **Gifts.** He shall not directly or indirectly solicit any gift or accept or receive any gift having a value of twenty-five dollars (\$25) or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

B. **Confidential information.** He shall not disclose confidential information acquired by him in the course of his official duties or use such information further his personal interest.

C. **Representatives before one's own agency.** He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or any municipal agency over which he has jurisdiction or to which he has power to appoint any member, officer or employee.

ETHICS, CODE OF

D. **Representation before any agency for a contingent fee.** He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

E. **Disclosure of interest in legislation.** To the extent that he knows thereof, a member of the Town Board or any officer or employee of the Town of Root, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.

F. **Investments in conflict with official duties.** He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.

ETHICS, CODE OF

G. **Private employment.** He shall not engage, in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.

H. **Future employment.** He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Root in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ **9-6. Filing of claims.** Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Town of Root, or any agency thereof, on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ **9-7. Copies to be distributed.**¹ The Supervisor of the Town of Root shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Root within thirty (30) days after the effective date of this Article. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of this office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code or the enforcement of provisions thereof.

§ **9-8. Penalties for offenses.** In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. I, General Provisions, Art. I.

Chapter 19

SALARIES AND COMPENSATION

[The salaries and compensation of all officers and employees of the Town of Root are set forth from time to time by the Town Board. Information concerning current salary and compensation figures is on file in the office of Town Clerk, where it is available for examination during regular business hours.]

Chapter 28

ASSEMBLIES

- § 28-1. Title; more restrictive provisions to apply.
- § 28-2. Purpose.
- § 28-3. Applicability.
- § 28-4. Definitions.
- § 28-5. Permit required.
- § 28-6. Filing of application.
- § 28-7. Application information and materials.
- § 28-8. Conditions for granting permit.
- § 28-9. Denial, restrictions and expiration of permit.
- § 28-10. Modification or rescission of permit.
- § 28-11. Fees.
- § 28-12. Penalties for offenses.
- § 28-13. Severability.
- § 28-14. When effective.
- § 28-15. Construal of provisions.

[HISTORY: Adopted by the Town Board of the Town of Root 11-7-1990 as L.L. No. 2-1990. Amendments noted where applicable.]

§ 28-1. Title; more restrictive provisions to apply. This chapter shall be known as the "Regulation of Public Assemblies Code of the Town of Root." Where other local laws or ordinances exist that refer to public assemblies, the most restrictive or that imposing the highest standards shall prevail.

§ 28-2. Purpose. In order to preserve the public peace and good order, to prevent riots and tumultuous assemblages, unreasonably loud or disturbing noises and disorderly, noisy, riotous or tumultuous conduct and to promote the health, safety, morals and general welfare of the community consonant with the rights of its citizen and inhabitants and others to peacefully assemble, this chapter is enacted.

ASSEMBLIES

§ **28-3. Applicability.** This Code chapter shall regulate the assembly of persons at temporary outdoor public gatherings for any reason whatsoever, including but not limited to the furnishing of entertainment or the amplification of music through electronic means, whether recorded or live, where five hundred (500) or more persons are expected to congregate.

§ **28-4. Definitions.** Unless otherwise expressly stated, the following terms shall, for the purposes of this Code chapter, have the meanings herein indicated:

ASSEMBLY – The gathering, collecting or congregating of persons with or without the levy of an admission fee.

BUILDING – A structure wholly or partially enclosed within exterior walls and a roof, of permanent or temporary nature, affording shelter to persons, animals or property.

PUBLIC PLACE – A place to which the public or a substantial group of persons is invited or has access.

STRUCTURE – A combination of materials to form a construction that is safe and stable and includes, among other things, stadiums, stages, platforms, radio towers, sheds, storage bins, tents, billboards and display signs.

TEMPORARY OUTDOOR ENTERTAINMENT – The furnishing of entertainment for a period of thirty (30) days or less, where the persons assembled are not contained in an enclosed structure or building.

§ **28-5. Permit required.** No persons shall use, allow, let or permit to be used property for the assembly of persons for temporary outdoor entertainment in excess of five hundred (500) persons on each occasion unless a written permit shall have been obtained from the Town Board.

§ **28-6. Filing of application.** Application for such permit shall be by verified petition addressed to the Town Board and shall be filed personally with the office of the Town Clerk at least ninety one (91) days prior to the date upon which the commencement of such assembly is contemplated, unless otherwise waived by the Town Board.

§ **28-7. Application information and materials.** Such application shall include the following written material:

A. A statement of the name, age and residence address of the applicant; if the applicant is a corporation, the name of the corporation and the names and addresses of the director, officers and stockholders owning five percent (5%) or more of the number of shares outstanding of each class of stock; if the applicant does not reside in the County of Montgomery, the name and address of any agent who shall be a natural person and shall reside or have a place of business in the County of Montgomery and who shall be authorized to and shall agree by verified statement to accept notices or summonses issued with respect to violations of any law, ordinances, rules or regulations.

ASSEMBLIES

B. A statement containing the name and address of the record owner of the subject property or properties and the nature and interest of the applicant therein; the proposed dates and hours of such assembly; the expected maximum number of persons intended to use the property at one (1) time and collectively; the expected number of automobiles and other vehicles intended to use the property at one (1) time and collectively; and the purpose of the function, including the nature of the activities to be carried on and the admission fee to be charged, if any.

C. A map showing the size of the property; the zoning district in which it is located; the streets or highways abutting said property; and the size and location of any existing building, buildings or structures to be erected for the purpose of the assembly.

D. A plan or drawing showing the method to be used for the disposal of sanitary sewage.

E. A plan or drawing showing the method to be used for the supply, storage and distribution of water.

F. A plan or drawing showing the layout of any parking area for automobiles and other vehicles and the means of ingress and egress to such parking area. Such parking area shall provide one (1) parking space for every four (4) persons in attendance.

G. A statement specifying the method of disposing of any garbage, trash, rubbish or other refuse arising therefrom.

H. If a person other than the person applying for the permit will be engaged in the sale and distribution of food and beverage, the name and address of such person shall be submitted.

I. A statement specifying the precautions to be utilized for fire protection and a map specifying the location of fire lanes and water supply for fire control.

J. A statement specifying the precautions to be utilized for fire protection and a map specifying the location of fire lanes and water supply for fire control.

K. A statement specifying the facilities to be available for emergency treatment of any person who might require immediate medical or nursing attention.

L. A statement specifying whether any camping or housing facilities are to be available and, if so, a plan showing the intended number and location of the same.

M. A statement that no soot, cinders, smoke, noxious acids, fumes, gases or unusual odors or loud or excessive noises shall be permitted to unreasonably emanate beyond the property line of the assembly.

N. An application pursuant to the New York State Environmental Quality Review Act¹ and containing those items contained in said Act.

ASSEMBLIES

O. Such other or further information as the Town Board shall reasonably require.

P. An audited statement of financial resources, prepared by a certified public accountant, acceptable to the Town Board, showing finances sufficient to execute the plans as submitted.

§ 28-8. Conditions for granting permit.

A. No permit shall be issued unless the permittee shall furnish the town with written authorization to permit the town or its lawful agents to go upon the subject property for the purpose of inspection the same, providing adequate police and fire protection and protecting persons and property from danger.

B. No permit shall be issued unless the applicant shall furnish the town with a comprehensive liability insurance policy, issued by a company duly licensed by the State of New York, insuring the applicant against liability for damage to persons or property with limits of not less than one million/tow million dollars (\$1,000,000./\$2,000,000.) for bodily injury or death and limits of not less than one million dollars (\$1,000,000.) for property damage, which said policy shall name the town as an additional insured and shall be noncancelable without thirty (30) days' prior written notice to the town.

C. The town may issue a permit upon such other conditions as the town may reasonably impose to ensure compliance with this chapter and for the general protection of the health, safety and welfare of the persons and property in the town.

§ 28-9. Denial, restrictions and expiration of permit.

A. The town may deny the issuance of a permit if it shall find that the any of the items as set forth in § 28-7 of this Code chapter are insufficient to properly safeguard the safety, health, welfare and well-being of persons or property. The denial shall be in writing and shall set forth the reason therefore. In no event shall the town withhold its written approval or denial of a permit for a period in excess of thirty (30) days after a full submission to it by an applicant, except by an extension, in writing, given by the applicant.

B. If a permit is granted by the town, such permit shall set forth the maximum number of persons to be permitted to attend the event. The town, in determining such maximum limit, shall take into consideration the capacity of the site, the facilities to be available and the availability of public highway and other means of transportation to and from the site. The applicant shall limit all ticket sales to such maximum number and shall include such limitations in all advertising.

C. Each permit shall expire thirty (30) days from the effective data thereof.

¹ Editor's Note: See Article 8 of the Environmental Conservation Law.

ASSEMBLIES

§ 28-10. Modification or rescission of permit.

If, after a permit is issued, the Town Board determines that any of the representatives and/or statements contained in the application or any of the conditions of the permit have not been complied with, the Town Board may serve upon the permittee's agent for the service of process as appointment pursuant to § 28-7A hereof two (2) days' notice of the hearing, specifying the manner in which the permittee has not complied with the terms of its permit, and at which hearing the Town Board, for good cause, may modify or rescind such permit, absolutely or upon condition.

§ 28-11. Fees.

The applicant shall pay to the town at the time of application is submitted a nonrefundable fee of fifty dollars (\$50.) where the maximum number of persons to assemble shall be five hundred fifty (550) persons or fewer, one hundred (\$100.) between five hundred fifty and not over one thousand (1,000) persons and two hundred dollars (\$200.) in excess of one thousand (1,000) persons. The Town Board, in its discretion, may waive the payment of the fee for good cause shown.

§ 28-12. Penalties for offenses.

A. Any person who shall use, allow, let or permit to be used property for the assembly of persons in excess of five hundred (500) for temporary outdoor entertainment of any person who shall cause the gathering, collecting or congregating of persons in excess of five hundred (500) in public places for temporary outdoor entertainment without having a written permit in accordance with the provisions of this Code chapter shall be guilty of a violation of this Code chapter.

B. A violation of any of the provisions of this chapter shall be a misdemeanor and shall be punishable as hereinafter provided.

C. A separate offense against this Code chapter shall be deemed committed on each day during or on which a violation occurs or continues. A separate penalty may be imposed for each separate offense.

D. For each violation of this Code chapter, the person violating the same shall be subject to a fine of not more than one thousand dollars (\$1000.) or imprisonment not to exceed one (1) year, or to both such fine and imprisonment.

E. In addition to the above-provided penalties, the town may maintain an action or proceeding in the name of the Town of Root in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter.

ASSEMBLIES

§ 28-13. Severability.

Should any section or provision of this Code chapter be declared by any court to be unconstitutional or invalid, such declaration shall not affect the validity of this Code chapter as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

§ 28-14. When effective.

This Code chapter shall become effective immediately upon filing with New York Secretary of State.

§ 28-15. Construal of provisions.

The provisions of this Code chapter shall be in addition to and not in lieu of nor construed to be in conflict with the provisions contained in the New York State Public Health Law or the New York State Sanitary Code.

PART II
GENERAL LEGISLATION

Chapter 33

DOGS

ARTICLE I

Dog Control Law of Root

- § 33-1. Title.
- § 33-2. Retention period.
- § 33-3. Contract to establish retention period.

ARTICLE II

Dog Control

- § 33-4. Purpose.
- § 33-5. Statutory authority.
- § 33-6. Definitions.
- § 33-7. Prohibited acts.
- § 33-8. Enforcement.
- § 33-9. Complaint procedure.
- § 33-10. Appearance tickets.
- § 33-11. Penalties for offenses.
- § 33-12. Impoundment fee.
- § 33-13. Dog Licensing and Control Law

[HISTORY: Adopted by the Town Board of the Town of Root: Art. I, 8-13-80 as L.L. No. 1-1980; Art. II 9-3-86 as L.L. No. 1-1986. Amendments noted where applicable. Adopted Local Law No. 1, 2011]

ARTICLE I

Dog Control Law of Root

[Adopted 8-13-80 as L.L. No. 1-1980]

§ **33-1. Title.** This Article shall be known and referred to as "Dog Control Law of Root".

§ **33-2. Retention period.**

Any contract now in existence or hereafter entered into between the Town of Root and Animal Shelter Association, Inc. or any other person, firm or agency, for the retention and care of dogs seized in such town, shall provide that any such seized dog will be retained and cared for, pursuant to such contract, for a period of time not less than that set forth in Article 7 of the Agriculture and Markets Law (or according to animal shelter contract) otherwise not more than ninety days (90) days. (The Supervisor of the Town of Root, with Board approval, shall enter in contract with said Agency).

§ **33-3. Contract to establish retention period.**

The Supervisor of the Town of Root shall forthwith enter into an amended contract with Animal Shelter Association, Inc., for calendar year 1980, providing the time periods set forth in § 33-2 hereof.

DOGS

ARTICLE II

Dog Control

[Adopted 9-3-1986 as L.L. No. 1-1986]

§ **33-4. Purpose.** The uncontrolled and unsupervised roaming of dogs off the property of Dog's owner presents a threat to public health, welfare and safety of the residents of the Town of Root. Thus, it is required that any time off owners property they be leashed or otherwise under control or supervision of owner or person responsible for the dog.

§ **33-5. Statutory authority.**

The Article is enacted pursuant to the provisions of § 124 of Article 7 of the Agriculture and Markets Law.

§ **33-6. Definitions.** See Section 33-14(B).

§ **33-7. Prohibited acts.** In addition to those acts regulated and restricted in Section 33-14(E), it shall be unlawful for any owner of any dog to permit or allow such dog in the Town of Root, to:

- A. Engage in habitual loud howling or barking; for one (1) hour or more.
- B. Dog shall not cause damage, destruction, urinate and defecate on property other than owners property.
- C. Chase or otherwise harass any person in such manner as reasonably to cause intimidation or to put such person in reasonable apprehension of bodily harm or injury; ~~or~~
- D. Habitually chase pedestrians, bicycles, motorcycles or other animals and vehicles; or.
- E. All dogs running at large is prohibited.

§ **33-8. Enforcement.** This article to be enforced by Town of Root Dog Control Officer or any Peace Officer or Dog/Animal Control Officer in Montgomery County or State of New York.

§ **33-9. Complaint procedure.** Any person who observes a dog in violation of this Article may file a complaint under oath with any Animal Control Officer, Constable or Peace Officer of Town of Root, or any other Police Agency specifying the nature of the violation, date, description of dog, the name of owner (if known) and where it occurred. Such complaint shall serve as a basis for enforcing provisions of this law.

DOGS

§ **33-10. Appearance tickets.** Any Animal Control Officer, Peace Officer or Police Authority having reasonable cause to believe a person/persons have violated this article, shall be issued and served an appearance ticket for each violation and be answerable in the Town Court.

§ **33-11. Penalties for offenses.** Any person/persons convicted of any violation of this article shall be deemed to have committed a violation and be subject to a fine, fine not to exceed \$100.00.

§ **33-12. Impoundment fee.** [Amended 12-27-1989 by L.L., No. 2-1989; 2-3-1993 by L.L. No. 1-1 1993; 2-12-1997 by L.L. No. 2-1997]

A. **Impoundment Fee:** The fee for the impoundment of any dog pursuant to Subdivision 4 of § 118 of the Agriculture and Markets Law is hereby set at \$25. No dog shall be released from impoundment to any owner redeeming the same without payment of the \$25 fee to the Town of Root Clerk's office.

B. **Additional Fees:** The Town shall have the right to charge any dog owner whose dog is placed in quarantine at the owner's residence or elsewhere the fee charged by the Dog Control Officer to visit and observe said dog during the period of quarantine (Resolution dated October 10, 2007).

§ **33-13 DOG LICENSING AND CONTROL LAW.** Adopted Local Law No. 1, 2011.

A. **PURPOSE.** The Town of Root is desirous of enacting a Local Law to provide for the licensing and identification of dogs, the control and protection of the dog population and the protection of persons, property, domestic animals and deer from dog attack and damage.

B. **DEFINITIONS.**

Dog: includes any dog of either sex and of any age unless otherwise indicated herein.

Animal Control Officer: means any person employed to assist in the enforcement of the law, with respect to issues involving animals, including investigating and appropriately dealing with or disposing of problematic animals.

Owner: includes any person owning, harboring or keeping a dog within the limits of the Town of Root and /or parent, guardian or other adult person with whom a minor dog owner resides. Any person harboring a dog three (3) days prior to any violations of this law shall be deemed the owner of said dog.

Running at Large: shall mean any dog, licensed or unlicensed, while roaming or running off the property of its owner or custodian and not under restraint.

Restraint: a dog is under restraint if it is:

- 1.) Controlled by a leash not exceeding ten (10) feet in length;
- 2.) On or within a vehicle being driven or parked on a street or roadway;
- 3.) Within the property limits of its owner; or
- 4.) Upon the premises of another with the consent of such other person.

DOGS

C. ANIMAL CONTROL OFFICER APPOINTMENT, DISPOSITION OF CHARGES

1. The Town Board of the Town of Root shall appoint an Animal Control Officer as needed pursuant to the appropriate statutes of the State of New York. It shall be the duty of such Animal Control Officer as well as any and all other peace officers within the Town of Root to enforce the appropriate provisions of this law as well as of the Agricultural and Markets Law of the State of New York with respect to dogs within the Town of Root. Animal Control Officer and any and all other peace officers within the Town of Root shall seize any dog found to be in violation of any portion of this law as well as any dogs otherwise required to be seized under and by virtue of the Agricultural and Markets Law of the State of New York. All complaints concerning alleged violations of this law shall be communicated to the Animal Control Officer.
2. All such complaints shall be investigated and it shall be the duty of the Animal Control Officer in the appropriate case to proceed with the civil or criminal enforcement of this law or any other provision of the law pertaining hereto.
3. The Town Board of the Town of Root is hereby authorized in conjunction with, or in lieu of the establishment of shelters and the employment of a Animal Control Officer, contract with any incorporated society for the prevention of the cruelty to animals, for the seizure and impounding of all unlicensed or untagged dogs not restrained by a leash while off the owner's premises whether or not tagged or licensed in violation of this law and for the maintenance of a shelter for such dogs and for lost and strayed or homeless dogs and for the destruction and dispositions of seized dogs not redeemed as provided in the Agriculture and Markets Law of the State of New York.
4. Any and all fees under this law received by the Town Clerk or the Animal Control Officer shall be paid into the Town and shall be used for the expense of executing and enforcing this law including the return of certain required fees to the State of New York for licensing of said dog.

D. LICENSING

1. Every person owning or harboring a dog within the Town of Root shall make application to the Town Clerk [pursuant to section 109 of the Agriculture and Markets law] for a license and shall pay the prescribed license fee as set forth below, [Pursuant to new Section 110 of said law].
2. All dogs in the Town of Root must be licensed with the Town Clerk by the age of four (4) months and are required to present a current Certificate of Rabies at the time of licensing or the renewal of an existing license.
3. All dog licenses will be for a period of one year and will expire at the end of August regardless of the date of issue.

DOGS

4. Fees for Licensing of Dogs: The fee for a spayed or neutered dog will be \$5.00, (which includes the assessment of a \$1.00 surcharge for the purpose of carrying out animal population control) and the fee for an un-spayed or un-neutered dog will be \$13.00, (which includes the assessment of a \$3.00 surcharge for the purpose of carrying out animal population control) with such fees being reviewed by the Town board periodically and may be adjusted by a Resolution of the Town Board, if deemed necessary. Late fees shall be \$3.00 from September 15 to October 14 and \$5.00 from October 15 or anytime after said date.
5. Purebred License: The Town of Root will not issue Purebred Licenses. All dogs will be licensed individually as per fee system stated above.
6. Service Dogs: The Town of Root will not charge a fee to license any guide dog, service dog, hearing dog or detection dog.
7. The Town of Root does not allow the licensing of dogs by a shelter. The shelter MUST send the adoptive dog owners to the Town Clerk of Root or to the Town or City in which the dog will be harbored for licensing. This will not apply to dogs adopted by out of state residents who will be required to get a license from the Town of Root.
8. All dog licenses may be purchased by visiting the Town offices or by regular mail. If licensing or renewing a license by mail, the appropriate fee must accompany the forms. There will be NO refund of fees or prorating.
9. All fees will be used in funding the administration of the Dog Control Law of the Town of Root.
10. Fees for Seizure of Dogs: The fee for seizure and impoundment of dogs in violation of this law or the Laws of the New York State Department of Agriculture and Markets Law are as follows: First Offense: \$25.00 plus the same impoundment and euthanasia fees per animal that are charged to the town for such service. Second Offense: \$50.00 plus the impoundment and euthanasia fees per animal.
11. It shall be lawful for any person to detain and deliver to the Animal Control Officer or a
E. REGULATIONS AND RESTRICTIONS.
ny other peace officers in the Town of Root, any dog not licensed or leased as provided by this law if found at large within the Town of Root.
1. No Person owning, keeping, harboring or having the care, custody or control of any dog shall permit such dog to be at large in the Town of Root, Montgomery County, New York unless under leash not exceeding ten (10) feet in length, other than when, on the premises of the person owning, keeping, harboring or having custody and /or control of such dog or upon the premises of another with the knowledge, consent and approval of the owner of such premises.

DOGS

2. No person who owns a dog shall permit dog to destroy or damage property of any kind, nor deposit waste or commit a nuisance on the private property of any other person other than that of the owner of the dog.
3. No person who owns a dog shall permit the premises, structures or enclosures, in which such dog is kept to be unclean or unsanitary.
4. The fact that a dog is at large in the Town elsewhere than on the premises of the owner shall be presumptive evidence that the dog has been permitted to be at large with the knowledge of the owner or person having custody and control of the dog.

F. COMPLAINTS

1. Any dog not wearing a tag, not identified and which is not on the owner's premises may be picked up by the Animal Control Officer or any other peace officers within the Town of Root. Dogs in dog shows are exempt from wearing tags during shows.
2. Any person who observes or has knowledge of a dog causing damage to property of a person other than its owner or violating any section of this law or permitting a nuisance upon the premises of a person other than its owner, may file a signed complaint under oath with the Animal Control Officer or any other peace officers within the Town of Root, specifying the objections and conduct of the dog and the name of the residence, if know, or the owner other than the person harboring said dog.
3. A person shall be designated annually by the Town Board to, upon complaint, make an assessment of damage or destruction of domestic livestock, poultry or other personal property and shall file a formal complaint to be acted upon with the Town Justice.
4. Upon receipt of any complaint against the conduct of any particular dog for a violation of any provision of this law or in the event any dog is found by the Animal Control Officer, or any other peace officers within the Town of Root, to be in violation of any provision of this law, the Animal Control Officer, or any other peace officers within the Town of Root, may summon the alleged owner or other person harboring said dog to appear before a Town Justice of the Town of Root.

G. REDEMPTION OF SEIZED DOGS

1. Every dog seized shall be properly fed and cared for at the expense of the Town until a disposition thereof be made as herein provided. Redemption of a seized dog shall be in conformance with the provisions of the Agricultural and Markets Law of the State of New York both as to licensed and unlicensed dogs.

DOGS

2. In the event that a dog seized bears a valid New York State license tag, the Animal Control Officer shall ascertain the owner of the dog and shall give immediate notice by personally serving such owner or an adult member of the minor's family with notice, in writing, that the dog has been seized and that the dog will be destroyed unless redeemed within the period hereinafter provided.
3. The owner of a dog seized shall redeem the dog within five (5) days of seizure and notice to the owner. The owner of such seized dog may redeem the dog without charge if it is the second seizure of the same dog or of a different dog of the same owner within one year, the dog may be redeemed with a payment to the Town Clerk of the sum of Twenty-Five (\$25.00) Dollars as the cost of such seizure. If it is the third seizure of the same dog or of a different dog of the same owner within one (1) year, the dog may be redeemed with a payment to the Town Clerk of the sum of Fifty (\$50.00) Dollars as the cost of such seizure.
4. In addition, the owner of any unlicensed dog shall be required to purchase a license for the dog prior to obtaining the release of the dog.

H. PENALTIES. Any person found guilty of violating this law shall be guilty of a violation and shall be punishable by a fine of not more than one hundred (\$100.00) Dollars for each such violation.

I. EXEMPTIONS. "Any dog harbored within the Town of Root which is owned by a resident of the Town of Root or licensed by the Town of Root, or which is owned by a non-resident of New York State and licensed by a jurisdiction outside the State of New York, shall for a period of thirty (30) days be exempt from the licensing and identification provisions of this local law."

J. SEPARABILITY. Each separate provision of this Local Law shall be deemed independent of all other provisions herein and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

K. REPEALER. This Local Law shall supersede all prior Local Laws, Ordinances, Resolutions, Rules and Regulations relative to the control of dogs within the Town of Root, and they shall be upon the effectiveness of the Local Law, null and void.

L. EFFECTIVE DATE. This law shall take effect January 1, 2011, after filing with the Secretary of State.

CHAPTER 34

KENNEL LAW

- § 34-1. Definition.
- § 34-2. Kennel License.
- § 34-3. Kennel Sites.
- § 34-4. Operational Requirements.
- § 34-5. Responsibilities of Operator.
- § 34-6. Violations of the Chapter.
- § 34-7. Validity.

§ **34-1. Definition.** [Adopted 4-23-12 by L.L No.1 of2012]

A. Any resident operating a facility, housing, keeping and maintaining more than five adult dogs but not to exceed 30 dogs over the age of 4 months shall be designated as a KENNEL.

B. Any resident keeping dogs as agricultural work dogs, to wit: Dogs used to herd and guard domestic animals and for hunting purposes shall be exempt from this Kennel Ordinance.

C. "Agricultural Work Dogs" – shall be defined as the keeping and raising of a Dog or Dogs who perform a function at a farm; ranch or other agricultural location which is incidental to the keeping and raising of other animals, such as guarding or herding said animals on premises, or is in furtherance of another agricultural purpose but shall not mean the keeping of dogs solely or primarily for the breeding and selling of such dogs.

§ **34-2. Kennel License.** [Adopted 4-23-12 by L.L No.1 of2012]

A. KENNEL LICENSE shall mean an annual license permitting a kennel to operate within the Town and will be issued to a kennel which has demonstrated compliance with the requirements of this Local Law. Any License issued under this ordinance shall be personal to the applicant and not run w/the land.

B. EXEMPTION FROM LICENSE REQUIREMENT any not for profit Shelter which has obtained a Charter or Certificate under 501 (c) (3) (Not for Profit) of the IRS Regulations shall be exempt from this Kennel Law.

C. LICENSING PERIOD shall be the time between August first and the following July thirty-first, both dates inclusive.

KENNEL LAW

D. KENNEL LICENSE REQUIRED:

1. No person shall operate a kennel within the Town without first obtaining a kennel license from the Town Clerk in accordance with the provisions of this law.
2. The location and operation of the kennel shall be appropriate for housing the number of dogs allowable under Local Law and will not be detrimental to the health and safety of the dogs or persons.
3. The kennel shall be operated in a safe, sanitary and humane condition.
4. The kennel shall not keep more than 30 dogs on the premises at any time of more than 4 months of age.
5. The kennel shall keep and maintain on its premises accurate records of the identities of all dogs kept on the premises and the number of dogs on premises each day.
6. The kennel must meet all laws and regulations including housing of the Town of Root, the County of Montgomery and the State of New York Ag & Markets pertaining to dogs.

E. KENNEL INSPECTOR shall mean the Town's Animal Control Officer with or without the Town Constable/ Peace Officer/ Police Officer.

F. FEES: Any facility meeting the requirements of a Kennel which shall have existed prior to enactment of this Law shall not be required to pay the initial Kennel Application Fee of \$150.00. However, it shall be required to pay the annual renewal fee of \$50.00.

G. PENALTIES: Any person, firm, entity or corporation which shall construct, reconstruct, relocate, enlarge or modify any kennel in violation of the provisions of this Ordinance, shall be subject to:

1. A fine not to exceed \$250 or imprisonment for a period not to exceed fifteen days, or both. Second and subsequent violations to \$500.
2. A civil penalty in the amount of \$25 for each day that such violation shall exist.
3. Failure to comply can result in a cease and desist order for the kennel operation.
4. Seizure order according to Agriculture & Markets Law.

KENNEL LAW

§ 34-3. KENNEL SITES [Adopted 4-23-12 by L.L No.1 of2012]

A. No site preparation or construction shall commence, nor shall existing structures be occupied, until final site plan approval has been granted by the Planning Board and permits have been issued by the Code Enforcement Officers involved.

B. GUIDELINES FOR PLANNING BOARD REVIEW

1. Any applicant shall submit a site plan map showing where on his lot said proposed kennel facilities will be located in sketch map form.
2. Site plan map shall meet or exceed all of the items listed under "Operational Requirements"
3. The sketch map shall show adequate shelter for dogs in accordance with Agriculture and Markets Law, Section 35-3 (b).
4. Disposal of all animal waste shall be in accordance with the Public Health Law.
5. The site plan shall illustrate the location if any show, demonstrations or exhibits area if applicable.
6. In the event that the applicant shall propose a Kennel as a site encompassed in a large plot of land over 10 acres where there exists natural buffer areas of hedgerows or mature trees, then in that event, the planting of a buffer zone of evergreens may be dispensed with.

C. Existing kennels or dog breeding facilities will have 2 years from the date of enactment to comply with all those provisions of this amendment except the requirements set forth in 34-4(A), which requirements shall be waived for existing Kennels.

D. There shall be no incineration of animal refuse upon the premises.

§ 34-4. OPERATIONAL REQUIREMENTS [Adopted 4-23-12 by L.L No.1 of2012]

A. Such kennel shall be located no closer than 300 feet to any property line or public right away and on a minimum of 10 acres of land.

B. For any kennel property having road frontage or in the event that a kennel shall be within 300 feet of an existing dwelling, then in that event, there shall be a requirement that the kennel operator construct either an 8 foot solid fence or plant evergreen trees double rowed in an offset pattern with appropriate spacing greater than 3 feet high when planted.

KENNEL LAW

C. All dogs must have current rabies protection at all times and operation of the kennel shall otherwise comply with all applicable conditions of the Town Code and the New York State Laws.

1. Appropriate and up to date health recorded deeds are to be correct and available to the Animal Control Officer, and / or the DEC /Agriculture & Markets Law on demand.

D. The site must be reviewed by the Town of Root Animal Control Officer at least once per year, or as requested by the Town Board and a record of that review and any others filed with the Code Enforcer Officer for use in evaluating conformance for renewal purposes.

E. All kennels shall have a posted 24 hour emergency contact telephone number readable from 300 feet at all times.

§ **34-5. RESPONSIBILITIES OF OPERATOR** [Adopted 4-23-12 by L.L No.1 of2012]

A. All animals housed at said kennel shall be restrained from:

1. Running at large other than on premises owned or operated by the owner.
2. Engaging in habitual loud howling, barking, crying or whining or conducting itself in such a manner so as to unreasonable and habitually disturb the comfort or repose of any person other than the owner of the such dog.

B. In the event an Animal shall escape from the kennel property, the owner shall be responsible for damages arising from the following:

1. Uprooting, digging or otherwise damaging any vegetables, lawns, flowers garden beds or other property not belonging to the owner of such dog(s).
2. Chasing, jumping upon or otherwise harassing any person in such a manner as to reasonable cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury.
3. Chasing or harassing agricultural livestock.
4. Habitually chasing, running alongside or barking at motor vehicles, bicycle riders, walking persons or horses while on a public street or highway or upon public or private property other than the property of said owner.
5. Creating a nuisance by defecating, urinating or digging on public property or private property other than the property of said owner.

KENNEL LAW

6. Establishment of fact or facts that the owner of a dog (s) has allowed or permitted such dog (s) to commit any of the acts prohibited above shall be presumptive evidence against the owner or harbinger of such dog (s) that he or she has failed to properly confine or control such dog (s).

§ 34-6. VIOLATIONS OF CHAPTER [Adopted 4-23-12 by L.L No.1 of2012]

A. Any violations of Section 34-3 shall be referred to the Town Code Officer, who may, where appropriate, issue a summons/Notice of Violation returnable in Town Court.

B. Any violations of Section 34-2, 34-4, 34-5 or 34-6 shall be referred to the Dog Control Officer and/or Peace Officer, who may where appropriate issue a Summons/Notice of Violation returnable in Town Court.

§ 34-7. VALIDITY [Adopted 4-23-12 by L.L No.1 of2012]

If any clause, sentence, paragraph, section or part of this Amendment to the Town Code of Ordinances shall be adjudged by any Court of competent jurisdictions to be invalid, such judgment shall not affect impair or invalidate the remainder thereof, but shall be confused in its operation to the clause, sentence paragraph, section or part thereof, directly involved in the controversy in which such judgment shall have been ordered.

Chapter 35

DUMPS AND REFUSE DISPOSAL

- § 35-1. Legislative intent.
- § 35-2. Definitions.
- § 35-3. Violations and penalties.
- § 35-4. Enforcement.
- § 35-5. Dump permits.
- § 35-6. Applications and procedures for dump.
- § 35-7. Renewal, fees, relocation and grace period.

[HISTORY: Adopted by the Town Board of the Town of Root 10-9-1996 by L.L. No. 1-1996. Amendments noted where applicable.]

GENERAL REFERENCES

Junkyards and junk dealers – See Ch. 53.

§ 35-1. Legislative intent. [Adopted 4-23-12 by L.L No.1 of2012]

A. By adoption of this chapter the Town Board of the Town of Root declares its intent to regulate, control or license activities known as “dumps,” “landfills,” “sewage waste disposal areas,” “hazardous sites” or any other areas where the activity of storing or processing of used materials for resale or disposal or handling thereof is being conducted.

B. Said Town Board hereby declares that such activities may constitute a nuisance or can be a hazard to property, the environment, individuals and the general public. The Town Board wishes to safeguard its residents against unwarranted dumping or storage and hereby declares that a clean, wholesome, attractive environment is important to the health and safety of its inhabitants.

C. Said Town Board declares its intent not to permit refuse to be stored in the town without a dump permit except upon the property at which such waste is produced or generated.

D. This chapter shall neither prohibit nor restrict the spreading of manure generated in the Town of Root as part of a normal farm operation practice on land owned or leased by said operation. All spreading and storage of manure shall comply with or be constructed in accordance with all local, State and Federal Laws and regulations that govern such activities.

DUMPS AND REFUSE DISPOSAL

§ **35-2. Definitions.** As used in this chapter, the following terms shall have the meanings indicated:

DUMP/LANDFILL – Includes any lot, land, parcel, building, structure or part thereof for a place of storage or deposit of refuse by any person or persons, corporation, partnership or other legal entity, whether in connection with any business or not, where items of refuse are held whether for the purpose of resale of some or all of the materials therein.

ENFORCEMENT OFFICER – The person(s) designated by the Town Board to enforce the provisions of this chapter.

REFUSE:

A. **SOLID WASTE** as hereafter defined:

- (1) Commercial solid waste generate by stores, offices and other activities that do not actually turn out a product.
- (2) Industrial solid waste resulting from industrial process and manufacturing.
- (3) Institutional solid waste originating from educational, health care or research facilities.
- (4) Municipal solid waste comprising of residential and commercial wastes.
- (5) Residential solid waste, including waste which normally originates in a residential environment, also known as “domestic solid waste.”
- (6) Construction solid waste from demolition debris.
- (7) Medical solid waste from hospitals, medical research facilities, adult and health care centers, nursing homes and other sources.
- (8) Low level waste from nuclear facilities, research centers and other sources which may be the source of such materials.
- (9) Sewage waste disposal.
- (10) Any other hazardous materials.

B. **LIQUID WASTE** – Water from homes, businesses or industries that is a mixture of water and dissolved or suspended solids and any other hazardous fluids.

C. Any old or discarded materials or objects of any kind not usable are “refuse.” Examples being building materials, trailers of any kind (including mobile homes and travel trailers), vehicles, machinery, appliances, furniture, old rubber, old batteries or other waste or discarded materials or materials dangerous to the health or safety, regardless of their kind, form, material, shape or nature.

DUMPS AND REFUSE DISPOSAL

TOWN – The Town of Root, Montgomery County, State of New York.

§ 35-3. Violations and penalties.

A. It shall be a violation to permit refuse to be stored, accumulated, deposited, abandoned or recycled in the Town of Root without a valid dump permit, except on property on which such refuse is produced or generated. Violation of this section of this chapter shall be punishable by a civil penalty not to exceed the sum of \$1,000 per day per violation for each day of each violation.

B. It shall be unlawful to leave refuse anywhere in the Town of Root other than at a dump in accordance with a valid permit. Any violation of this section of this chapter shall be punishable by a fine not to exceed the sum of \$500 per act.

C. In the event that a civil penalty under this section remains unpaid for a period in excess of 30 days, such civil penalty and in addition the sum of ½ of such unpaid civil penalty may be enforced by an action on behalf of the Town of Root in any court of competent jurisdiction.

D. In addition to the above penalties, the town may also maintain an action or proceeding in the name of the town in any court of competent jurisdiction to compel compliance with this chapter or to restrain by injunction the removal of the same from the premises upon which such refuse or dump is situated. All costs associated with such action or proceeding as well as the removal shall be assessed to the party(s) found to be in violation of this chapter.

§ 35-4. **Enforcement.** The Enforcement Officer shall have the power to enforce the provisions of this chapter and for that purpose shall have the right and is hereby empowered to obtain a warrant to enter upon any premises upon which any refuse is stored or a dump is operating in the town, or upon which the Enforcement Officer has reasonable cause to believe a dump is about to be located, and inspect the same at any reasonable time.

§ 35-5. **Dump permits.** [Adopted 4-23-12 by L.L No.1 of 2012]

A. No person, corporation, partnership or other legal entity shall engage in or conduct, whether for profit or otherwise, on real property within the Town of Root, indoors or outdoors, either for himself or themselves or for and/or on behalf of any other person(s), corporation, partnership or of the legal entity, directly or indirectly, as agent, employee or otherwise any operation which involves the collection, storage, burning, dumping, disassembling, dismantling, salvaging, sorting or otherwise processing, handling or arranging for sale, resale, storage, disposal or otherwise of refuse, without first obtaining a dump permit as hereinafter provided. A separate permit shall be required for each location.

B. No person, corporation, partnership or other legal entity shall collect, store, burn, dump, process, disassemble, dismantle, salvage, sort or otherwise handle or arrange outdoors, for sale, resale, storage, disposal or otherwise, deal in any manner with refuse as provided in this section, whether as dealer or otherwise, in the Town of Root without first having obtained a permit as hereinafter provided.

DUMPS AND REFUSE DISPOSAL

C. Outdoor burning is prohibited except as allowed by State Law.

§ 35-6. Applications and procedures for dump.

A. Applications for a dump permit shall be filed with the Town Clerk of the Town of Root upon such forms as are promulgated therefore by the Town Board. The necessary fee(s) shall accompany the application.

B. Upon receipt of a completed application, the Town Clerk shall submit a copy of said application to the Town Board at its next regular meeting for their review and processing in accordance with this chapter.

C. Upon receipt of a completed application for a proposed dump, the Town Board shall determine the level of review needed under 6 NYCRR Part 617 of the New York State Environment Quality Review Act (SEQR). Upon completion of the SEQR evaluation the Town Board shall refer the application and SEQR assessment/draft impact statement to the Planning Board which shall conduct a site plan review within 45 days. Site plan review shall incorporate a process similar to that used in the Town of Root Subdivision Regulations under which the Planning Board may make a reasonable request of an applicant to produce the following:

- (1) Large scale topography professional drawing of the proposed dump site.
- (2) A small scale drawing of the general areas around the site.
- (3) Location of existing features including structures, within 500 feet of the site, public roadways, rights-of-way, watercourses, water bodies, public and private water supplies, wetlands, flood hazard areas and other significant existing features, natural or manmade, that may influence the proposed dumping site.
- (4) Such other information as the SEQR review suggests to be relevant to the site.

D. Within 45 days of the site plan information and comments from the Planning Board, the Town Board shall hold a public hearing on the application. Notice of the public hearing shall be published once in the town official newspaper and shall not be less than seven days before the date of the hearing.

E. The Town Board shall hear the applicant and all other persons wishing to be heard at the public hearing on the application for a permit to establish, operate and maintain a dump. Upon considering the application, the public comment and the ability of the applicant to comply with the requirements of this chapter and other applicable federal, state and local laws, rules and regulations, the Town Board, following criteria set below, shall either approve, disapprove or approve with conditions said application. The Town Board's decision shall be duly recorded by the Clerk in the official minutes of the meeting and the applicant notified in writing by the Town Attorney of the Board's decision. The Town Board shall render its decision and reasons for its decision within 45 days of the public hearing.

DUMPS AND REFUSE DISPOSAL

F. When reviewing an application for a permit, the Town Board shall take into consideration the nature and use of surrounding property, including the proximity of churches, school, hospitals, farms and public places (such as historical sites, parks, public buildings and other places of public gathering) and whether or not the proposed location can be reasonably protected from adversely affecting the public health and safety by reason of offensive or unhealthy odors, smoke, air or water pollution and other causes. Also, the Town Board shall take into account the town's desire to maintain a clean and wholesome environment and to protect the public health, safety and general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an effect or impact contrary to the best public interest. In this connection, the Town Board may consider collectively the type of road servicing the dump or from which the same can be seen, the natural or artificial barriers, such as fencing, protecting the site from view, the proximity of the proposed dump to established or potential residential and recreational areas, of access routes thereto, as well as the reasonable availability to other suitable sites for a dump.

G. If approved, a permit shall remain in effect until June 30. Any new permit issued on or after April 1 of any year shall continue in force to June 30 of the following year, and the fee for the remainder of the year in which such permit is issued shall be prorated for that year.

H. All permits shall be placed, and at all times displayed, in a conspicuous place at the permittee's place of activity or business.

§ 35-7. Renewal, fees, relocation and grace period.

A. Applications to renew permits shall be filed on or before April 30 of each year on forms adopted by the Town Board and available from the Town Clerk. The renewal fee shall accompany the application. The Enforcement Officer shall ascertain that the permittee is operating said dump in accordance with all terms and conditions of the original by inspection of the dump site and then will make a report of such to the Town Board. Operation consistent with said terms and conditions shall entitle the holder to permit renewal. Any substantial, important modification, expansion or enlargement or changes in the refuse stored and deposited therein shall be cause for rejection of the permit renewal.

B. Fees shall be set by the Town Board. A schedule of the fees shall be set following adoption of this chapter and annually thereafter.

C. A dump permit may be revoked for failure to comply with the terms and conditions of the permit upon written notice (by United States mail-certified letter or personally given to the permittee or their business by a process server). The permittee shall have forty-five (45) days upon receipt of written notice to have opportunity to be heard, give witness and cross examination as to conditions that are causing the violation. In revoking said permit, the Town Board shall make factual findings and establish which term(s) or conditions(s) of the permit were not followed. Written notice to permittee shall follow.

DUMPS AND REFUSE DISPOSAL

D. Any person, corporation, partnership or other legal entity operating an unlicensed dump as herein defined in the Town of Root upon effective date of this chapter shall have 60 days from the effective date to complete an application under this chapter or shall be given 60 days from the effective date to remedy any and all violations of this chapter. No proceedings shall be brought to enforce this chapter against said person(s), corporation, partnership or other legal entity during the consideration of their application or when acting in good faith to comply with this chapter.

Chapter 36

DWELLINGS AND SANITATION

- § 36-1. Title; more restrictive provisions to apply.
- § 36-2. Purpose.
- § 36-3. Definitions.
- § 36-4. Permit; fees; appeals.
- § 36-5. Standards.
- § 36-6. Inspections.
- § 36-7. Stop orders.
- § 36-8. Penalties for offenses.
- § 36-9. Severability.’
- § 36-10. When effective.

[HISTORY: Adopted by the Town Board of the Town of Root 10-3-1990 as L.L. No. 1-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction – See Ch. 39.
Mobile homes – See Ch. 59.

§ 36-1. Title; more restrictive provisions to apply.

This chapter shall be known as the “Dwelling and Sanitation Code of the Town of Root.” Where other local laws or ordinances with reference to dwelling and sanitation exist, the most restrictive or that imposing the highest standards shall prevail.

§ 36-2. Purpose.

It is the purpose of this Code chapter to promote the health, safety, convenience, economy, amenity, rural character and general welfare of the inhabitants of the Town of Root by the more efficient regulation of dwellings by enforcing minimum standards, including provisions for construction standards, sewage disposal, water supply, minimum lot size and other actions deemed necessary for said purposes.

DWELLINGS AND SANITATION

§ **36-3. Definitions.** As used in this chapter, the following terms shall have the meanings indicated: [Adopted 4-23-12 by L.L No.1 of2012]

ACCESSORY STRUCTURE – Any structure, which is subordinate to and whose use is incidental to the use of the principal building on the same lot or an adjoining lot under the same ownership, but not for habitable use.

CODE ENFORCEMENT OFFICER - The Town of Root Building Inspector or other person designated and appointed as enforcement Officer by the Town Board to enforce the provisions of this chapter.

DWELLING – Any building or structure or part thereof use and occupied for human habitation or intended to be so used, an abode, a place of residence.

LOT – A tract, plot or portion of a subdivision or other parcel of land intended, as a unit for the purpose whether immediate or future, or sale, lease, donation, or separate use.

PARCEL – A plot or piece of land.

§ **36-4. Permit; fees; appeals.** [Adopted 4-23-12 by L.L No.1 of2012]

A. General. No person, being the owner or occupant of any land in the Town of Root, shall use or permit the use of such land for any building of a dwelling, garage, workshop, car ports, and accessory structures, including additions, alterations, lean-to, decks, porches, roofs, chimney, swimming pools, shed, whether attached or detached of any size, without first obtaining a permit here-after provided.

Applicant shall be liable for all errors or misrepresentative on application for a permit. Demolition of structure also requires a permit for NYS Codes to insure historical considerations, septic removal, fuel tank removal, and require any openings to be barricaded until filled with suitable materials to protect safety and health of our residents.

B. Applications for permit. Applications are available in the Town Clerk's office or from the Code Enforcement Officer of the Town of Root and when completed should be returned to the Code Enforcement Officer. Approval must be received and a permit issued before any construction is commenced.

C. Fees. Each applicant shall pay to the Code Enforcement Officer at the time of submission of the completed application a fee to be determined by the Town Board by resolution. Such fee may be adjusted from time to time by the Town Board, based on enforcement costs to the town.

DWELLINGS AND SANITATION

D. Issuing of Permits.

(1) The Code Enforcement Officer shall, within thirty (30) days upon receipt of the completed application from the applicant, approve or reject the application and, if rejected, state the reason for the action. The applicant shall be notified of the decision, in writing, by mail, return receipt requested, and postmarked no later than seven (7) days after the decision of the Code Enforcement Officer; or the decision shall be hand delivered and signed for.

(2) A permit shall be valid for one (1) year from the date of issuance. Upon final completion of work to be performed pursuant to the terms of the permit and upon final inspection by the Code Enforcement Officer, a certificate of occupancy, or certificate of compliance, will be issued by the Code Enforcement Officer. A permit may be renewed yearly until final approval is received. Renewal shall be granted if all terms of original permit are being complied with. The permit shall be prominently displayed during construction. The renewal fees shall be determined by the Town Board by resolution.

E. Appeals.

(1) In the event that an applicant is denied a permit, the applicant has the right to file an appeal. A petition for an appeal shall be submitted, in writing, by the applicant or the property owner. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner. The petition must be submitted in the first instance to the Town of Root Board of Appeals for the purpose of rendering an opinion. The Board of Appeals must render its decision within Sixty (60) days after receipt of the application. Failure of the Board of Appeals to render a written decision within the sixty day (60) period shall be deemed a favorable decision from the Board of Appeals.

(2) Where the Board of Appeals finds that compliance with this chapter would cause unusual hardship or extraordinary difficulties because of exceptional and unique conditions of topography, access, location, shape, size, drainage or other physical features of the site, the minimum requirements of the chapter may be modified to mitigate the hardship, provided that the public interest is protected and the development is in keeping with the general spirit and intent of this chapter. No such modifications may be granted if it would have the effect of nullifying the intent and purpose of this chapter.

(3) In approving an appeal, the Board of Appeals may require such conditions as will, in its judgment, secure substantially the objectives of the policy and standards of this chapter.

F. Existing parcels. Existing undersized parcels without dwellings shall be exempted from the minimum lot size and minimum road frontage requirements of this chapter if water and sanitation systems that are to be installed in conjunction with the construction of a dwelling satisfy New York State Health Department codes. This provision shall relate back to October 15, 1990 [Added 6-5-1991 by L.L. No. 2-1991].

DWELLINGS AND SANITATION

§ **36-5. Standards.** Dwellings shall only be constructed in accordance with the following requirements: [Adopted 4-23-12 by L.L No.1 of2012]

A. **Location.** The site of each dwelling shall be located on a well-drained and properly graded area. No driveway shall be cut on town roads without the prior written approval from the Authority who owns the public highway.

B. **Lot requirements.** No more than one (1) dwelling shall be permitted to occupy any one (1) lot. The size of the lot shall be a minimum of two (2) acres with frontage on a publicly owned highway of a minimum of two hundred (200) feet. Any such lot for a dwelling that does not have access to a public highway shall be provided with a deeded right-of-way of at least sixty feet (60) in width. In no event shall the owner of any dwelling diminish the size of the lot upon which the dwelling is located to an area less than the two-acre minimum. No permit for a second dwelling shall be issued if there is a dwelling on a parcel of land (regardless of size of parcel) until the section where the second dwelling is to be constructed has its own survey with permanent markers placed, and its deed recorded in Montgomery County Clerk's Office and issued its own tax numbers. The new lot shall be of size to meet all other requirements in this chapter.

C. **Setback requirements.** No dwelling shall be located within fifty (50) feet of the edge of the highway right-of-way of any public road surface nor be located closer than fifty (50) feet to side and rear lot lines. The front setback for any dwelling along a state or county highway shall be 125 feet from the centerline of said highway unless a survey is provided to the CEO showing pins or other monuments from which the fifty feet can be measured. Any accessory structure or outbuilding shall be no closer than fifty (50) feet to the edge of the highway right-of-way of any public road surface nor closer than twenty (20) feet to side or rear lot lines. The front setback for accessory structures or outbuilding along a state or county highway will be 125 feet from the centerline of said highway unless a survey is provided to the CEO showing pins or other monuments from which the fifty feet can be measured.

D. **Sewage.** A dwelling shall be provided with a suitable and adequate sewage disposal system as required by state and local regulations and shall be designed in accordance with the New York State Department of Health, including the New York State Waste Treatment Handbook.

- (1) A mandated percolation test shall be performed for all new septic systems before any dwelling permit is issued. This percolation test shall be done by a NY State licensed engineer at land owner's expense, the septic system shall be installed to comply with the results of the percolation test and must be approved by the Town Code Enforcement Officer before the septic system is backfilled.
- (2) No parts of the septic system shall be closer than twenty (20) feet to adjacent property lines.
- (3) The septic system shall be a minimum of one hundred (100) feet from potable drinking water supply.

DWELLINGS AND SANITATION

- (4) No waste matter shall be channeled into road ditches, streams, rock fissures, etc. (excluding surface water and roof drainage).
- (5) All existing dwellings shall have working septic systems or they shall be regarded as nonconforming and subject to penalties according to the Town of Root Uniform Fire Prevention and Building Code, Chapter 39, § 39-12. An acceptable disposal septic system should assure that:
 - (a) Drinking water supplies will not be contaminated.
 - (b) A health hazard will not be created as the result of sewage exposed on ground surface.
 - (c) It will not cause a nuisance due to odor or unsightliness.
 - (d) State and other regulations governing water pollution or sewage disposal are not violated.
- (6) In the event that any existing septic system requires replacement, a permit shall be obtained and rules for sewage disposal systems shall be obtained and rules for sewage disposal systems shall be followed. The same will apply for replacement as for new systems beginning with a percolation test. Replacement of all or part of a former working septic system may be done with only the approval of the Town Code Enforcement Officer, provided that said replacement poses no health hazards.

E. **Water.**

(1) A sufficient supply of potable drinking water shall be provided for a dwelling as provided by state and local regulations, meeting the requirements of the New York State Department of Health.

~~(2) Any habitable dwelling, upon change of ownership and before any building is to be used as a dwelling they shall have its potable water source and septic system tested and approved by a licensed technician, at owner/sellers expense. This is needed to assure compliance of this chapter and to protect the buyer. This requirement shall also apply to any habitable dwelling that has remained unoccupied for a period of two (2) years or more.~~

removed 9/11/2013

F. **Plumbing.** All plumbing in a dwelling shall comply with all requirements of the New York State Standard Plumbing Code.

G. **Fire protection.** Each and every dwelling shall be equipped with smoke detectors to comply with New York State regulations.

DWELLINGS AND SANITATION

- (1) A permit is required for all wood burning units. The unit must be approved by Underwriters' Laboratories, Inc. or other similar agencies. A proper outside air source must be provided and installed to comply with the New York State Uniform Fire Prevention and Building Code. Before the unit is placed in service, the Code Enforcement Officer must give final approval.
- (2) A wood burning unit must be placed on a fireproof pad.
- (3) **OUTSIDE BOILERS.** Shall require a separate permit where such devices are proposed for installation at a dwelling located within fifty (50) feet of another dwelling and shall meet all NYSDEC requirements.

H. **Foundations.** Each dwelling shall be placed on a permanent foundation of the owner's choice that is appropriate to support said dwelling. All foundations shall receive approval of the Code Enforcement Officer before being backfilled.

L. **Accessory structures.** Any detached structure, which is subordinate to and whose use is incidental to the use of the principle building on the same lot or an adjoining lot under same ownership - but shall not be used for human habitation.

J. **Minimum living space.** All new or replacement dwellings shall be a minimum of nine hundred (900) square feet of living space. Temporary dwellings sometimes known as "skid houses" which have living space less than minimum of nine hundred (900) square feet shall not be permitted for more than one (1) year on any parcel.

K. **Roofing.** A permit is required for all roofs where twenty-five (25) percent or more is replaced in a period of one (1) year. Roof replacement shall comply with the NY State Uniform Building and Fire Code; however in no event shall more than three (3) layers of roofing material be employed on any roof.

L. **Lapse of Use of Dwelling.** In the event that a dwelling used for human habitation does not comply with the NYS Uniform Fire and Building Code and said usage shall have lapsed for two (2) years or more, then in that event the owner of said dwelling shall be required to bring said dwelling into compliance with all current regulations, or the Code Enforcement Officer shall be empowered to revoke any certificate of occupancy on said structure.

§ **36-6 Inspections.** The Code Enforcement Officer shall have the right at any reasonable time, upon proper notification and with the consent of the owner or pursuant to a legally obtained search warrant or in instances of extreme emergency, to enter onto the premises of any dwelling to inspect for conformance to codes within this chapter.

§ **36-7. Stop orders.** Whenever the Code Enforcement Officer or other duly authorized official of the town has reasonable grounds to believe that work on any building or dwelling is being done in violation of the provisions of this chapter or in an unsafe and dangerous manner,

DWELLINGS AND SANITATION

the Code Enforcement Officer shall notify the owner of the property or dwelling to suspend all work. Such stop order and notice shall state, in writing, the conditions under which the work may be resumed and may be served upon an owner either by delivering it to him personally or by posting the same upon a conspicuous portion of the structure under construction and sending a copy of the same by registered or certified mail, return receipt requested.

§ 36-8. Penalties for offenses. [Adopted 4-23-12 by L.L No.1 of2012]

Any person, firm or corporation who violates any provision of this chapter shall be guilty of a violation of this chapter and subject to a fine shall not exceed one thousand (\$1,000) dollars or imprisonment in the county jail for not more than fifteen (15) days, or both such fine and imprisonment. The imposition of penalties for any violation of this chapter shall not excuse the violation or permit to continue. The application of the above penalty or penalties or the prosecution of the violation of the provisions of this chapter shall not be held to prevent the enforced removal of conditions prohibited by this chapter. Each week such violation shall continue shall constitute a separate and distinct violation of this chapter, subjecting the offender to additional penalty.

§ 36-9. Severability. If any section, paragraph, subdivision or provision of this chapter shall be found invalid, such invalidity shall apply to the section, paragraph, subdivision or provision adjudged invalid, and the remainder of the chapter shall remain valid and effective.

§ 36-10. When effective. This chapter shall take effect immediately upon filing with the Secretary of State.

CHAPTER 37

LAND SUBDIVISION REGULATIONS

Article 1

General Provisions

§	37-1-1	Authority
§	37-1-2	Jurisdiction
§	37-1-3	Policy
§	37-1-4	Building Permits
§	37-1-5	Resubdivision
§	37-1-6	Conditions
§	37-1-7	Waivers and Modifications
§	37-1-8	Amendments
§	37-1-9	Violations
§	37-1-10	Separability
§	37-1-11	Court Review
§	37-1-12	Subdivisions in Progress
§	37-1-13	Title and Effective Date

Article 2

Definitions

§	37-2-1	General Terms
§	37-2-2	Key Terms

Article 3

Application Procedure

§	37-3-1	General
§	37-3-2	Initial Conference
§	37-3-3	Sketch Plan Review
§	37-3-4	Requirements for Simple Subdivision
§	37-3-5	Preliminary Plat for Major Subdivision
§	37-3-6	Final Plat for Major Subdivision
§	37-3-7	Final Approval and Filing
§	37-3-8	Status of Roads, Parks and Easements

Article 4

Required Improvements for Major Subdivisions

§	37-4-1	General
§	37-4-2	Performance Bond and Completion of Improvements
§	37-4-3	Modification of Required Improvements
§	37-4-4	Temporary Improvements
§	37-4-5	Inspection of Improvements
§	37-4-6	Proper Installation of Improvements
§	37-4-7	Escrow Deposits for Lot Improvements
§	37-4-8	Certificate of Occupancy

LAND SUBDIVISION REGULATIONS

Article 5

General Improvements and Design Standards

§	37-5-1	General Considerations
§	37-5-2	Lot Improvements
§	37-5-3	Road Layout
§	37-5-4	Road Design
§	37-5-5	Drainage Improvements
§	37-5-6	Water Facilities
§	37-5-7	Community Sewage Facility
§	37-5-8	Utility Improvements

Article 6

Documents to be Submitted

§	37-6-1	Sketch Plan
§	37-6-2	Subdivision Preliminary Plat
§	37-6-3	Major Subdivision Final Plat

Appendix A. Application Process for Dedication of Road to Town of Root

Appendix B. Subdivision Fees.

Article 1. General Provisions.

§ 37-1-1. **Authority.** By authority of the resolution of the Town Board of the Town of Root adopted September 11, 1991, pursuant to the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Root is authorized and empowered to review and approve plats for the subdivision of land in the Town of Root.

§ 37-1-2. **Jurisdiction.** Land within the Town of Root may be subdivided into lots, blocks, or sites, with or without roads or highways, only if approved by the Planning Board in accordance with the procedures and requirements as set forth in these Regulations, and only if the approved plat is duly filed in the Office of the County Clerk of Montgomery County, New York. Construction, excavation, filling, regarding, clearing of vegetation or other similar activities shall not begin within any area proposed or intended for subdivision until said subdivision sketch plan shall have been approved, or conditionally approved by the Planning Board.

§ 37-1-3. **Policy.** It is declared to be the policy of the Planning Board to consider land subdivision as part of a plan for the orderly, efficient, and economical development of the Town. This means, among other things:

- A. That land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and without resulting in significant and/or irreparable damage to the ecology of the area in which it is located;

LAND SUBDIVISION REGULATIONS

- B. That proper provision shall be made for surface drainage, water supply, sewage and other needed improvements;
- C. That all proposed lots shall be so laid out and of such size as to not cause any adverse effects, such as erosion, on neighboring properties or roadways;
- D. That roads shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to follow the natural contours of the land.

§ 37-1-4. **Building Permits.** No building permit shall be issued for the erection of any building within a proposed subdivision until said subdivision has been duly approved by the Planning Board and filed in the Office of the County Clerk. However, the Building Inspector may issue a single building permit for a single family residence based upon the entire tract of land where there is no other existing residence within the proposed subdivision and where the location of the proposed building is in accordance with an approved preliminary plat.

§ 37-1-5. **Resubdivision.** A resubdivision, as defined herein, is subject to the same procedures, rules and regulations applicable to an original subdivision.

§ 37-1-6. **Conditions.** Regulation of the subdivision of land and the attachment of reasonable conditions is an exercise of valid police power delegated by New York State to the Town. The subdivider or developer has the duty of compliance with reasonable conditions laid down by the Planning Board for design, dedication, improvement, and restrictive use of the land so as to conform to the physical and economical development of the Town and to the safety and general welfare of the future plat owners in the subdivision and the community at large.

§ 37-1-7. **Waivers and Modifications.**

A. **Waivers.** Where the Planning Board finds that, because of the special circumstances of a particular case, extraordinary hardship may result from strict compliance with these Regulations, the Planning Board shall have the authority to vary or modify the application of any of the requirements herein related to layout and platting of land for subdivision, provided, however that any such waiver will not have the effect of nullifying the spirit and intent of these standards, the comprehensive Plan, the Official Map, or any other regulations or ordinance, if such exists. Any such waiver must be approved by a vote of a majority of the Planning Board Members plus one.

B. **Design Innovations.** When design concepts which are imaginative and beneficial to the public interest are proposed by the subdivider, the Planning Board may modify the requirements of the Regulations and impose additional conditions as necessary to permit the accomplishments of such concepts. As authorized by resolution of the Town Board, the Planning Board may, simultaneously, with the approval of a plat, apply the provisions of Section 281 of the Town Law, when applicable.

LAND SUBDIVISION REGULATIONS

C. Procedure. Applications for waivers or modifications shall be submitted by the subdivider at the time the Sketch Plan is submitted to the Planning Board. The application shall state fully the grounds and all the facts relied upon by the Applicant.

§ 37-1-8. **Amendments.** These Regulations may be amended by the Planning Board after public hearing on such amendments and subject to the approval of the Town Board. Any proposed preliminary subdivision plat which has not received sketch plan approval prior to the effective date of an amendment to these Regulations, or any conditionally approved preliminary subdivision plat where an application for final plat approval has not yet been received within six (6) months of the date of conditional approval, shall fully comply with any amendment to these Regulations.

§ 37-1-9. **Violations.**

A. General

1. No owner, or agent of the owner, of any parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a plat of such subdivision has been approved by the Planning Board, in accordance with the provisions of the Regulations, and filed with the County Clerk.
2. The subdivision of any lot or parcel of land, by the use of metes and bounds description for the purpose of sale, transfer, or lease with the intent of evading these Regulations, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in these Regulations.
3. No building permit shall be issued for the construction of any building or structure located on a lot or plat subdivided or conveyed in violation of the provisions of these regulations.

B. Civil Enforcement. Appropriate actions and proceedings may be taken by law or in equity to prevent any violation of these Regulations, or prevent unlawful construction, to recover damages, to restrain, correct, or abate a violation, to prevent illegal occupancy of a building, structure or premises; and these remedies shall be in addition to the penalties described, in a separate local law.

§ 37-1-10. **Separability.** Should any section or provision of the regulations contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Regulation as a whole or any part thereof other than the part so declared to be invalid.

§ 37-1-11. **Court Review.** Any person aggrieved by any decision of the Planning Board relative to a subdivision may have such decision reviewed by a special term of the Supreme Court in the manner provided by §78 of the Civil Practice Law and Rules, providing the proceeding is commenced within thirty (30) days after the filing of the decision in the office of the Planning Board, as set forth in Section 282 of Town Law.

LAND SUBDIVISION REGULATIONS

§ 37-1-12. **Subdivisions in Progress.** This Regulation shall not apply to subdivisions for which plats have been properly filed with the Montgomery County Clerk's Office prior to the effective date of this Regulation and for which there has been substantial investment made prior to the effective date of this Regulation. Substantial investments shall include the physical layout and construction work on new roads and/or the sale of more than twenty (20%) percent of the new parcels proposed.

§ 37-1-13. **Title and Effective Date.** In order that land subdivisions may be made in accordance with the authority, jurisdiction, and policy as set forth above, these Regulations, which shall be known and cited as the "Town of Root Land Subdivision Regulations," having been adopted by the Planning Board on July 17, 1991 and approved by the Town Board on September 11, 1991, and shall become effective on September 11, 1991.

Article 2. Definitions.

§ 37-2-1. **General Terms.** Except where specifically defined, all words used in these standards shall carry their customary meaning. Words used in the present tense shall include the future; words used in the singular shall include the plural, unless context clearly indicates otherwise.

The word "shall" is always mandatory. The word "may" is permissive. "Buildings" or "structure" includes any part thereof. The word "person" includes an individual person, a firm, a corporation, a co-partnership, and any other agency of voluntary action.

§ 37-2-2. **Key Terms.** For the purpose of these Regulations, certain words and terms shall have the following meanings:

Applicant- The owner of the land proposed to be subdivided or his duly appointed representative. Written consent shall be required from the legal owner when a representative makes application.

Building Permit- A permit issued by the Code Enforcement Officer or Building Inspector, which indicates the applicant has submitted an approved application and plan for building construction in compliance with the Town of Root requirements.

Construction Drawings- The maps and/or drawings accompanying a subdivision plat and showing the specific location and design of improvements to be installed in the subdivision in accordance with the requirements of the Planning Board as a condition of the approval of the plat.

Easement- Authorization by a property owner for the use of any designated part of his property by another, and for a specified purpose.

Engineer- A person licensed as a professional engineer by the State of New York or licensed in a state with a reciprocal agreement with New York State.

LAND SUBDIVISION REGULATIONS

Environmental Assessment Form (EAF)- A form used by the Planning Board in the State Environmental Quality Review process to assist in determining the environmental significance or non-significance of an action or project.

Environmental Impact Statement (EIS)- A written document required for each Type I and Unlisted action which the Planning Board determines may have a significant effect on the environment.

Escrow- A deposit of cash with the Town in lieu of an amount required on a performance or maintenance bond. The amount held in escrow will be held in an interest bearing account, the interest being payable to the applicant upon release of said funds.

Final Plat- A drawing in final form, showing a proposed subdivision containing all information and detail required by law and these Regulations to be presented to the Planning Board for approval and which, if approved, shall be duly filed and recorded by the applicant in the Office of the Montgomery County Clerk.

Lot Improvement- Any building, structure, or other improvements to the land as may be required by the Planning Board, including clearing, final grading and drainage improvements that constitute a physical betterment of real property. Certain lot improvements shall be properly bonded as provided in these Regulations.

Lot or Parcel- A tract, plot, or portion of a subdivision or other parcel of land intended, as a unit for the purpose, whether immediate or future, of sale, lease, donation or separate use.

Master/Comprehensive Plan- A comprehensive plan prepared by the Planning Board pursuant to Section 272 (a) of the Town Law which indicates the general locations recommended for various functional classes of public works, places and structures and for general physical development of the Town and includes any unit or part of such plan separately prepared and any amendment to such plan or parts therein.

Model Home- A dwelling unit used initially for display purposes which typifies the types of units that will be constructed in the subdivision.

Owner- The person or persons actually holding title to a parcel or tract of land.

Official Map- A map established by the Town Board pursuant to Section 270 of the Town Law showing roads, highways, parks and drainage, both existing and proposed.

Parcel- See Lot.

Performance Bond- A bond as required by Section 277 of the Town Law to assure the full and satisfactory completion of all required subdivision improvements as specified in the Planning Board Resolution of Approval.

Planning Board- The Planning Board of the Town of Root, Montgomery County, State of New York.

LAND SUBDIVISION REGULATIONS

Planning Board Assistant- A person(s) appointed by the Planning Board and approved by the Town Board to assist the Planning Board with the administration of these Regulations. The person(s) will assist and instruct applicants with forms and procedures to ease administration. He may be directed by the Planning Board to review the application, including a field trip to the site and to make recommendations.

Preliminary Plat- A drawing or drawings clearly marked "Preliminary Plat" showing the salient features of a proposed subdivision, as specified in Article 6, Section 6.2, of these Regulations, submitted to the Planning Board for approval prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

Public Improvement- Any drainage ditch, road, off-street parking, recreation area, lot improvement, or other facility for which the Town may ultimately assume the responsibilities for maintenance and operation, or which may affect an improvement for which Town responsibility is established. All such improvements shall be properly bonded.

Resubdivision- A change in a map of an approved or recorded subdivision plat if such change affects any road layout on such map or any lot line or if it affects any map or plan legally recorded prior to the adoption of any regulation controlling subdivisions. Any further subdivision of a tract which will create a total of more than five (5) lots shall be classified as a major subdivision.

Road, Collector- A road which serves or is designed to serve as a trafficway for a neighborhood or as a feeder to a major road.

Road, Dead-End or Cul-De-Sac- A road or portion of a road with only one vehicular traffic outlet.

Road, Existing- An existing State, County or Town road, or other private road shown on a plat approved by the Planning Board or shown on a plat duly filed and recorded in the Office of the Montgomery County Clerk prior to the effective date of these Regulations.

Road, Major- A road which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

Road, Minor- A road intended to serve primarily as an access to abutting properties.

Road, Pavement- The wearing or exposed surface of the road right-of-way designed to be used by vehicular traffic.

Road, Perimeter- An existing road to which the parcel of land to be subdivided abuts only on one side.

Road, Private Right-of-Way- A new road intended to provide access to no more than five (5) lots that have been classified as a simple subdivision.

LAND SUBDIVISION REGULATIONS

Road Review Committee- A committee appointed by the Town Board to review plans and make periodic inspection during the construction phase of required improvement. The committee shall consist of one member of the Planning Board, one member of the Town Board, and the Town Highway Superintendent or his designee.

Road Width- The width of the right-of-way between property lines measured at right angles to the centerline of the road at any given point.

Sketch Plan- A sketch of a proposed subdivision showing the information specified in Article 6, Section 6.1, of these Regulations to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the layout and objectives of these Regulations.

State Environmental Quality Review Act (SEQR)- It is a process to help government and the public protect and improve the environment. SEQR requires that environmental factors be considered along with social and economic considerations in government decision making.

Street- See Road.

Subdivider- Any person, firm, corporation, partnership, or any legal entity who shall layout any subdivision or part thereof as defined herein.

Subdivision- The division of any tract of land into two (2) or more lots, blocks or sites for any purpose with or without the creation of new roads or highways and includes resubdivision and planned unit developments. A subdivision shall not include the division of land for agricultural purposes into two or more lots, each five acres or more in area, and which do not involve the creation of a new street or highway.

A subdivision shall also not include the following:

- a.) A two lot division of land with one (1) lot retained by the Seller;
- b.) A two lot division of land with one (1) lot containing an existing dwelling;
- c.) A two lot division of land in which each of the two lots contain five acres or more.

Any lot created under a, b, or c above cannot be divided under these exceptions for three years and must adhere to all restrictions otherwise outlined in the applicable local laws, rules and regulations of the Town of Root.

All divisions of land considered as not a subdivision as outlined above must be presented to the Planning Board to determine if all requirements are met. This presentation will be heard under privilege of the floor at any Planning Board meeting. If all requirements are determined to be met, a letter will be provided which must be presented to the Montgomery County Clerk's Office in order to have a transfer deed recorded.

Subdivision, Major- Any subdivision of more than five (5) lots.

LAND SUBDIVISION REGULATIONS

Subdivision, Simple- The subdivision of any tract of land into no more than five (5) lots.

Surveyor- A person licensed as a land surveyor by the State of New York.

Town Construction Standards- The standards and specifications adopted by the Town Board for the construction of new roads and related improvements.

Tract- Any parcel or parcels of land contained in a single deed as of the effective date of this regulation.

Type I Action- An action that is likely to have a significant effect on the environment as listed in Part 617.12 of 6NYCRR.

Type II Action- An action that is not likely to have a significant effect on the environment.

Unlisted Action- An action that may have a significant effect on the environment as explained in Part 617.2 of 6NYCRR Law.

Article 3. Application Procedure

§ 37-3-1. **General.** Whenever any subdivision of land is proposed to be made, and before any contract for the sale, or any offer to sell any lot in such subdivision or any part thereof is made, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply for approval of such proposed subdivision in accordance with the following procedures. In no event shall title pass to any lot within the subdivision prior to final approval.

§ 37-3-2. **Initial Conference.** Before preparing a sketch plan, the applicant should meet with the Planning Board or its assistant to discuss the procedure for approval of a subdivision and the requirements as they may pertain, including general layout of lots, new roads, reservation of lands, road improvements, drainage, sewer, fire protection and other similar matters.

The applicant will also be advised of the necessary forms for Sketch Plan review and the requirements for compliance with New York State Environmental Quality Review Act procedures.

§ 37-3-3. **Sketch Plan Review.**

A. **Submission of Sketch Plan.** Any owner of land shall, prior to subdividing or resubdividing land, submit to the Town Clerk, at least ten (10) days prior to the regular meeting of the Board, ten (10) copies of a Sketch Plan and a complete application for the proposed subdivision, which shall comply with the requirements of Article 6, Subdivision 6.1, for the purpose of classification and preliminary review and discussion.

LAND SUBDIVISION REGULATIONS

The subdivider, or his duly authorized agent, shall attend the meeting of the Planning Board to discuss the requirements of these Regulations for road improvements, drainage, sewage, water supply, fire protection, flood protection and similar aspects, as well as the availability of existing services and other pertinent information.

B. **Classification of Sketch Plan.** At this time, the Planning Board shall classify the Sketch Plan as to whether it is a simple or major subdivision as defined in these Regulations. If the Planning Board classifies the Sketch Plan as a Simple Subdivision, then the applicant shall comply with the requirements in section 3.4. If it is classified as a Major Subdivision, the subdivider shall then comply with the procedures outlined in Article 3, Sections 3.5, 3.6, 3.7, and 3.8 and Article 4.

C. **State Environmental Quality Review Act (SEQR) Requirements.** The Planning Board shall also determine the applicability of SEQR. An Environmental Assessment Form (EAF), to be completed by the applicant, is required to determine if the proposed subdivision is to be classified as Type I, Type II, or Unlisted according to the SEQR Act. A completed EAF will assist the Planning Board in determining the environmental significance of the project.

D. **Sketch Plan Review and Recommendations.** The Planning Board, in studying the Sketch Plan, shall take into consideration the requirements of these standards and the best use of the land being subdivided. Particular attention will be given to the arrangement, location and width of roads, their relationship to the topography of the land, sewage disposal, drainage, lot sizes and arrangements, the further development of adjoining land, as yet unsubdivided, and the goals and objectives of the Town Comprehensive Plan as it may exist.

The Planning Board may transmit copies of the Sketch Plan to other interested officials or agencies of government for review and comment as may be necessary. Written comments, if any, from these officials and agencies shall be required within thirty (30) days of their receipt of the Sketch Plan.

After reviewing the Sketch Plan and reports, as submitted, the Planning Board shall determine where the Sketch Plan meets the purposes of these Regulations and shall, as it deems necessary, make specific recommendations in writing which shall be incorporated by the applicant into the next submission to the Planning Board. Such recommendations shall be made within forty-five (45) days from the time the Sketch Plan was initially reviewed by the Planning Board.

§ 37-3-4. Requirements for Simple Subdivision. A public hearing is necessary for a simple subdivision and will be set by the Planning Board as soon as plans meeting the requirements listed below having been submitted. The plans must be submitted to the Town Clerk's Office at least ten (10) days prior to a regular meeting and in sufficient time to advertise in a newspaper of general circulation in the Town at least five (5) days before such hearing.

The following standards are applicable to all Simple Subdivisions:

- I. a. All lots not fronting on an existing public road must have a private right-of-way for access.

LAND SUBDIVISION REGULATIONS

- b. The minimum right-of-way width shall be sixty (60) feet, with a grade not to exceed those called for in the Town of Root Road Specifications.
2. No minimum roadbed requirements are listed.
3. The angle of intersection with an existing road shall be within ten (10°) degrees of a right angle.
4. Clear visibility at all intersections shall be maintained as described in Article 5, Section 5.4 of these regulations.
5. Adequate drainage is to be provided at intersections with existing roads acceptable to the Road Review Committee.
6. A map of the subdivision, suitable for filing in the Office of the Montgomery County Clerk, as required by New York State Law, shall be drawn by a licensed surveyor.
7. Provisions shall be made for the proper installation of utilities. This means the establishment of utility easements, of rights-of-way acceptable to the utility company having jurisdiction, and located where possible within the sixty (60) foot road right-of-way.
8. Shall comply to Article 5, Sections 5.1, 5.2 A, B, C, D, F, G; 5.5, 5.6, 5.7, 5.8 and 6.3 J.

§ 37-3-5. Preliminary Plat for Major Subdivision.

A. Application and Fee. Within six (6) months after Planning Board classification of the Sketch Plan as a Major Subdivision, the subdivider shall file an Application for Approval of the Preliminary Plat of the proposed subdivision. Such Preliminary Plat shall be clearly marked "Preliminary Plat" and shall be in accordance with Article 6, Section 6.3, of these Regulations, except where a waiver may be specifically authorized by the Planning Board.

Ten (10) copies of the Preliminary Plat shall be presented to the Town Clerk at least ten (10) days prior to a regular meeting of the Planning Board. The Application for Approval of the Preliminary Plat shall be accomplished by a fee set by the Town Board and on file in the Town Clerk's Office.

The time of submission of the Preliminary Plat shall be considered to be the date of the regular meeting of the Planning Board, at least ten (10) days prior to which the Application for conditional Approval of the Preliminary Plat, complete and accompanied by the required fee and all data required by Article 6, Section 6.3 of the Regulations has been filed with the Town Clerk.

An EAF, completed by the applicant, for the proposed subdivision shall be available for review at the meeting of the Planning Board. The statement should consider potential impacts of the development as anticipated by the developer.

LAND SUBDIVISION REGULATIONS

B. Referrals. When applicable, the Planning Board shall, upon initial review, refer the Preliminary Plat to the Montgomery County Planning Board for their review and recommendation as required by Section 239-n of §12-B of the General Municipal Law. In addition, the Planning Board shall refer the Preliminary Plat to other County or State agencies which have or may have jurisdiction of review or approval of the subdivision. If the subdivision meets any Type I threshold listed in Part 617.12 of the SEQR regulations, lead agency for the SEQR process shall be determined according to procedures outlined in Section 617.6 of the SEQR regulations.

C. Study of Preliminary Plat. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the Preliminary Plat.

The Planning Board shall study the practicality of the Preliminary Plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location, width and design of roads and their relation to the topography, water supply, sewage disposal, surface drainage, lot sizes and arrangement, potential flood hazards, the future development of adjoining lands as yet unsubdivided, and the future development of adjoining lands as yet unsubdivided, and the recommendations and requirements of the Master Plan, the Official Map, and zoning regulations, if such exists.

The Planning Board may schedule a field trip to the proposed subdivision site accompanied by the applicant or his agent. In order to facilitate field inspection and review of the site, temporary staking along the centerline of all proposed roads at two hundred fifty (250') foot intervals and approximate front lot corners may be required.

D. Public Hearing. Within forty-five (45) days after the time of submission of a Preliminary Plat, the Planning Board shall hold a Public Hearing on said Plat. The Hearing shall be advertised in a newspaper of general circulation in the Town at least five (5) days before such hearing. This Public Hearing shall also be used to solicit comments on the Draft EIS under SEQR, if required. The applicant shall notify, by Certified Mail, at least five (5) days in advance, the owners of property abutting the proposed subdivision and directly across any adjoining road and shall furnish the Planning Board with Post Office receipts as proof of notification. The Planning Board may notify other persons as it deems necessary.

E. Action on Preliminary Plat. Within forty-five (45) days from the date of such Public Hearing, the Planning Board shall take action to approve, with or without modifications, or disapprove such Preliminary Plat and the grounds for any modification required or the grounds for disapproval shall be stated upon the records of the Planning Board. The time in which the Planning Board must take action on such Preliminary Plat may be extended by mutual consent of the subdivider and the Planning Board.

If the Planning Board disapproves the Preliminary Plat, it shall direct the Secretary to notify the applicant, in writing, of the specific reasons for disapproval.

LAND SUBDIVISION REGULATIONS

A determination of no significant environmental impact (negative declaration) or a Draft EIS is required by the designated lead agency before the subdivision may be approved. The Planning Board may notify other agencies that have authority to review the subdivision of this determination.

F. Approval of Preliminary Plat. When granting approval to a Preliminary Plat, the Planning Board shall state the conditions of such approval, if any, with respect to:

1. The specific changes which will be required in the Final Subdivision Plat;
2. The character and extent of the required improvements for which waivers may have been requested and which, in the Planning Board's opinion, may be waived without jeopardy to the public health, safety, morals and general welfare;
3. The amount of the improvement or the amount of all bonds thereof which will be required as a prerequisite to the approval of the subdivision Plat.

Within five (5) days of conditional Preliminary Plat approval the action of the Planning Board, plus any conditions attached thereto, shall be noted on, or attached to, five (5) copies of the Preliminary Plat. One (1) copy shall be returned to the subdivider, three (3) retained by the Planning Board, and one (1) forwarded to the Town Clerk.

Approval of a Preliminary Plat shall not constitute approval of the subdivision plat. Rather, it shall be deemed an expression of approval of the design submitted on the Preliminary Plat as a guide to the preparation of the Final Subdivision Plat, the Planning Board may require additional changes as a result of further study or new information obtained.

G. Model Homes. For the purpose of allowing the early construction of model homes in a subdivision, the Planning Board may permit a portion of a Subdivision, involving no more than three (3) lots, to be created in accordance with the procedures for simple Subdivision, provided said portion derives access from existing County or Town Highway, and provided no future road or other improvement is anticipated where said lots are proposed. The Subdivision Plat for the simple portion shall be submitted to the Planning Board simultaneously with the Preliminary Plat for the Entire Major Subdivision. After preliminary approval, the model may be constructed, subject to such additional requirements that the Planning Board may require.

§ 37-3-6. Final Plat for Major Subdivision.

A. Application and Fee. The subdivider shall, within six (6) months after the approval of the Preliminary Plat, file with the Planning Board an application for approval of the Subdivision Plat in final form. The application and accompanying data shall conform to the requirements of Article 6, Section 6.3, of these Regulations. If the Final Plat is not submitted within the said six (6) months, the Planning Board may refuse to approve the Final Plat and require resubmission of the Preliminary Plat.

The subdivider shall provide the Planning Board Secretary with two (2) copies of the Application, three (3) copies of the final covenants and agreements, and three (3) prints of all construction

LAND SUBDIVISION REGULATIONS

drawings, at least fifteen (15) days in advance of the regular Planning Board meeting at which the Plat is to be officially submitted. The Application of Approval of the Final Plat shall be accompanied by a fee set by the Town Board and on file in the Town Clerk's Office.

The time of submission of the Final Plat shall be considered to be the date of the regular meeting of the Planning Board at least ten (10) days prior to which the Application for Approval of the Subdivision Plat, complete and accompanied by the required fee and all data required by Article 6, Section 6.3 of these Regulations, has been filed with the Secretary of the Planning Board.

Evidence shall be supplied that any proposed water supply and sewage disposal facilities associated with the Subdivision Plat requiring approval by the Department of Environmental Conservation and/or the New York State Department of Health shall have received at least preliminary approval(s) of such facilities.

B. Public Hearing. A public hearing on the Final Plat may be held by the Planning Board if the Board deems that there are substantial changes from the approved Preliminary Plat. Such hearing shall be held within forty-five (45) days after the time of submission of the Final Plat for Approval and shall be advertised in the same manner as the previous public hearing for Preliminary Plat Approval. Adjacent property owners shall also be notified by the Applicant by the process specified for Preliminary Plat Approval.

C. Action on Final Plat. The Planning Board shall, within forty-five (45) days from the date of submission of the Final Subdivision Plat, if no hearing is required [or within forty-five (45) days of second public hearing if required], approve, conditionally approve with or without modifications, or disapprove said Plat and so indicate on the Plat. This time period may be extended by mutual consent of the subdivider and Planning Board. Failure to act within the stated time period, or a mutually agreed upon extension thereof, shall constitute approval of the Plat.

A resolution of conditional approval shall also duly authorize and empower an Officer of the Planning Board to sign the Plat for recording with the County Clerk. However, the Final Plat shall not be signed until the subdivider has complied with Article 4 of these Regulations. Conditional approval of the Final Plat shall expire one hundred eighty (180) days after the date of the resolution granting such approval, except that this time may be extended by the Planning Board for no more than two additional periods of ninety (90) days each.

If a Draft Environmental Impact Statement was required, the Planning Board's action on the Final Plat shall include either a negative declaration or the Final EIS and a statement of findings on the subdivision as required under Section 80-0109 of the SEQRA Act of 1975, as amended.

Within five (5) days of the Planning Board resolution of conditional approval, the Final Subdivision Plat shall be certified by the Planning Board as conditionally approved. A copy of such certification shall be filed in the Office of the Town Clerk and a copy mailed to the subdivider.

LAND SUBDIVISION REGULATIONS

§ 37-3-7. **Final Approval and Filing.** The Chairman or other duly authorized officer of the Planning Board shall endorse the Board's final approval on the Plat only after it is satisfied that all required conditions, modifications and improvements have been met and/or completed in accordance with the Planning Board's resolution of approval of the Plat and construction plans, or alternatively that a bond of the required amount and surety has been filed and that all other required conditions of the resolution of approval, including the payment of all fees and the approval of the New York State Department of Health, have been complied with. The Planning Board endorsement shall be by signature and dated, in ink, on the original of the Plat (which shall be returned to the applicant for filing) and on a print of the Plat which shall be retained by the Planning Board in its files.

The approved Plat shall be filed with the Montgomery County Clerk within sixty (60) days of the date of the Planning Board endorsement. Any Subdivision Plat not so filed, or recorded within sixty (60) days of the date which such Plat is approved, or considered approved by reasons of the failure of the Planning Board to act, shall come null and void, unless the particular circumstances of said applicant warrant the Planning Board to grant an extension which shall not exceed two additional periods of sixty (60) days.

No changes, erasures, modifications, or revisions shall be made on any Subdivision Plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless the said Plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such Subdivision Plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the Plat stricken from the records of the County Clerk.

§ 37-3-8. **Status of Roads, Parks and Easements.**

A. **Acceptance by Town.** Acceptance of any offer of cession of roads or parks shall rest with the Town Board. The approval by the Planning Board of a Subdivision Plat shall not be deemed to constitute nor imply the acceptance by the Town of any roads, parks or other areas shown on appropriate notes to this effect on the Plat.

B. **Maintenance.** IN the vent that no offer of cession to the public is made for the roads, parks and required easements shown on the Plat, there shall be submitted with the Final Application copies of agreements or other documents providing for and fixing responsibility.

Article 4.

Required Improvements for Major Subdivisions

§ 37-4-1. **General.** After adoption of a resolution approving a Final Subdivisions Plat and before the Plat is endorsed by the Planning Board, the applicant shall be required to complete, at his expense and without reimbursement by the Town or any special district, all road, sanitary, storm drainage, and other improvements, including lot improvements as shown on the approved Construction Plans or as otherwise specified in the resolution. The Planning Board may, in a special or peculiar circumstance of a particular case, modify or waive a requirement only by specific resolution.

LAND SUBDIVISION REGULATIONS

§ 37-4-2. **Performance Bond and Completion of Improvements.** Before the Planning Board grants Final Approval of the Subdivision Plat, the subdivider shall follow the procedure set forth in either subparagraph "A" or subparagraph "B" below:

A. In an amount set by the Planning Board from an estimate proposed by the Town Highway Superintendent or other duly designated officer, the subdivider shall either file with the Town Clerk a certified check to cover the full cost of the required improvements or the subdivider shall file with the Town Clerk a performance bond issued by a bonding or surety company approved by the Town Board to cover the full cost of the required improvements. Any such bond shall comply with the requirements of Section 277 of the Town Law and further shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of one (1) year or other such period as the Planning Board may determine appropriate, not to exceed three (3) years shall be set forth in the bond within which required improvements must be completed.

OR

B. The subdivider shall complete all required improvements to the satisfaction of the Road Review Committee or other representative designated by the Town Board to fulfill such duties who shall file with the Planning Board a letter signifying the satisfactory completion of improvements required by the Board. For any required improvements the subdivider shall file with the Town Clerk a bond or certified check covering the costs of satisfactorily installing any improvements not approved by the Road Review Committee. Any such bond shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety.

C. Modification of Bond.

1. Extension of Bond. The time period specified for the completion of all required improvements, as set forth in the bond may be extended only by resolution of the Planning Board upon request in writing by the applicant, setting forth in detail the amount of work which has been completed; reasons for failure to complete the remainder of the work within the specified period, the maximum estimated time required to complete the remainder of the work and the time period extension which is requested.
2. Reduction of Bond. An applicant may request in writing that the Planning Board authorize a reduction in the amount of the bond. Such request shall itemize the extent of required improvements remaining to be completed and the bond reduction requested. Upon approval of the Town Board, the Planning Board may, if it determines that sufficient required improvements have been installed to warrant such action, reduce the face amount of the bond by an appropriate amount so that the new amount will cover the cost in full of all required improvements remaining to be completed, and any security deposited with the bond may be reduced proportionately.

LAND SUBDIVISION REGULATIONS

§ 37-4-3. **Modification of Required Improvements.** If, at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the Road Review Committee that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Road Review Committee shall, upon approval by the Planning Board, authorize modifications provided these modifications are within the spirit and intent of the Planning Board's approval and are not tantamount to the waiver or substantial alteration of the function of any improvements required by the Planning Board. If such modification affects the scope of work covered by a bond, the Planning Board may require or allow appropriate modification of such bond.

§ 37-4-4. **Temporary Improvements.** The applicant shall build or pay for all costs of temporary improvements required by the Planning Board. Prior to the construction of any temporary facility or improvement, the developer shall file with the Town Clerk a separate suitable bond for temporary facilities, which bond shall insure that the temporary facilities will be properly constructed, maintained and removed.

§ 37-4-5. **Inspection of Improvements.**

A. At least five (5) days prior to commencing construction of required improvements, the subdivider shall pay to the Town Clerk the inspection fee required by the Planning Board and shall notify the Road Review Committee in writing of the time when he proposes to commence construction of such improvements. The Committee will then make periodic inspections to assure that all Town specifications and requirements shall be met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Planning Board.

B. Final Inspection. A final inspection of all improvements will be made by the Road Review Committee to determine whether the work is satisfactory and in agreement with the approved final plat and construction drawings. Upon a satisfactory final inspection report, action will be taken to release the performance bond covering such improvements and utilities (if a bond was filed). The Road Review Committee shall also notify the Planning Board that all work has been completed to its satisfaction.

C. Inspection Fee. An inspection fee, as may be required from time to time, shall be paid to the Town prior to the time that the Planning Board signs the Final Plat. No Building Permits or Certificates of Occupancy shall be issued until all inspection fees (if required) are paid.

§ 37-4-6. **Proper Installation of Improvements.** If the Road Review Committee finds, upon inspection, that, either the required improvements have not been completed in accordance with the plans and specifications filed by the subdivider, or that the required improvements have not been completed within the period specified in the Planning Board resolution of approval or the expiration date of the performance bond (if one exists), such approval shall be deemed to have expired, unless, upon request of the applicant, the period has been extended by resolution of the Planning Board.

LAND SUBDIVISION REGULATIONS

§ 37-4-7. Escrow Deposits for Lot Improvements.

A. Acceptance. Whenever any lot improvements required by these Regulations cannot be performed, the Road Review Committee may, nevertheless, permit the issuance of a Certificate of Occupancy, provided there is no danger to health, safety or general welfare, upon accepting a cash escrow deposit, in an amount to be determined by the Committee, for the cost of said improvements. The performance bond covering such lot improvements shall remain in full force and effect.

B. Procedures. All required improvements for which escrow monies have been accepted by the Town at the time of issuance of a Certificate of Occupancy shall be installed by the developer within a period of nine (9) months from the date of deposit and issuance of the Certificate of Occupancy. In the event that the improvements have not been properly installed at the end of the time period the Road Review Committee shall give two (2) weeks written notice to the developer requiring him to install same; and, in the event the same are not installed properly in the discretion of the Road Review Committee, the Committee may request the Root Town Board to authorize the Town of Root to proceed to contract out the work for the sum not to exceed the amount of the escrow deposit. At the time of the issuance of the Certificate of Occupancy, a notarized statement shall be required from the purchaser or purchasers of the premises authorizing the Town of Root to install the improvements at the end of the nine (9) month period, in the event the same have not been duly installed by the developer.

§ 37-4-8. Certification of Occupancy. A Certificate of Occupancy shall not be issued for a structure within a subdivision where the improvements are guaranteed by a performance bond unless it is determined by the Planning Board that the following conditions have been complied with:

A. Stats of Road Improvements. The improvement of the road or roads giving access to the structure has progressed to a stage deemed adequate by the Road Review Committee to render safe all-weather vehicular access for both routine and emergency purposes.

B. Maintenance Agreements. Written agreements have been filed providing for the maintenance of the bonded road or roads in such all weather passable condition, including snow removal and sanding, during the period between the issuance of the Certificate of Occupancy and the acceptance of the fully completed road by the Town Board. If the road is not to be offered for dedication to the Town, maintenance agreements shall have been required in accordance with Article 3, Section 3.8, Part B, Maintenance, of these regulations.

Article 5

General Improvements and Design Standards

§ 37-5-1. General Considerations. The Planning Board, in considering an application for the subdivision of land, shall be guided by, but shall not be bound by the following considerations and standards, upon which the Planning Board shall be the determining agent. In general, these standards shall be deemed to be the minimum requirements, for the convenience, health, safety and welfare of the town and shall be waived by the Planning Board only under circumstances set forth in Article 1, Section 1.7 herein.

LAND SUBDIVISION REGULATIONS

- A. Conformity to Official Map and Master Plan. Subdivisions shall conform to the Official Map of the Town and shall be in harmony with the Master Plan, as they may exist.
- B. Plats Straddling Municipal Boundaries. Whenever access to the subdivision is required across land in another municipality, the Planning Board may request assurance from the Town Attorney that access is legally established and from the Road Review Committee that the access road is adequately improved, or that a performance bond has been duly executed and is sufficient in amount to assure the construction of the access road. In general, lot lines should be laid out so as not to cross municipal boundaries.
- C. Monuments and Lot Corner Markers. Permanent markers meeting specification approved by the Road Review Committee as to size, type and installation shall be set on such block corners, angle points, points of curves in roads and other points as the Planning Board may require, and their location shall be shown on the subdivision Plat.
- D. Character of Land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
- E. Reservation and Easements. All reservations and easements shall be clearly indicated on the Final Subdivision Plat, along with appropriate notations indicating the rights which exist with respect to each such reservation and/or easement title, if vested in interests other than the developer.
- F. Subdivision Name. The proposed name of the subdivision shall not duplicate, or too closely approximate phonetically, the name of any other subdivision in the area covered by these Regulations.

§ 37-5-2. Lot Improvements.

- A. Lots to be Buildable. The lot size, width, depth, shape and arrangement shall be such that there will be no foreseeable difficulty for reasons of topography or other natural conditions in securing building permits to build on all lots in compliance with these Regulations, the New York State Health Department Regulations, Town Law 280(a), the Uniform Building and Fire Code, and a Town Zoning Ordinance as it may exist. The Final Plat must show the location of a test hole on each lot and a statement by an exempt licensed land surveyor and/or a licensed professional Engineer that this site would be adequate for a septic system.
- B. Side Lines. Side lines of lots shall generally be at right angles to straight road lines and radial to curved road lines, unless a variance from this rule will give a better road or lot arrangement.
- C. Corner Lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each road and to provide a desirable building site.
- D. Driveways. Driveway grades within 15' of the road right-of-way shall not incline more than fifteen (15%) per cent from the road and culverts must comply with the requirements of the

LAND SUBDIVISION REGULATIONS

Planning Board and the Superintendent of Highways. Driveway access shall also conform to the standards of the Town and County Highway Departments when necessary. Each lot shall have adequate off road parking.

E. Access from Private Roads. The area proposed to be subdivided and all proposed lots shall have frontage on and direct access to a public road or private road which conforms to Town Law and construction specifications as prescribed in this Regulation. Such required improvements to, a private road shall be a condition of subdivision approval.

F. Debris and Waste. No cut trees, timber, debris, junk, rubbish or other waste materials of any kind shall be buried within a proposed right-of-way.

G. Soil Preservation and Final Grading. Land to be subdivided shall be designed in reasonable conformity to existing topography in order to minimize grading, cut and fill, to retain the natural contours, to limit storm water runoff, and to conserve the natural vegetative cover and soil. No trees, top soil or excavated material shall be removed from its natural position except where necessary to the improvement of lots and the construction of roads and related facilities in accordance with the approved plan. All disturbed areas not occupied by buildings or structures or within a road bed shall be properly graded and seeded.

H. Performance Bond to Include Lot Improvement. The performance bond shall include an amount to guarantee completion of all requirements contained in Article 4 of these Regulations, including, but not limited to, soil preservation, final grading, lot drainage, seeding, and all other lot improvements required by the Planning Board.

§ 37-5-3. Road Layout.

A. Location, Width and Construction. Roads shall be of sufficient width, suitability located and adequately constructed to conform to the applicable Town Highway Construction Specifications, accommodate the prospective traffic and to afford satisfactory access to police, fire fighting, snow removal and other road maintenance equipment. The arrangement of roads shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system.

B. Arrangement. The arrangement of roads in the subdivision shall provide for the continuation of major roads of adjoining subdivisions, and for proper projection of major roads into adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services, such as sewers, water and drainage facilities. Where, in the opinion of the Planning Board, topographic and other conditions make such continuance undesirable or impractical, the above conditions may be modified.

C. Minor Roads. Minor roads shall be laid out that their use by through traffic will be discouraged.

LAND SUBDIVISION REGULATIONS

D. Dead End Roads. The Planning Board may require, where needed or desirable along a dead-end road, reservation of a thirty (30) foot wide easement to the subdivision boundary to provide for the continuation of pedestrian traffic, utilities, and/or drainage facilities to the next road. The entrance at a dead-end road shall bear a "No Outlet" sign.

E. Intersection with Collector or Major Road. Minor or secondary road openings into such roads shall, in general, be at least five hundred (500') feet apart.

F. Road Jogs. Road jogs with center line offsets of less than one hundred twentyfive feet (125') shall be avoided.

G. Angel of Intersection. In general, all roads shall join each other so that for a distance of at least one hundred (100') feet the road is approximately at right angles to the road it joins. No road shall intersect with another at an angle of less than eighty (80°) degrees.

H. Relation to Topography. The road plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all roads shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the roads. Grades of roads shall conform as closely as possible to the original topography.

I. Road Names. All road names shown on the Preliminary Plat and Final Plat shall be approved by the Planning Board. Proposed road names shall be substantially difference in sound and spelling from present names in the Town so as not to cause confusion.

A road which is a continuation of an existing road shall bear the same name.

§ 37-5-4. Road Design.

A. Conformity to Town Standards. In order to provide for roads of suitable location, width and improvement to accommodate prospective traffic and afford satisfactory access to police, emergency vehicles, firefighting, snow removal, sanitation and road maintenance equipment and school buses, the following design standards, contained within these Regulations and those standards adopted by the Town and included here by reference, are hereby required. All roadway and related construction, whether to be offered for dedication or not, shall be the responsibility of the subdivider unless otherwise indicated, and shall be in accord with these standards and other relevant road standards developed by the Town of Root.

B. Other Improvements and Deemed Appropriate. The Planning Board may require the following improvements: road signs, school bus pickup areas, water mains, sanitary sewers, storm drains, fire hydrants and other utilities.

C. Changes in Grade. All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Town Highway Committee so that clear visibility shall be provided for a safe distance. A combination of steep grades and curves shall be avoided.

LAND SUBDIVISION REGULATIONS

D. Visibility of Intersections. In order to provide visibility for traffic safety, that portion of any corner lot (whether at an intersection entirely within the subdivision or of a new road with an existing road), as indicated in Sketch A, shall be cleared of all growth and obstructions above the level three feet (3') higher than the center line of the road. If directed, ground shall be excavated to achieve visibility. An easement for the enforcement of this provision shall be granted to the owner of the road and notation of this effect made on the Final Plat.

INSERT SKETCH A.....

E. Watercourses. Where a watercourse separates a proposed road from abutting property, provision shall be made for access to all lots by means of culverts or other structures of design approved by the Town Highway Committee.

Where a subdivision is traversed by a watercourse, a drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way as required by the Town Highway Committee, and in no case less than thirty (30') feet in width.

F. Road Signs. Road signs, of the type approved by the Town Highway Superintendent, including highway warning and directional signs, shall be provided by the subdivider and placed within the road right-of-way, in locations approved by the Planning Board and Highway Committee.

G. Slope Easements. Where steep slopes beyond the road right-of-way may require maintenance, an easement may be required by the Town Highway Committee for such purpose.

H. Service Roads or Loading Space in Commercial Development. Rear Service roads of not less than twenty (20') feet in width, or in lieu thereof, adequate off-road loading space, suitably surfaced, shall be provided in connection with lots designed for commercial use.

LAND SUBDIVISION REGULATIONS

I. Free flow of Vehicular Traffic Abutting Commercial Developments. In front of areas designed for commercial use, or where commercial use is contemplated, the road width shall be increased by such amount on each side as may be deemed necessary by the Planning Board to assure the free flow of traffic without interference by parked or parking vehicles, and to provide adequate and safe parking space for such commercial or business district.

J. Road Dedications and Reservations.

1. New Perimeter Roads. Road systems in new subdivisions shall be laid out so as to eliminate or avoid new perimeter half-roads. Where an existing half-road is adjacent to a new subdivision, the other half of the road shall be improved by the subdivider and the entire width of the road dedicated. The Planning Board may authorize a new perimeter road where the subdivider improves and dedicated the entire required road right-of-way width within his own subdivision.
2. Widening and Realignment of Existing Roads. Where a subdivision borders on an existing Town road which is narrower than the recommended right-of-way width as specified for such roads in these Regulations, or where a subdivision borders an existing Town road planned for widening or realignment in such a way as to require the use of some land in the subdivision, the Planning Board may require the subdivision plat to show such area which shall be marked "Reserved for Road Realignment (or Widening) Purpose," and a fee title to such areas shall be conveyed to the Town. Land reserved for such purposes may not be counted in satisfying yard or lot area requirements.

§ 37-5-5. **Drainage Improvements.** The Planning Board may require that the subdivider make adequate provision for storm or flood water runoff channels or basins. The storm water drainage system shall be separate and independent of any sanitary sewer system.

A. Removal of spring and Surface Water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either previous to, or as a result of, the subdivision. Such drainage facilities shall be located in the road right-of-way where feasible, or in perpetual unobstructed easements of appropriate width, and shall be constructed in accordance with the town construction standards and specifications.

B. Accommodation of Upstream Drainage Areas. In a subdivision, a culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Planning Board and Town Highway Superintendent shall approve the design and size of the facility based on anticipated runoff from a "fifty year" storm under conditions of maximum potential development within the water shed. The applicant shall be responsible for submitting such computations to the Planning Board in sufficient detail to make possible the ready determination of the adequacy of the proposed drainage installations. Concentrated drainage from lots onto the road right-of-way shall not be permitted.

C. Effect on Downstream Drainage Area. The Planning Board may also require a study of the effects of the subdivision on existing downstream drainage facilities outside the area of the

LAND SUBDIVISION REGULATIONS

subdivision. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a fifty year storm, the Planning Board shall notify the owner of such downstream facility and the Town Board of such potential condition. In such case the Planning Board shall withhold approval of the subdivision until provision has been made for the correction of said potential condition.

D. Wetlands. Areas shown on DEC maps as designated freshwater wetlands shall be regulated according to the provisions contained in Article 24 of the NYS Environmental Conservation Law, including subsequent amendments, which is adopted herein by reference.

E. Flood Plain Areas. Flood plain areas shall be those defined on the Official H.U.D. Flood Hazard Maps. These flood areas shall be preserved from any and all destruction or damage resulting from clearing, grading or dumping of earth, waste material or stumps, except at the discretion of the Planning Board.

F. Drainage Easements. Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road right-of-way, perpetual unobstructed easements shall be provided for such across properties outside the road lines and with satisfactory access to the road.

§ 37-5-6. **Water Facilities.** Wells and central Water Systems. If a developer is planning for wells and central water systems, he must conform to Part 75 of the New York State Department of Health Regulations and other applicable regulations governing community water systems.

§ 37-5-7. **Community Sewage Facility.** If the applicant is proposing to install a community sewage system, then he shall install such sanitary sewer facilities in a manner prescribed by the Town of Root, and instituted sewer district, and in accordance with the regulations of the New York State Health Department.

§ 37-5-8. **Utility Improvements.**

A. General. In order to insure greater safety and improved appearance, all utility lines and related equipment for providing electric power and communication services shall, whenever required by law, be installed underground in the manner prescribed by the regulations of the utility company having jurisdiction. Underground utilities shall be located outside, of the traveled way of roads, but, except in unusual circumstances, within the road right-of-way.

B. Easements. Where topography or other conditions are such as to make impractical the inclusion of utilities within road right-of-way, perpetual unobstructed easements shall be provided for such utilities across properties outside the road lines and wherever possible easements shall be along the property lines, with satisfactory access to the road.

Article 6. Documents to Be Submitted.

§ 37-6-1. **Sketch Plan.** The Sketch Plan initially submitted to the Planning Board shall be based on tax map information or some other similarly accurate base map at a scale

LAND SUBDIVISION REGULATIONS

(preferably not less than four hundred (400') feet to the inch) to enable the entire tract to be shown on one sheet. The Sketch Plan shall be submitted showing the following information.

A. Location map to indicate the relationship of the proposed subdivision to existing community facilities which will serve or influence the layout, such as existing road patterns, schools, parks and other public lands, local villages and hamlets, and special districts, including school, fire, agricultural, etc.

B. All existing structures, burial grounds, existing property lines, wooded areas, streams or water courses, flood hazard areas, wetlands, and other significant physical features within the area to be subdivided and within two hundred (200') feet thereof. Topographic conditions shall be indicated at contour intervals with elevations of not more than twenty (20') feet between contours. U.S.G.S. maps are suitable.

C. The name of the owner, the name of the professional person(s) responsible for the subdivision design, and the names of all adjoining property owners as disclosed by the most recent municipal tax records within five hundred (500') feet of any perimeter boundary of the subdivision.

D. The proposed subdivision name, the tax map sheet, block and lot numbers, scale, north arrow and acreage involved.

E. All the utilities currently available, including any existing or proposed easements, and all roads which are proposed, mapped or built.

F. The proposed pattern and approximate dimensions and area of lots, road layout, systems of drainage, sewerage and water supply within the subdivision area.

G. All existing restrictions on the use of land, including easements, covenants, or zoning divisions.

H. An overlay showing the various types of soils on the land should be provided. This information may be taken from the Montgomery County soil maps.

§ 37-6-2. Subdivision Preliminary Plat. The Preliminary Plat shall be submitted at a scale of one inch (1") equals one hundred feet (100'), or another scale approved by the Planning Board, whichever most clearly illustrates the subdividers proposal. The Preliminary Plat shall be clearly marked "Preliminary Plat" and shall include"

A. Proposed subdivision name, name of town and county in which it is located, name and address of property owner, subdivider, engineer or surveyor preparing the plan, including license number, seal, date, north point and scale.

B. The name of all subdivisions immediately adjacent, if any, and the names and addresses of the owner of record of all property adjacent to the subdivisions and within five hundred feet (500') of any perimeter boundary.

LAND SUBDIVISION REGULATIONS

C. The location of any zoning district lines, special districts, including school, fire and agricultural, or municipal boundary lines affecting the subdivision.

D. Offers of cession of all land to be offered for dedication for roads, highways, easements, parks or other public facilities.

E. The location of all existing structures and pertinent features including railroads, water bodies, watercourses, wetlands, flood hazard areas, and any other significant existing features that may influence the design of the proposed subdivision area plus accurate topography at a vertical contour interval of not more than twenty (20') feet between contour elevations. The topographic data shall be determined by field survey unless the Planning Board specifically waives this requirement and/or permits the substitution of topographic information obtained from other sources determined satisfactory for the particular case.

F. Location of existing sewers, water mains, culverts and drains serving the property, with pipe locations, grades, direction of flow and existing easements.

G. The width, location and names of any roads or public ways or places shown on the Official Map or in the Master Plan, if such exists, within the area to be subdivided including existing easements and rights-of-way; and the right-of-way width, location, grades, and proposed easements, of all roads or public ways proposed by the developer.

H. Approximate location and size of all proposed water lines, valves and sewer lines or alternative means of water supply or sewage disposal and treatment, including sites for on-site systems as provided in the Public Health Law.

Profiles of all proposed water and sewer mains. If individual septic systems are proposed, the results of soil depth tests shall accompany the Preliminary Plat. Where central water supply systems are proposed, the quality and quantity of water available shall be indicated.

I. Storm drainage plan indicating the approximate location and size of proposed lines, their profiles and connection to existing lines or alternative mean of disposal, including existing and proposed drainage easements. Temporary measures to control erosion during construction phase shall also be shown.

J. Construction plans and other drawings, as required, to show the proposed location and types of all improvements required by Article 5 and the Planning Board.

K. Preliminary designs of any bridges or culverts which may be required.

L. The proposed lot lines with approximate dimensions and area of each lot and the total acreage of the subdivision. An actual field survey of the boundary lines of the tract, giving complete descriptive data by the bearings and distances made and certified to by licensed land surveyor. Corners of the tract shall also be located on the ground and marked by permanent markers and shall be referenced and shown on the Plat.

LAND SUBDIVISION REGULATIONS

M. A copy of any covenants or deed restrictions that are intended to cover any lot in all or part of the tract.

N. If the Preliminary Plat submitted for approval covers only a part of the subdivider's entire holding in the area, then a map shall be prepared, at a scale of not less than one inch equals four hundred feet (1" = 400'), showing the entire tract as it relates to the parcel included on the Preliminary Plat.

O. A site location sketch as a maximum scale of one inch equals two thousand feet (1" = 2,000'), showing the general situation of the applicant's property with respect to surrounding properties and roads, including all utility lines.

§ 37-6-3. **Major Subdivision Final Plat.** The Final Plat, to be approved by the Planning Board and filed in the Office of the County Clerk, shall be drawn at the same scale as the Preliminary Plat. When more than one (1) sheet is required an additional index map on the same size sheet shall be prepared and included for filing showing to scale the entire subdivision with lot and block lines clearly legible. The Final Plat submission shall show:

A. Proposed subdivision name or identifying title, the name of the Town and County in which it is located, the name and address of the owner of record and the subdivider (if other than owner), the name, certification and seal of the licensed land surveyor who prepared the plat, the names of the owners of record of adjoining properties and of properties directly across roads.

B. Road lines, pedestrian ways, lots, reservations, easements and area to be dedicated to public use.

C. The location and dimensions of all boundary lines of the proposed subdivision and all existing and proposed road lines, lot lines, easements and rights-of-way, with sufficient data to readily determine the location, bearing and length of all such lines and to reproduce such lines upon the ground. The Plat shall show the boundaries of the property, location, graphic scale and north point. If in the opinion of the Planning Board a subdivision of a portion of an existing tract will cause major impact on the remainder of the tract, the Planning Board may require a survey of the entire tract.

D. All offers of cession and all covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Town Attorney as to their form and legal sufficiency.

E. Notations explaining any drainage, sight, slope, road widening, park area or other reservations or easements, as may be required by the Planning Board, including any self-imposed restrictions or covenants.

F. Lots and blocks within a subdivision shall be numbered and lettered in accordance with the prevailing Town practice.

G. Permanent reference monuments and lot corner markers shall be shown and their location referenced on the Final Plat.

LAND SUBDIVISION REGULATIONS

H. A site location map, at a scale no greater than one inch equals two thousand feet (1" = 2,000'), showing the location of the applicant's property with respect to surrounding land and roads.

I. The following notes shall be placed upon the Final Plat:

1. No building permit shall be issued to any property owner within this subdivision other than to the owner or applicant for a model home unless all improvements are in compliance with Article 4 and approved in accordance with the Planning Board's resolution of approval of this plat.
2. Sanding, snowplowing and other maintenance of highways within this subdivision shall be the responsibility of the developer and/or association of the subdivision owners, until such time as the Town accepts the roads.

J. Endorsement of approval by the New York State Department of health with regard to the sewage disposal and water supply systems is required on all major subdivisions having more than four (4) lots less than five (5) acres in size. No modification may be made after Department of Health Certification.

K. Statement from the appropriate town officials certifying that required improvements have been satisfactorily installed or that an acceptable bond for such installation has been filed with the Town Clerk.

L. Notation for endorsement by Planning Board Chairman as follows:

"Approved by Resolution of the Root Town Planning Board"

Dated: _____

Chairman's Signature

LAND SUBDIVISION REGULATIONS

APPENDIX A: Application Process for Dedication of Road to Town of Root.

1. Specifications for road construction to be obtained from Town Clerk.
2. Applicant will give Town Road Committee at least three (3) days notice during and after completion of one state of road, before proceeding to the next step so that said committee will be able to inspect and approve or disapprove that state. The stages requiring their approval are:
 1. During and after completion of clearing, grubbing, and rough grading;
 2. During and after completion of application and grading of 8" of R.O.B. gravel and installation of culverts; and
 3. During and after completion of application, grading, compacting and stabilizing of 4" of 2" screened gravel.
3. As a prerequisite for the Town actually maintaining said road it must be proven to the satisfaction of the Town Board that the tax revenues from the property/properties accessed by said road shall be sufficient to cover the cost of the maintenance of said road, said cost shall be determined by applying the then town budgeted amount per mile for maintenance of existing Town Roads.

The following formula shall be used:

Highway Budget for Town Roads Total Town Budget	X	Town Highway & Town General Tax Revenue Created by all parcels accessed by proposed road Mileage of the proposed road	> = =	Total Highway Budget for Town Roads Total Town Road Mileage
--	---	---	-------------	---

Sample Equation:

$$(209,812.00 = .482) (10,000.00 = 13,157.90) = \$6,342.11 > 209,812.00 = \$5,913.53$$
$$(435,355.00) (.76) = 35.48$$

4. After final approval of road by the Town Board, applicant must provide the Town with a deed conveying an easement either by metes and bounds description or a filed survey map describing or depicting the outbounds of said road.

APPENDIX B. Subdivision Fees.

Required for Simple and Major Subdivisions.

Application Fee	\$25.00
Subdivision Fee	\$25.00 per lot (payable at time of final approval)
Consultant Fee	Any expenses incurred by the Town resulting from consultant fees shall be paid by the applicant.

UNIFORM FIRE PREV. & BLDG. CODE

Chapter 39

FIRE PREVENTION AND BUILDING CODE, UNIFORM

A LOCAL LAW PROVIDING FOR THE
ADMINISTRATION AND ENFORCEMENT OF THE
NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE

- § 39-1. Purpose and Intent
- § 39-2. Definitions
- § 39-3. Code Enforcement Officer and Inspectors
- § 39-4. Building Permits
- § 39-5. Construction Inspections
- § 39-6. Stop Work Orders
- § 39-7. Certifications of Occupancy/Certificates of Compliance
- § 39-8. Notification Regarding Fire or Explosion
- § 39-9. Unsafe Building and Structures
- § 39-10. Operating Permits
- § 39-11. Fire Safety and Property Maintenance Inspections
- § 39-12. Complaints
- § 39-13. Record Keeping
- § 39-14. Program Review and Reporting
- § 39-15. Violations
- § 39-16. Fees
- § 39-17. Intermunicipal Agreements
- § 39-18. Partial Invalidity
- § 39-19. Effective Date

Local Law #4 of 2006

Be it enacted by the Town Board of the Town of Root, in the County of Montgomery, as follows:

§ 39-1. PURPOSE AND INTENT

This local law provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

§ 39-2. DEFINITIONS. In this local law:

"Building Permit" shall mean a permit issued pursuant to section 4 of this local law. The term "Building Permit" shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this local law.

"Certificate of Occupancy" / "Certificate of Compliance" shall mean a certificate issued pursuant to subdivision (b) of section 7 of this local law.

"Code Enforcement Officer" shall mean the Code Enforcement Officer appointed pursuant to subdivision (b) of section 3 of this local law.

"Code Enforcement Personnel" shall include the Code Enforcement Officer and all Inspectors.

"Compliance Order" shall mean an order issued by the Code Enforcement Officer pursuant to subdivision (a) of section 15 of this local law.

"Energy Code" shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

"Inspector" shall mean an inspector appointed pursuant to subdivision (d) of section 4 of this local law.

"Operating Permit" shall mean a permit issued pursuant to section 10 of this local law. The term "Operating Permit" shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this local law.

"Permit Holder" shall mean the Person to whom a Building Permit has been issued.

"Person" shall include an individual, corporation, Limited Liability Company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

"Stop Work Order" shall mean an order issued pursuant to section 6 of this local law.

"Temporary Certificate" shall mean a certificate issued pursuant to subdivision (d) of section 7 of this local law.

"Town" shall mean the Town of Root.

"Uniform Code" shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

§ 39-3. CODE ENFORCEMENT OFFICER AND INSPECTORS.

(a) The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this local law. The Code Enforcement Officer shall have the following powers and duties:

- (1) to receive, review, and approve or disapprove applications for Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
- (2) upon approval of such applications, to issue Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, and to include in Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
- (3) to conduct construction inspections, inspections to be made prior to the issuance of Certificates of Occupancy / Certificates of Compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this local law;
- (4) to issue Stop Work Orders;
- (5) to review and investigate complaints;
- (6) to issue orders pursuant to subdivision (a) of section 15 (Violations) of this local law;
- (7) to maintain records;
- (8) to collect fees as set by the Town Board of this Town;
- (9) to pursue administrative enforcement actions and proceedings;
- (10) in consultation with this Town attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this local law, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this local law; and
- (11) to exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this local law.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

(b) The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(c) In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this local law.

(d) One or more Inspectors may be appointed the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this local law. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

(e) The compensation for the Code Enforcement Officer and Inspectors shall be fixed from time to time by the Town Board of this Town

§ 39-4. BUILDING PERMITS.

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Code Enforcement Officer.

(b) Exemptions. No Building Permit shall be required for work in any of the following categories:

- (1) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);
- (2) installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);

FIRE PREVENTION AND BUILDING CODE, UNIFORM

- (3) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
- (4) installation of fences which are not part of an enclosure surrounding a swimming pool;
- (5) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (6) construction of temporary motion picture, television and theater stage sets and scenery;
- (7) installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (8) installation of partitions or movable cases less than 5'-9" in height;
- (9) painting, wallpapering, tiling, carpeting, or other similar finish work;
- (10) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (11) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (12) repairs, provided that such repairs do not involve (i) the removal or cutting away of a load bearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code

FIRE PREVENTION AND BUILDING CODE, UNIFORM

Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) a description of the proposed work;
- (2) the tax map number and the street address of the premises where the work is to be performed;
- (3) the occupancy classification of any affected building or structure;
- (4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(e) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

(f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.

(g) Building Permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

(h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

(i) Time limits. Building Permits shall become invalid unless the authorized work is commenced within 6 months following the date of issuance. Building Permits shall expire 12 months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

(j) Revocation or suspension of Building Permits. If the Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

§ 39-5. CONSTRUCTION INSPECTIONS.

(a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an Inspector authorized by the Code Enforcement Officer. The Permit Holder shall notify the Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected made, where applicable:

- (1) work site prior to the issuance of a Building Permit;
- (2) footing and foundation;
- (3) preparation for concrete slab;
- (4) framing;

FIRE PREVENTION AND BUILDING CODE, UNIFORM

- (5) building systems, including underground and rough-in;
- (6) fire resistant construction;
- (7) fire resistant penetrations;
- (8) solid fuel burning heating appliances, chimneys, flues or gas vents;
- (9) Energy Code compliance; and
- (10) a final inspection after all work authorized by the Building Permit has been completed.

(c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 39-6. STOP WORK ORDERS.

(a) Authority to issue. The Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Code Enforcement Officer shall issue a Stop Work Order to halt:

- (1) any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- (2) any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or
- (3) any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

(b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(c) Service of Stop Work Orders. The Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by registered mail / certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by registered mail / certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(d) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 15 (Violations) of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

§ 39- 7. CERTIFICATES OF OCCUPANCY / CERTIFICATES OF COMPLIANCE.

(a) Certificates of Occupancy / Certificates of Compliance required. A Certificate of Occupancy / Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy / Certificate of Compliance.

(b) Issuance of Certificates of Occupancy / Certificates of Compliance. The Code Enforcement Officer shall issue a Certificate of Occupancy / Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy / Certificate of Compliance. In addition, where applicable, the following

FIRE PREVENTION AND BUILDING CODE, UNIFORM

documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy / Certificate of Compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy / Certificate of Compliance:

- (1) a written statement of structural observations and/or a final report of special inspections, and
- (2) flood hazard certifications.

(c) Contents of Certificates of Occupancy / Certificates of Compliance. A Certificate of Occupancy / Certificate of Compliance shall contain the following information:

- (1) the Building Permit number, if any;
- (2) the date of issuance of the Building Permit, if any;
- (3) the name, address and tax map number of the property;
- (4) if the Certificate of Occupancy / Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy / Certificate of Compliance is issued;
- (5) the use and occupancy classification of the structure;
- (6) the type of construction of the structure;
- (7) the assembly occupant load of the structure, if any;
- (8) if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- (9) any special conditions imposed in connection with the issuance of the Building Permit; and
- (10) the signature of the Code Enforcement Officer issuing the Certificate of Occupancy / Certificate of Compliance and the date of issuance.

(d) Temporary Certificate. The Code Enforcement Officer shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer issue a Temporary Certificate unless the Code Enforcement Officer determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed 6 months, which shall be determined by the Code Enforcement Officer and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

(e) Revocation or suspension of certificates. If the Code Enforcement Officer determines that a Certificate of Occupancy / Certificate of Compliance or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time of submission of an application for a Certificate of Occupancy / Certificate of Compliance or for Temporary Certificate.

§ 39-8. NOTIFICATION REGARDING FIRE OR EXPLOSION. The chief of any fire department providing fire fighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

§ 39-9. UNSAFE BUILDING AND STRUCTURES. Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the following procedures [specify procedures].

§ 39-10. OPERATING PERMITS

(a) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

- (1) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR section 1225.1;
- (2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
- (3) use of pyrotechnic devices in assembly occupancies;
- (4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
- (5) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

(b) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

(c) Inspections. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.

(d) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single Operating Permit to apply to all such activities.

ALTERNATIVE 1: (e) Duration of Operating Permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any Operating Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each Operating Permit shall be specified in the Operating Permit. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.

ALTERNATIVE 2: (e) Duration of Operating Permits. Operating Permits shall remain in effect until reissued, renewed, revoked, or suspended.

(f) Revocation or suspension of Operating Permits. If the Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

(g) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid at the time submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

§ 39-11. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS

(a) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:

- (1) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

FIRE PREVENTION AND BUILDING CODE, UNIFORM

- (2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.
- (3) Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this subdivision, shall be performed at least once every [specify interval consistent with local conditions, not to exceed thirty-six (36) months].

(b) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at any time upon:

- (1) the request of the owner of the property to be inspected or an authorized agent of such owner;
- (2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (3) receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b. [INCLUDE THE FOLLOWING PROVISIONS IF THE CITY / TOWN / VILLAGE WISHES TO RELY ON THE INSPECTIONS PERFORMED BY OFPC, AND DOES NOT WISH TO HAVE THE CODE ENFORCEMENT OFFICER INSPECT BUILDINGS THAT ARE INSPECTED BY OFPC: Notwithstanding any other provision of this section to the contrary:

- (1) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;
- (2) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;

FIRE PREVENTION AND BUILDING CODE, UNIFORM

- (3) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section; and
- (4) the Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section.]

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

§ 39-12. COMPLAINTS. The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law, ordinance or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- (a) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (b) if a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 15 (Violations) of this local law;
- (c) if appropriate, issuing a Stop Work Order;
- (d) if a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 39-13. RECORD KEEPING

(a) The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

- (1) all applications received, reviewed and approved or denied;
- (2) all plans, specifications and construction documents approved;

FIRE PREVENTION AND BUILDING CODE, UNIFORM

- (3) all Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;
- (4) all inspections and tests performed;
- (5) all statements and reports issued;
- (6) all complaints received;
- (7) all investigations conducted;
- (8) all other features and activities specified in or contemplated by sections 4 through 12, inclusive, of this local law, including; and
- (9) all fees charged and collected.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

§ 39-14. PROGRAM REVIEW AND REPORTING.

(a) The Code Enforcement Officer shall annually submit to Town Board of this Town a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 13 (Record Keeping) of this local law and a report and summary of all appeals or litigation pending or concluded.

(b) The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.

(c) The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code.

§ 39-15. VIOLATIONS

(a) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this local law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this local law; (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this local law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if

FIRE PREVENTION AND BUILDING CODE, UNIFORM

compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail / certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail / certified mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(c) Civil Penalties. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Town.

(d) Injunctive Relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board of this Town.

(e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6 (Stop Work Orders) of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty

FIRE PREVENTION AND BUILDING CODE, UNIFORM

specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

§ 39-16. FEES. A fee schedule shall be established by resolution of the Town Board of this Town. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of occupancy / Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this local law.

§ 39-17. INTERMUNICIPAL AGREEMENTS. The Town Board of this Town may, by resolution, authorize the [specify title] of this Town to enter into an agreement, in the name of this Town, with other governments to carry out the terms of this local law, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

§ 39-18. PARTIAL INVALIDITY. If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

§ 39- 19. EFFECTIVE DATE. This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

FLOOD DAMAGE PREVENTION

Chapter 43

FLOOD DAMAGE PREVENTION

- § 43-1. Findings.
- § 43-2. Purpose.
- § 43-3. Objectives.
- § 43-4. Definitions and word usage.
- § 43-5. Applicability.
- § 43-6. Basis for establishing areas of special flood hazard.
- § 43-7. Interpretations; conflict with other laws.
- § 43-8. Compliance required; penalties for offenses.
- § 43-9. Warning and disclaimer of liability.
- § 43-10. Designation of local administrator.
- § 43-11. Development permit.
- § 43-12. Powers and duties of local administrator.
- § 43-13. General standards.
- § 43-14. Specific standards.
- § 43-15. Floodways.
- § 43-16. Appeals Board.
- § 43-17. Variances.

[History: Adopted by the Town Board of The Town of Root 4-1-87 as L.L. No. 1-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform Fire Prevention and Building Code – See Ch. 39.
Mobile homes – See Ch. 59.

FLOOD DAMAGE PREVENTION

§ **43-1. Findings.** The Town Board of the Town of Root finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Root and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ **43-2. Purpose.** It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ **43-3. Objectives.** The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general purpose.
- D. Minimize prolonged business interruptions.
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.

FLOOD DAMAGE PREVENTION

- G. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 43-4. Definitions and word usage.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL – A request for a review of the local administrator's interpretation of any provision of this chapter, or a request for a variance.

AREA OF SHALLOW FLOODING – A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD – The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 – A99, V, VO, VE or VI – V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD – The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT – That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKWAY WALL – A wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING – Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR – The same meaning as "basement."

FLOOD DAMAGE PREVENTION

COASTAL HIGH-HAZARD AREA - The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as zone V1 – V30, VE, VO or V.

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

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

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) - An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD or FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from:

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

FLOOD HAZARD BOUNDARY MAP (FHB) - An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined, but no water surface elevation data is provided.

FLOOD INSURANCE RATE MAP (FIRM) - An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk-premium zones applicable to the community.

FLOOD INSURANCE STUDY - The official report provided by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary and Floodway Map, and the water surface elevations of the base flood.

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

FLOOD DAMAGE PREVENTION

FLOODWAY – The same meaning as “regulatory floodway.”

FLOOR – The top surface of an enclosed area in a building including basement, i.e. the top of the slab in concrete slab construction or the top of wood flooring in wood frame construction.

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

HIGHEST ADJACENT GRADE - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR – The lowest level, including basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement or cellar is not considered a building’s “lowest floor,” provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME – A structure, transportable in one (1) or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL - For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

MOBILE HOME – The same meaning as “manufactured home.”

NATIONAL GEODETIC VERTICAL DATUM (NGVD) – As corrected in 1929, a vertical control used as a reference for establishing elevations within floodplain.

NEW CONSTRUCTION – Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD – The same meaning as “base flood.”

FLOOD DAMAGE PREVENTION

PRINCIPALLY ABOVE GROUND – At least fifty percent (50%) of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 43-12B of this chapter.

SAND DUNES – Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

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

STRUCTURE - A walled and roofed building, a manufactured home or a gas or liquid storage tank is principally above ground.

SUBSTANTIAL IMPROVEMENT – Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure, excluding land values, either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

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

VARIANCE - A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

FLOOD DAMAGE PREVENTION

§ **43-5. Applicability.** This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Root.

§ **43-6. Basis for establishing areas of special flood hazard.** The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) No. H-01-04, Community No. 3604, dated April 1, 1988, are hereby adopted and declared to be part of this chapter. The FHBM or FIRM is on file at the Town Office, Flat Creek, Town of Root, Montgomery County, New York.

§ **43-7. Interpretation; conflict with other laws.**

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the highest standards, shall govern.

§ **43-8. Compliance required; penalties for offenses.** No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. An infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than two hundred fifty dollars (\$250) or imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Root from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under §§ 43-16 and 43-17 will be declared noncompliant, and notification will be sent to the Federal Emergency Management Agency.

§ **43-9. Warning and disclaimer of liability.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on part of the Town of Root, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

FLOOD DAMAGE PREVENTION

§ **43-10. Designation of local administrator.** [Amended 2-3-88 by L.L. No. 1-1998]
The Code enforcement Official is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ **43-11. Development permit.** A development permit shall be obtained before the start of construction or any other development with the area of special flood hazard as established in § 43-6. Application for a development permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale, and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of material and drainage facilities; and the location of the foregoing.

- A. Application stage. The following information is required, where applicable:
- (1) The elevation, in relation to mean sea level, of the proposed lowest floor, including basement or cellar, of all structures.
 - (2) The elevation, in relation to mean sea level, to which any nonresidential structure will be flood proofed.
 - (3) When required, a certificate from a licensed professional engineer or architect that the utility flood proofing will meet the criteria in § 43-13C(1).
 - (4) A certificate from a licensed professional engineer or architect that the nonresidential flood proofed structure will meet the flood proofing criteria in § 43-14B.
 - (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. Construction stage. Upon placement of the lowest floor or flood proofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the as-built elevation of the lowest floor or flood proofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building, the flood proofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same. Any further work undertaken prior to submission and approval of the certificate shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

FLOOD DAMAGE PREVENTION

§ **43-12. Powers and duties of local administrator.** Duties of the local administrator shall include, but not be limited to:

- A. Permit application review. The local administrator shall:
 - (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
 - (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
 - (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent properties. A hydraulic engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
 - (4) Review of all development permits for compliance with the provisions of § 43-13E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 43-6, Basis for establishing areas of special flood hazard, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 43-13D(4) in order to administer § 43-14, Specific standards, and § 43-15, Floodways.
- C. Information to be obtained and maintained. The local administrator shall:
 - 1. Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures, and whether or not the structure contains a basement or cellar.
 - 2. For all new or substantially improved flood proofed structures:
 - a. Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been flood proofed; and

FLOOD DAMAGE PREVENTION

- b. Maintain the flood proofing certifications required in §§ 43-14 and 43-15.
 3. Maintain for public inspection all records pertaining to the provisions of this chapter, including variances when granted, and certificates of compliance.
- D. Alteration of watercourses. The local administrator shall:
 1. Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.
 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- E. Interpretation of FHBM, FIRM or FBFM boundaries.
 1. The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
 2. Base flood elevation data established pursuant to § 43-6 and/or § 43-12B, when available, shall be used to accurately delineate the areas of special flood hazard.
 3. The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.
- F. Stop-work orders.
 1. All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 43-8 of this chapter.
 2. All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 43-8 of this chapter.

FLOOD DAMAGE PREVENTION

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

H. Certificates of compliance.

1. It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of either the development permit or approved variance.

2. All other development occurring within the area of special flood hazard will have, upon completion, a certificate of compliance issued by the local administrator.

3. All certificates shall be based upon the inspections conducted subject to Subsection G and/or any certified elevations, hydraulic information, flood proofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

§ **43-13. General standards.** In all areas of special flood hazard, the following standards are required:

A. Anchoring.

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

B. Construction materials and methods.

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

FLOOD DAMAGE PREVENTION

C. Utilities.

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

D. Subdivision proposals.

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

E. Encroachments.

- (1) All proposed developments in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the areas of special flood hazard set forth in § 43-12A(3)(a). This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 43-12B or 43-13D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall no increase the water surface elevation of the base flood more than one (1) foot at any point.

FLOOD DAMAGE PREVENTION

- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to § 43-12B, the requirements of § 43-15, Floodways shall apply.

§ **43-14. Specific standards.** In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 43-6, Basis for establishing areas of special flood hazard, and § 43-12B, Use of other base flood and floodway data, the following standards are required:

- A. Residential construction. New construction and substantial improvements of any resident structure shall:
 - (1) Have the lowest floor, including basements or cellar, elevated to or above the base flood elevation.
 - (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) A minimum of two (2) opening shaving a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- B. Nonresidential construction.
 - (1) New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation or be flood proofed to the base flood level.
 - (a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

FLOOD DAMAGE PREVENTION

- [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- [2] The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
- [3] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(b) If the structure is to be floodproofed:

- [1] A licensed professional engineer or architect shall develop and/or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- [2] A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is flood proofed.

- (2) The local administrator shall maintain on record a copy of all such certificates noted in this section.

C. Construction standards for areas of special flood hazard without base flood elevations.

- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
- (2) Full enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

FLOOD DAMAGE PREVENTION

- (a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all such opening shall be no higher than one (1) foot above the lowest adjacent finished grade.
- (c) Openings may be equipped with louvers, valves, screens or other coverings or devices. Provided that they permit the automatic entry and exit of floodwaters.

§ **43-15. Floodways.** Located within areas of special flood hazard are areas designated as "floodways" (see § 43-4, Definitions and word usage). The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by § 43-12B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ **43-16. Appeals Board.**

- A. The Board of Appeals, as established by the Town of Root, shall hear and decide appeals and requests for variances from the requirements of this chapter. [Amended 2-3-88 by L.L. No. 1-1998]
- B. The Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter. [Amended 2-3-88 by L.L. No. 1-1988]
- C. Those aggrieved by the decision of the Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules. [Amended 2-3-88 by L.L. No. 1-1988]
- D. [Amended 2-3-88 by L.L. No. 1-1988] In passing upon such applications, the Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to the flood damage and the effect of such damage on the individual owner.

FLOOD DAMAGE PREVENTION

- (4) The importance of the services provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the comprehensive Plan and floodplain management program of that area.
 - (9) The safety of access of property in times of flood for ordinary and emergency vehicles.
 - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Town Board may attach such condition to the granting of variances as it deems necessary to further the purposes of this chapter. [Amended 2-3-88 by L.L. No. 1-1988]
- F. The local administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal emergency Management Agency upon request.
- § **43-17. Variances.** [Adopted 4-23-12 by L.L. No. 1 of 2012]
- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of two (2) acres or less or having two hundred (200) feet of frontage, contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the items in § 43-16D(1) through (12) have been fully considered. As the lot size increases beyond one-half (1/2) acre, the technical justification required for issuing the variance increases.

FLOOD DAMAGE PREVENTION

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

GAMES OF CHANCE

Chapter 49

GAMES OF CHANCE

- § 49-1. Title.
- § 49-2. Definitions and word usage.
- § 49-3. Statutory authority; conduct of games.
- § 49-4. Restrictions.
- § 49-5. Provisions to be inclusive.
- § 49-6. Enforcement.

[HISTORY: Adopted by the Town Board of the Town of Root 8-5-81 as L.L. No. 1-1981. ¹ Amendments noted where applicable.]

§ **49-1. Title.** This chapter shall be known as the “Games of Chance Law of the Town of Root.”

§ **49-2. Definitions and word usage.**

- A. Specific terms. As used in this chapter, the following terms shall have the following meanings.

AUTHORIZED ORGANIZATION – Includes any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firemen, which, by its charter, certificate of incorporation, constitution or act of legislature, shall have among its dominant purposes one (1) or more of the lawful purposes as defined in § 186 of the General Municipal Law, provided that each shall operate without profit to its members, and provided that each such organization has engaged in serving one (1) or more of the lawful purposes as defined in § 186 of the General Municipal Law for a period of three (3) years immediately prior to applying for a license under this chapter and Article 9-A of the General Municipal Law.

BOARD – The New York State Racing and Wagering Board.

¹ Editor’s Note: This local law was approved at referendum

GAMES OF CHANCE

GAMES OF CHANCE – Includes specific games of chance in which prizes are awarded on the basis of a designated winning number or numbers, color or colors, symbol or symbols, determined by chance, but not including games commonly known as “bingo” or “lotto” which are controlled under Article 14-H of the General Municipal Law, and also not including “slot machines,” “bookmaking,” “policy or numbers games” or “lotteries” as defined § 225.00 of the Penal Law. No “games of chance” shall involve wagering of money by one (1) player against another player.

TOWN – The Town of Root in the County of Montgomery and State of New York.

- B. Other terms. All other terms in this chapter shall have, for the purpose of this chapter, the meanings respectively ascribed to them by § 186 of the General Municipal Law.

§ 49-3. Statutory authority; conduct of games.

Authorized organizations may, upon obtaining a license from the Town Clerk, conduct games of chance within the Town of Root as provided in Article 9-A of the General Municipal Law and as provided further in this chapter. Such games of chance shall be conducted in accordance with the laws of the State of New York and with the rules and regulations adopted by the New York State Racing and Wagering Board and pursuant to this chapter.

§ 49-4. **Restrictions.** The conduct of games of chance shall be subject to the restrictions imposed by § 189 of the General Municipal Law.

§ 49-5. **Provisions to be inclusive.** This chapter shall be deemed to include all of the provisions of Article 9-A of the General Municipal Law, except as otherwise provided in this chapter, and any amendment to the provisions of such Article to the extent that such provisions and amending acts are otherwise applicable to games of chance authorized under this chapter.

§ 49-6. **Enforcement.** The chief law enforcement officer of the County of Montgomery shall exercise control over and supervision of all games of chance conducted under a validly issued license hereunder. Said chief law enforcement officer of the County of Montgomery shall have all those powers and duties set forth in Article 9-A of the General Municipal Law.

JUNKYARDS AND JUNK DEALERS

Chapter 53

JUNKYARDS AND JUNK DEALERS

- § 53-1. Legislative intent.
- § 53-2. Definitions.
- § 53-3. License required.
- § 53-4. Application for license.
- § 53-5. License fee; display; renewal; non-transferability; revocation; applicability.
- § 53-6. Additional requirements to be fulfilled by licensee.
- § 53-7. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Root 9-7-88 as L.L. No. 2-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Uniform Fire Prevention and Building Code – See Ch. 39.
Abandoned vehicles – See Ch. 85.

§ 53-1. Legislative intent.

A. By adoption of this chapter, the Town Board of the Town of Root declares its intent to regulate, control and license the activities or businesses known as “auto graveyards,” “junkyards,” “secondhand parts collections areas” or any other areas where the business of processing of used or secondhand materials for resale or otherwise disposed of is being conducted.

B. Said Town Board hereby declares that such activities or businesses may constitute a nuisance and can be a hazard to property and persons. The Town Board wishes to safeguard its residents against unwarranted invasion and hereby declares that a clean, wholesome, attractive environment is important to the health and safety of its inhabitants.

§ 53-2. **Definitions.** As used in this chapter, the following terms shall have the meanings indicated:

AUTO – Passenger auto, truck, van, tractor, tractor-truck, trailer, motorcycle, bus or any other vehicle, however propelled, including tractors, trailers bulldozers and equipment.

JUNKYARDS AND JUNK DEALERS

JUNKYARD – Any place of storage or deposit, whether in conjunction with another business or not, where two (2) or more unregistered, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, regardless of the purpose for holding them.

PERSON – An individual, an association, a partnership or a corporation.

§ **53-3. License required.** No person shall engage in or conduct on real property within the Town of Root, either for himself or on behalf of any other person, directly or indirectly, as agent or employee or otherwise, any activity or business either for profit or otherwise, which involves the assembly, dismantling, salvage, sorting or otherwise handling or arranging for sale, resale, storage or disposal of bodies, engines or parts of autos, or any other secondhand or used property or waste material, without first obtaining a license as provided in this chapter.

§ **53-4. Application for license.** [Adopted 4-23-12 by L.L No.1 of2012]

A. Each applicant for a license hereunder shall execute under oath an application therefore to be supplied to him by the Town Clerk, which shall contain the following information: that the applicant is over twenty-one (21) years of age; that he is a citizen of United States; whether he has ever been convicted of a felony or misdemeanor and such other facts or evidence as is deemed necessary to establish that his is a person fit and capable of properly conducting the activity or business for which the license is sought; a description of the exact type of business he intends to conduct; the nature of the materials he intends to handle; the number of employees he intends to engage; and the name and address of the owner or owners and the nature of the right of occupancy of the applicant to the use of such land.

B. At the time of making the application, the applicant shall submit to and file with the Town clerk a map or plan of the real property upon which he intends to conduct the activity or business for which he is making application for a license hereunder with the area of such real property which it is proposed to use for such purpose, the location of the fence to screen from the general view required hereunder indicated thereon, as well as the location of any buildings on such land and the location of any streets or highways abutting or passing through such land.

C. A person presently engaged in or conducting an activity or business such as described herein, on a real property within the Town of Root, must apply for a license within thirty (30) days of the adoption of this chapter. If the place where he conducts such activity or business property complies with the requirements of this chapter a person must meet to secure a license in the first instance, he shall be issued a license therefore. If the place where he conducts such activity or business does not presently comply with the requirements of this chapter a person must meet to secure a license in the first instance, he may be granted a temporary license until the following April 1 and during this time, he must bring the area where he conducts such activity or business into compliance with the requirements of this chapter a person must meet to secure a license in the first instance. If by such next April 1, such person has not so complied, he shall forthwith cease and desist engaging in or conducting such activity or business and shall remove from such place any autos, parts or other materials of the nature described herein within sixty (60) days.

JUNKYARDS AND JUNK DEALERS

D. If the person conducting such activity or business is not the sole owner of the premises to be used for such purpose, he shall state such fact at the time he applies for his temporary license and the Town Clerk, at the time of issuing such temporary license, shall send each owner a notice of the issuance of such temporary license to such person together with a copy of this chapter.

E. In addition to the junkyard licensing requirements of the General Municipal Law, persons engaged in such activity or business must also be registered with the Department of Motor Vehicles (DMV) according to § 4115-a of Vehicle and Traffic Law.

F. SEQR review shall be required, and a public hearing shall be held.

§ 53-5. License fee; display; renewal; non-transferability; revocation; applicability.

A. The fee for the license is hereby fixed in the sum of two hundred fifty dollars (\$250), which sum covers not only the cost of issuing the license itself but also the cost of making the necessary inspections of the premises to ascertain compliance with the regulations hereinafter prescribed.

B. Such license shall be placed and at all times displayed in a conspicuous place at the licensee's place of activity or business for which it is issued.

C. Such license shall be effective from the date of its issuance until the 1st day of April for the year such issuance; the license must be renewed yearly with a new application, reflecting any changes to the physical aspects of the real property, if licensee desires to continue such activity or business.

D. Such license is personal with the licensee. It does not go with the title of the land, nor may it be sold, assigned, transferred or otherwise disposed of.

E. Such license may be revoked by the Town Board after a public hearing thereon at which the licensee shall have an opportunity to be heard. Upon revocation of a license the Town Board may require the removal of autos, parts and materials left as above provided in the case of an applicant who fails to qualify for a license.

F. This law shall be fully binding upon and applicable to the holder of any previously issued junk dealer's or junkyard license.

§ 53-6. Additional requirements to be fulfilled by licensee.

A. The licensee must personally manage or be responsible for the management of the activity or business for which the license is granted.

B. The licensee must maintain an office and a sufficient number of employees on the premises to assure the proper and safe conduct of such activity or business to minimize the fire hazard therefrom and to prevent improper trespass thereon by children and others.

JUNKYARDS AND JUNK DEALERS

C. Section 89 of the Highway Law regulates the establishment, operation or maintenance of a junkyard or scrap metal processing facility within one thousand (1,000) feet of the right-of-way of a primary or interstate highway. The licensee must erect and maintain a fence completely surrounding the property at least eight (8) feet in height, which substantially screens from public view to the materials stored or placed thereon, and with a suitable gate, which shall be closed and locked except during the working hours of such activity or business or when the applicant or his agent shall be within. Such fence shall be erected not nearer than one thousand (1,000) feet from any public highway or one thousand five hundred (1,500) feet from any dwelling, apartment house, place of human habitation or building used for business purposes. All the materials dealt in by the licensee shall be kept within the fence at all times. The topography of the site must be such so that the materials stored within the fence are not visible from the highway.

D. Inside, adjacent to and contiguous with such fence, a strip of land at least twenty-five (25) feet in width shall be kept free of all dry grass or other growth or other combustible materials so as to provide a fire lane or line around the whole area where the activity or business of the licensee is being conducted.

E. Prior to storing of autos, parts and materials dealt in by the licensee, all liquids such as motor oil, transmission fluid, gasoline, radiator fluids, battery acid and/or batteries shall be removed and properly disposed of according to current New York State regulations. All such autos, parts and materials shall be piled or arranged in neat rows so as to permit easy, clear passage through the area. The burning of autos, parts and materials dealt in by the licensee is strictly prohibited.

F. SEQR review shall be required, and a public hearing shall be held.

G. When the area is not supervised by the licensee or his employees the fence shall be locked at a secure gate in a secure manner.

H. Suitable sanitary facilities shall be available, connected to approved public sewers or a suitable and adequate sewage disposal system, as required by state and local regulations, and shall be designed in accordance with the New York State Department of Health Wastewater Treatment Handbook, for the use of and convenience of the employees of the licensee, as well as the general public visiting the area.

I. The area of the licensee's activity or business shall not be used as dump area nor as a place for the burning or disposal of junk or trash.

J. Any law enforcement officer or any member of the Town Board or any duly authorized representatives of the Board shall be granted access to the area of the activity or business of the licensee at all reasonable hours to inspect the same for compliance with this chapter.

§ **53-7. Penalties for offenses.** [Adopted 4-23-12 by L.L No.1 of2012]

- A. The owner or licensee of any such place of business who commits or permits any acts in violation of any of the provisions of this chapter shall be deemed to have committed an offense against such chapter, and also shall be liable for any such violation and the penalty therefore. Each day such violation shall continue or be permitted to exist shall constitute a separate violation.
- B. For every violation of any provision of this chapter, the person violating the same shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for a period not to exceed Thirty (30) days in the Montgomery County Jail, or both such fine and imprisonment.
- C. Conviction of any above-mentioned violation shall constitute and affect an immediate forfeiture of the license.
- D. Any person violating this chapter shall be subject to a civil penalty enforceable and collectible by the town in the amount of one thousand (\$1,000) for each such offense. Such penalty shall be collectible by and in the name of the town for each day that such violation shall continue.
- E. In addition to the above-provided penalties and punishment, the Town Board may also maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter.

MOBILE HOMES

Chapter 59

MOBILE HOMES

- § 59-1. Title; more restrictive provisions to apply.
- § 59-2. Purpose.
- § 59-3. Word usage and definitions.
- § 59-4. Permits; fees; appeals.
- § 59-5. Inspection.
- § 59-6. Revocation of permit.
- § 59-7. Standards.
- § 59-8. Exceptions.
- § 59-9. Nonconforming mobile home and mobile home parks.
- § 59-10. Penalties for offenses.
- § 59-11. Stop Orders.
- § 59-12. Severability.

Appendix A-1 Mobile Home and Mobile Home Park Application Process

Appendix A-2 Application for Permit: Individual Mobile Home

Appendix A-3 Application for Permit: Mobile Home Park

Appendix A-4 Annual Application: Operation of Mobile Home Park

Appendix A-5 Preliminary Site Plan for a Mobile Home Park

Appendix A-6 Typical Mobile Home Lot Layout

[HISTORY: Adopted by the Town Board of the Town of Root 6-3-87 as L.L. No. 2-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Dwellings and sanitation – See Ch. 36.
Uniform Fire Prevention and Building Code – See Ch. 39.
Flood damage prevention – See Ch. 43.

MOBILE HOMES

§ **59-1. Title; more restrictive provisions to apply.** This chapter shall be known as the "Mobile Home and Mobile Home Park Local Law of the Town of Root, Montgomery County, New York." Where other local laws or ordinances with reference to mobile homes or mobile home parks exist, the most restrictive, or that imposing the highest standards, shall prevail.

§ **59-2. Purpose.** It is the purpose of this chapter to promote the health, safety, convenience, economy, amenity and general welfare of the inhabitants of the Town of Root by the more efficient regulation of mobile homes and mobile home parks by enforcing minimum standards, including provisions for sewage disposal, water supply, garbage removal, traffic control and safety, registration of occupants, inspection of facility and other actions deemed necessary for said purpose.

§ **59-3 Word usage and definitions.**

A. General terms.

- (1) For the purpose of this chapter, words and terms used herein shall be interpreted as follows:
 - (a) Words used in the present tense include the future.
 - (b) The singular includes the plural.
 - (c) The word "person" includes a corporation, partnership and association as well as the individual.
 - (d) The term "shall" is always mandatory.
 - (e) The term "may" is permissive.
 - (f) The term "used" shall be interpreted to include the term "designated or intended to be used."
- (2) Any word or term not defined herein shall be used with a meaning of standard usage.

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

ACCESSORY STRUCTURE – Any structure, which is subordinate to and whose use is incidental to the use of the principal building on the same lot or an adjoining lot under the same ownership.

CODE ENFORCEMENT OFFICER – The Town of Root Building Inspector or other person designated and appointed as enforcement officer by the Town Board to enforce the provisions of this chapter.

MOBILE HOMES

INDIVIDUAL MOBILE HOME LOT - A parcel of land occupied or to be occupied by a single mobile home and its accessory buildings, together with such open spaces as are required under the provisions of this chapter and for the exclusive use of the occupants.

MOBILE HOME:

- (1) [Amended 10-3-1990 by L.L. No. 2-1990] A detached, single-family dwelling unit;
- (c) Designed and manufactured as a relocatable dwelling unit without a permanent foundation, to be transported on its own chassis and connected to utilities upon being placed.
 - (d) Designed for long-term, year-round occupancy and containing sleeping accommodations, flush toilets, a tub or shower and kitchen facilities.
 - (e) Designed for installation with only minimal unpacking and assembling operations upon being placed on a mobile home stand and connected to utility hookups.
 - (f) Commonly referred to as "single-wide" and/or "double-wide" units.
- (2) A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two (2) or more separately towable components designed to be joined into one (1) integral unit capable of being again separated into the components for repeated towing.
- (3) Mobile homes can be designed to be used for residential, commercial, educational or industrial purposes, excluding, however, travel trailers, motorized homes, pickup coaches and camping trailers.

MOBILE HOME PARK – A parcel of land under one (1) ownership or management which has been planned and improved for the placement of at least two (2) mobile homes for non-transient use and for which a rental fee is collected.

MOBILE HOME PARK LOT – The owner or manager of a mobile home park for the exclusive use of the occupants of a single mobile home.

MOBILE HOME PARK OPERATOR – The owner or manager of a mobile home park who is responsible for the maintenance and operation of the park.

MOBILE HOME STAND - A part of an individual mobile home lot or mobile home park lot that has been reserved for the placement of the mobile home, appurtenant structures or additions.

MOBILE HOMES

PLANNING BOARD – The Town of Root Planning Board. [Amended 10-3-1990 by L.L. 2-1990]

TRAVEL TRAILER - A trailer which is towed by an automobile, can be operated independently or with utility connections, is limited to width to eight (8) feet, in length to thirty-two (32) feet and is designed to be used principally as a temporary vacation dwelling.

§ **59-4. Permits; fees; appeals.** [Adopted 4-23-12 by L.L. No.1 of2012]

A. General. No person, being the owner or occupant of any land within the Town of Root, shall use or permit the use of such land for parking, storage or use of a mobile home or as a mobile home park without first obtaining a permit as hereinafter provided. No permit shall be required of the owner of a mobile home who maintains such mobile home in a mobile home park for which a valid permit has been issued. None of the provisions of this chapter shall apply to those existing mobile homes or mobile home parks which were registered under the previous ordinance, until such time as the mobile home or mobile home park is enlarged, extended, reconstructed, replaced or moved.

B. Application for permit. Applications are available in the Town Clerk's office and when completed shall be returned to the Town Clerk. Upon receipt of the completed application, attachment and fee, the Town Clerk will submit copies to the Code Enforcement Officer and the Root Planning Board. (See Appendixes A-2, Application for Permit; Individual Mobile Home, and A-3, Application for Permit; Mobile Home Park.) [Amended 10-3-1990 by L.L. No. 2-1990]

C. Fees.

- (1) Individual mobile home. Each applicant shall pay to the Town Clerk at the time of submission of application a fee to be determined by the Town Board. Such fee may be adjusted from time to time by the Town Board, based on enforcement costs to the town.
- (2) Mobile home park.
 - (a) The applicant shall be required to pay to the Town Clerk a permit application fee to be determined by the Town Board.
 - (b) The applicant, at the time of issuance of such permit, shall pay to the Town Clerk a permit fee in the amount of five hundred (\$500) dollars.
 - (c) Such fees may be adjusted from time to time by the Town Board, based on enforcement costs to the town.

MOBILE HOMES

D. Issuing of permits. [Amended 10-3-1990 by L.L. No. 2-1990]

- (1) General. For Mobile Home Parks, the Town Planning Board shall, within thirty (30) days upon receipt of the completed application from, the Town Clerk, approve or reject the application and, if rejected, state the reason for the action. Said written decision shall be filed in the Town Clerk's office and a copy thereof furnished to the Code Enforcement Officer. The applicant shall be notified of the decision, in writing, by mail and postmarked no later than seven (7) days after Town Planning Board-action. Failure of the Town Planning Board to act within the given time frame will constitute a favorable recommendation on the application.
- (2) Individual mobile home. The Code Enforcement Officer of the Town of Root, upon receiving written approval of the application by the New York State Department of Health, when applicable, shall issue a permit to any owner of one (1) mobile home. Such permit shall be transferable or assignable and shall continue in force until such time as the permitted mobile home is moved, enlarged, extended, reconstructed or replaced.
- (3) Mobile home park. The Town Clerk of the Town of Root, upon written application and upon receipt of the permit fee, thereafter shall, with written approval of the Town Planning Board and Code Enforcement Officer and upon receiving written approval of the application by the new York State Department of Health, when applicable, issue a permit to become effective from the date thereof and to continue in force for a period of one (1) year, at which time the Town Planning Board must renew its permit. Such permit shall not be transferable or assignable.
- (4) Renewal of permits. At the time of yearly renewal of a permit, the mobile home park operator shall submit a written annual report of its operations to the Town Planning Board. The Town Planning Board shall renew the permit upon demonstration that the design and maintenance of the park is in accordance with the requirements of this chapter and upon receipt by the Town Clerk of the annual fee. (See Appendix A-4, Annual Application: Operation of a Mobile Home Park.)
- (5) Existing mobile homes and mobile home parks. The owner or operator of any individual mobile home or mobile home park that existed in the Town of Root prior to the effective date of this chapter and has not applied for or received a license under the previous ordinance shall have ninety (90) days to register the mobile home or mobile home park with the Town Clerk.
- (6) Appeal by applicant. If, after review by the Root Town Board of Appeals, the application is rejected or modifications are requested, which the applicant feels are unreasonable, the applicant shall have the right to file an application under Article 78 within thirty (30) days of said denial.

MOBILE HOMES

- (7) **Demolition of Mobile Home.** A permit is required for all mobile home demolition according to NY State Codes. Before a demolition permit is issued by the Code Enforcement Officer that Officer must consider the following: it must consider septic tank and system, fuel tank removal, utility disconnect, and where a basement exists it shall be barricaded until filled with suitable material.
- (8) **Mobile Home Roofs.** A permit is required for all mobile home roofs where more than twenty five (25) percent of the roof is being replaced within a period of one (1) year. No more than three (3) layers on any such roof shall be permitted.
- (9) In cases where Mobile Home Parks are in existence prior to this section, said park shall be required to meet all regulations which are in effect at the time said park is expanded or enlarged.

§ **59-5. Inspection.** The Code Enforcement Officer shall have the right at any reasonable time, upon proper notification and with the consent of the owner or operator, or pursuant to a legally obtained administrative search warrant or in instances of extreme emergency to enter onto the premises of any mobile home or mobile home park to inspect parts for conformance with the standards of this chapter.

§ **59-6. Revocation of permit.** If the Code Enforcement Officer, upon inspection, finds that such mobile home or mobile home park is not being maintained in a clean and sanitary condition or that such mobile home or mobile home park is not being conducted in accordance with the provisions of this chapter or conditioned requirements of the permit, he shall serve upon the holder of the permit therefore or the person in charge of such mobile home or mobile home park and initial order in writing directing that the conditions therein specified be corrected within thirty (30) days after the serving of such order. The Town Health officer may also serve such order if findings of inspection are not satisfactory to the State Sanitary Code,¹ as amended. If, after the expiration of such period, such conditions are not corrected, the individual mobile home owner or mobile home park owner or the person in charge of such mobile home or mobile home park shall be considered in violation of this chapter and subject to the penalties as set forth in § 59-10.

§ **59-7. Standards.** [Adopted 4-23-12 by L.L No.1 of 2012]

A. **Individual mobile homes.** The owner or occupant of such mobile home and premises shall comply with the following standards:

- (1) **Location.** The site of such mobile home shall be located on a well-drained site and properly graded. No driveway shall be cut on any public road without the prior written approval.

¹ Editor's Note: See 10 NYCRR 6.1 et seq.

MOBILE HOMES

(2) Lot requirements. No more than one (1) mobile home shall be permitted to occupy any one (1) mobile home lot. Individual lot size shall be a minimum of two (2) acres, with frontage on a public highway of a minimum of two hundred (200) feet. Any such lot for a mobile home that does not have access to a public highway shall be provided with a deeded right-of-way for ingress or egress of at least sixty (60) feet in width. In no event shall the owner of any mobile home diminish the size of the lot upon which the mobile home is located to an area less than the two-acre minimum. **[Amended 10-3-1990 by L.L. No. 2-1990]**.

(3) Setback requirements. No dwelling shall be located within fifty (50) feet of the edge of the highway right-of-way of any public road surface nor be located closer than fifty (50) feet to side and rear lot lines. The front setback for any dwelling along a state or county highway shall be 125 feet from the centerline of said highway unless a survey is provided to the CEO showing pins or other monuments from which the fifty feet can be measured. Any accessory structure or outbuilding shall be no closer than fifty (50) feet to the edge of the highway right-of-way of any public road surface nor closer than twenty (20) feet to side or rear lot lines. The front setback for accessory structures or outbuilding along a state or county highway will be 125 feet from the centerline of said highway unless a survey is provided to the CEO showing pins or other monuments from which the fifty feet can be measured.

(4) Health and safety.

(a) **[Amended 10-3-1990 by L.L. 2-1990]** Sewage. A mobile home shall be provided with a suitable and adequate sewage disposal system as required by state and local regulations and shall be designed in accordance with the New York State Department of Health, including the New York State Waste Treatment Handbook.

- [1] A mandated percolation test shall be performed before any mobile home installation has begun. The septic system shall be installed to comply with the results of the percolation test and must be approved by the Town Code Enforcement Officer before the septic system is backfilled.
- [2] No parts of the septic system shall be closer than twenty (20) feet to adjacent property lines.
- [3] The septic system shall be a minimum of one hundred (100) feet from potable drinking water supply.
- [4] No waste matter shall be channeled into road ditches, streams, rock fissures, etc. (excluding surface water and roof drainage).
- [5] All existing mobile homes shall have working septic systems or they shall be regarded as nonconforming and subject to penalties according to the Town of Root Uniform Fire Prevention and Building Code, Chapter 39, § 39-12. An acceptable disposal septic system should assure that:

MOBILE HOMES

- [a] Drinking water supplies will not be contaminated.
- [b] A health hazard will not be created as the result of sewage exposed on ground surface.
- [c] It will not cause a nuisance due to odor or unsightliness.
- [d] State and other regulations governing water pollution or sewage disposal are not violated.

[6] In the event that any existing septic system requires replacement, a permit shall be obtained and rules for sewage disposal systems shall be followed. Replacement of all or part of a former working septic system may be done only with the approval of the Town Code Enforcement Officer, provided that said replacement poses no health hazards.

(b) Water. A sufficient supply of potable drinking water shall be provided for such mobile homes as provided by state and local regulations, meeting the requirements of the New York State Health Department as specified in the booklet called "rural Water Supply."

(c) Plumbing. Connections of mobile homes shall comply with all requirements of the State Standard Plumbing Code.

(d) **[Amended 10-3-1990 by L.L. No. 2-1990]** Fire protection. Each and every mobile home shall be equipped with smoke detectors to comply with New York State regulations.

[1] A permit is required for all wood burning units. The unit must be approved by Underwriters' Laboratories, Inc., or other similar agencies. A proper outside air source must be provided and installed to comply with the New York State Uniform Fire Prevention and Building Code. Before the unit is placed in service, the Code Enforcement Officer must give final approval.

[2] A wood burning unit must be placed on a fireproof pad.

(5) In the event that a non-conforming mobile home exists in a mobile home park where it's used for human habitation shall have lapsed for two (2) years or more, then in that event the owner of said mobile home shall be required to bring said mobile home into compliance with all current regulations or remove said mobile home from the park.

MOBILE HOMES

B. Mobile Home parks. The following site planning standards shall be the responsibility of the mobile home park operator:

(1) Site plan standards (See Appendix A-5, Preliminary Site Plan for a Mobile Home Park.)

- (a) Location. The site shall not be exposed to excessive or objectionable smoke, dust, noise, odors or other adverse influences. No portion of the site shall be subject to predictable sudden flooding or erosion, nor shall it be used for any purpose which would expose persons or property to hazards.
- (b) Drainage. The mobile home park shall be located on a well-drained site, properly graded to ensure rapid drainage and freedom from stagnant pools of water.
- (c) Minimum lot size. A minimum lot size of ten thousand (10,000) square feet shall be provided for each mobile home. (See Appendix A-6, Typical Mobile Home Lot Layout)
- (d) Bulk requirements. Any Mobile home, office or service building must meet the normal set back requirement from public highway and property lines as per Section 36-5(c).
- (e) Minimum frontage. Minimum frontage of individual mobile home park lots is seventy (70) feet.
- (f) Minimum setback. No part of a mobile home shall be located closer than sixty (60) feet to the center line of any public street or road within the mobile home park.
- (g) Separation. No mobile home shall be located closer than forty (40) feet to any other mobile home or permanent building in the mobile home park.

(2) Circulation plan. A mobile home park shall have an internal street system, adequate for access to each mobile home lot, with the following provisions:

- (a) All parks shall have access from two (2) points along a street, road or highway, or, if bordering on two (2) streets, roads or highways, or a combination thereof, one (1) point of access may be provided from each street.
- (b) Access points shall be separated by at least one hundred fifty (150) feet.

MOBILE HOMES

- (c) The surfaces of all internal streets shall be paved with asphalt, concrete as recommended by the Town Highway Superintendent and shall be kept in good repair.
 - (d) All entrances and exits to the park from public roads and all internal streets shall intersect at right angles.
 - (e) Streets shall be thirty-foot rights-of-way, with at least eighteen (18) feet of road surface.
 - (f) If dead-end streets are contained in the plan, a turning diameter of at least sixty (60) feet of road surface shall be provided. No dead-end streets shall serve more than twelve (12) mobile homes on one (1) side and shall be limited in length to one thousand (1,000) feet. A "no outlet" or "dead end" sign shall appear at the entrance.
 - (g) Two (2) off-street parking space shall be provided for each mobile home, with one (1) additional space for each four (4) mobile homes. Every parking space shall be at least ten (10) feet in width and twenty (20) feet in length and have adequate provision for maneuvering and for passage to and from streets.
- (3) Utilities. All utility lines, including water, sewer, electricity and telephone, shall be installed underground and be in accordance with state and local regulations.
- (a) Water. A sufficient supply of potable drinking water shall be provided in a mobile home park as provided for by state and local regulations. If the water is from a private source, periodic tests may be made as requested by the State Health Department.
 - (b) Sewage. A mobile home park shall be provided with suitable and adequate sewage disposal systems in accordance with state and local regulations.
 - (c) Plumbing. Connections to mobile homes shall comply with all regulations of the State Standard Plumbing Code.
 - (d) Telephone. At least one (1) public telephone or access to the office phone may be required in all mobile home parks.
 - (e) Electric. Weatherproof electrical service connections and outlets shall be of a type approved by the New York State Board of Fire Underwriters.

MOBILE HOMES

(4) Health and safety.

- (a) Fire protection. A mobile home park shall be provided with suitable and operable fire extinguishers and other fire alarm and protection devices as may be prescribed by the fire district wherein said mobile home park is located. There shall be clear numbering of mobile homes within the mobile home park, with a layout map provided to the Fire and Disaster Coordinator and to ambulance and police agencies. Water supplies should be adequate, as determined by the County Fire Coordinator, to permit the effective operation of at least two (2) one-and-one-half-inch hose streams at any fire in a mobile home park, whether the supply is derived from hydrants connected to an underground water supply system or reservoir or a water supply source of not less than six thousand (6,000) gallons suitably accessible for Fire Department drafting operations.
- (b) Smoke detectors. Smoke detectors shall be installed and operable in all mobile homes not so equipped within one (1) year of the effective date of this chapter.
- (c) Garbage and refuse. Each mobile home within a park shall provide adequate sanitary equipment sufficient to prevent littering of the ground and premises with rubbish, garbage, refuse and the like. The containers shall be fly-tight depositories with tight-fitting covers. Such depositories shall be kept at all times in sanitary condition and emptied weekly and shall be suitably enclosed and screened from view.
- (d) Lighting. Street lighting shall be provided at all entrances and exits to the mobile home park and on all internal streets, intersections, walkways and common areas. Such lighting shall provide an illumination of six-tenths (0.6) candle to those areas.
- (e) Walkways. To reduce vehicular traffic hazards to pedestrians, sidewalks shall be provided from mobile home space to service buildings.

(5) Miscellaneous requirements.

- (a) Required landscaping. A mobile home park may be required to have landscaped buffer strips. Such buffer strips shall be located along the margins of the front, side and rear property lines. Such buffer strips should utilize existing trees and shrubs and provide additional interlocking hedges, evergreen trees and foliage acceptable to the Root Town Planning Board. Such buffer strips shall not interfere with the vision of motorists at intersections and at access points for the mobile home park.

MOBILE HOMES

- (b) Tenant storage. Adequate tenant storage shall be provided on the lot or in compounds located within a reasonable distance, generally not more than one hundred (100) feet from each stand. Storage facilities shall be designed in a manner that will enhance the appearance of the park and shall be constructed of suitable weatherproof materials.
 - (c) Advertising signs.
 - [1] Only one (1) sign shall be permitted for each five hundred (500) feet of street frontage of the lot or major part thereof.
 - [2] No sign shall exceed a total sign area of twenty (20) square feet.
 - [3] Signs may be illuminated only by indirect lighting.
 - [4] No sign shall be permitted to be erected within fifty (50) feet of a residential use, within twenty-five (25) feet of any adjoining property line or project into any public highway right-of-way.
 - (d) Recreation. Each mobile home park may be required to have at least one (1) common recreational area of at least five thousand (5,000) square feet or at least one thousand (1,000) square feet per mobile unit, whichever is greater. The Planning Board may establish conditions on the ownership, use and maintenance of this area as it deems necessary to assure the preservation of the recreation area for its intended purpose.
 - (e) Community building. A centrally located community recreation and service building shall be provided in those mobile parks proposed to contain twenty-five (25) mobile homes or more. Such facility should contain laundry facilities, public telephones, recreational facilities, meeting rooms and rest rooms.
- (6) Registration of mobile home occupants. The owner or operator of each mobile home park shall keep a permanent record of all mobile home occupants using the facilities of such mobile home park. Such records shall be accessible to the Code Enforcement Officer and shall include the following with reference to each mobile home:
- (a) Date of arrival and departure of mobile home occupant.
 - (b) Name of owner of mobile home.

MOBILE HOMES

- (c) Make and year of mobile home.
 - (d) Serial number of mobile home.
 - (e) Number of occupants.
- (7) Required improvements for a mobile home park. **[Added 4-3-1991 by L.L. No. 1-1991]**
- (a) The owner or operator of a mobile home park shall be required to complete, at his sole cost and expense, all road, sanitary, storm drainage or other improvements, including lot improvements, as shown on the approved construction plans for the mobile home park.
 - (b) Before any final permit is issued to construct the mobile home park, the owner or operator shall follow the procedure set forth in either Subsection B(7)(b)[1] or [2] below:
 - [1] In an amount set by the Town Planning Board from an estimate proposed by the Town Highway officer, the owner or operator shall either file with the Town Clerk a certified check to cover the full cost of the required improvements as set forth in Subsection B(7)(a) or the owner or operator shall file with the Town Clerk a performance bond issued by a bonding or surety company approved by the Town Board to cover the full cost of the required improvements. Any such bond shall comply with the requirements of § 277 of the Town Law and further shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of one (1) year or other such period as the Town Planning Board may determine appropriate, not to exceed three (3) years, shall be set forth in the bond, within which required improvements must be completed.
 - [2] The owner or operator shall complete all required improvements set forth in Subsection B(7)(a) to the satisfaction of the Town Board. For any required improvements the owner or operator shall file with the Town Clerk a bond or certified check covering the costs of satisfactorily installing any improvements not approved by the Town Board. Any such bond shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety.
- C. General.
- (1) All mobile homes installed in the Town of Root shall be constructed and installed in compliance with the applicable provisions of Article 19AA of the New York State Executive Law¹ and related state codes for construction and installation of mobile homes.

MOBILE HOMES

- (2) Each mobile home without a basement shall be placed upon a foundation of a minimum of six (6) inches of concrete, with wire mesh in the concrete. The concrete slab shall be placed upon at least eight (8) inches of drainage base material for adequate support of a mobile home so as to prevent heaving, shifting and uneven settling. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- (3) Each mobile home shall be secured to the concrete pad with tie-down at least every ten (10) feet on each side of the frame length, designed so as to secure the mobile home against uplift, sliding, rotation and overturning. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- (4) The Code Enforcement Officer shall reserve the right to waive the above tie-down requirement when it has been sufficiently demonstrated that the mobile home has or will be placed in such a way as to be protected from high-wind damage. The siting of the mobile home shall take into consideration prevailing wind direction, use of existing vegetation and tree protection. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- (5) No accessory structures to a mobile home shall be constructed with increase to the living floor space of that mobile home without obtainment of a building permit and in compliance with the provisions of this chapter. Any such additions must conform to the architectural and aesthetic characteristics of the existing mobile home. Accessory structures, for the purposes including, but no limited to, awnings, covered patios and carports may be –permitted upon approval of the Code Enforcement Officer, provided that such accessory building conform to the architectural aesthetic characteristics of the mobile home. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- (6) Each mobile home shall have skirting to screen the space between the mobile home and the ground. Skirting shall be of permanent material, such as metal or other solid material as approved by the Town Planning Board, and shall be finished to conform to the mobile home. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- (7) No mobile home shall be parked or allowed to remain on any street, highway or town road for a period longer than twenty-four (24) hours, except for emergency stopping or parking occasioned by mechanical failure, which is permitted on any street, highway or town road for a period not longer than seventy-two (72) hours, subject, however, to other existing laws and regulations imposed for parking purposes.

¹ Editor's Note: See now Art. 18 of the Executive Law

MOBILE HOMES

- (8) An owner of a travel trailer used for summer camping or tripping or vacation purposes away from his permanent place of residence may store such travel trailer on the premises of his permanent place of residence without having a permit, provided that such travel trailer is not occupied or used as a place of human habitat for more than seven (7) consecutive days. An exception in writing can be granted by the Code Enforcement Officer.
- (9) Travel trailers, motorized homes, pickup coaches or campers, camping trailers, converted buses or other similar devices normally used as temporary portable housing, intended instead for use as a permanent or seasonal dwelling unit, shall meet all the applicable portions of this Code pertaining to individual mobile homes.
- (10) All new or replacement mobile homes shall be a minimum of nine hundred (900) square feet based on the outside dimensions of the mobile home. [Added 10-3-1990 by L.L. No. 2-1990; amended 4-1-1992 by L.L. No. 2-1992]

§ 59-8. Exceptions.

- A. None of the provisions of this chapter shall be applicable to the business of mobile home sales. In the case where joint mobile home sales and mobile home park operations exist and units are being used as living quarters, the provisions of this chapter shall apply.
- B. None of the provisions of this chapter shall be applicable to a house trailer temporarily located on the site of a construction project, survey project or other similar work project and used solely as a field office or work or tool house in connection with such, provided that such trailer is removed from said site within fourteen (14) days after completion of such project.

§ 59-9. Nonconforming mobile homes and mobile home parks.

- A. Any mobile home or mobile home park legally existing prior to the effective date of this chapter and not conforming to the requirements of this chapter shall be regarded as nonconforming.
- B. Any such nonconforming mobile home or mobile home park in existence on the effective date of this chapter may be continued, provided that such mobile home or mobile home park is not enlarged, extended, reconstructed, replaced, moved or sold.
- C. Nothing in this chapter shall require a change in the plans or construction of a mobile home legally installed or mobile home park on which actual foundation construction was begun or approved in writing by the Town Board prior to the adoption of this chapter.

MOBILE HOMES

- D. In the event that a non-conforming mobile home exists in a mobile home park where it's used for human habitation shall have lapsed for two (2) years or more, then in that event the owner of said mobile home shall be required to bring said mobile home into compliance with all current regulations or remove said mobile home from the park.

§ 59-10. Penalties for offenses.

Any person, firm or corporation who violates any provision of this chapter shall be guilty of a violation of this chapter and subject to a fine of not more than one hundred dollars (\$100) or imprisonment for a period of not more than fifteen (15) days or both such fine and imprisonment. The imposition of penalties for any violation of this chapter shall not excuse the violation or permit it to continue. The application of the above penalty or penalties or the prosecution of the violation of the provisions of this chapter shall not be held to prevent the enforced removal of conditions prohibited by this chapter. Each week such violation shall continue shall constitute a separate and distinct violation of this chapter, subjecting the offender to additional penalty.

§ 59-11. Stop orders.

Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is being done in violation of the provisions of this chapter or in an unsafe and dangerous manner, he shall notify the owner of the property to suspend all work. Such stop order and notice shall state in writing the conditions under which the work may be resumed and may be served upon an owner either by delivering it to him personally or by posting the same upon a conspicuous portion of the structure under construction and sending a copy of the same by registered mail.

§ 59-12. Severability. [Added 10-3-1990 by L.L. No. 2-1990]

If any section, paragraph, subdivision or provision of this Code chapter shall be found invalid, such invalidity shall apply to the section, paragraph, subdivision or provision adjudged invalid, and the remainder of the Code chapter shall remain valid and ineffective.

MOBILE HOMES

Town of Root

Appendix A-1

Mobile Home and Mobile Home Park Application Process

- Step 1: Pick up application from Town Clerk.
- Step 2: Complete the appropriate forms indicating compliance with all applicable requirements, particularly as they relate to § 59-7, Standards, of this chapter.
- Step 3: Transmit the completed forms and all necessary attachments, including site plan, to the Town Clerk, who will submit copies to the Code Enforcement Officer and Town Planning Board. [Amended 10-3-1990 by L.L. No. 2-1990]
- Step 4: If the Town Planning Board determines that the application is complete as to form, the Town Planning Board will accept the application and, if appropriate, forward said application to the Montgomery County Planning Board for review and comment. [Amended 10-3-1990 by L.L. No. 2-1990]
- Step 5: If the application is referred to the Montgomery County Planning Board, the Board has thirty (30) days after accepting the completed application to review the request and make a recommendation of approval, disapproval or approval of subject to stated conditions. Said recommendation is forwarded to the Town Planning Board. [Amended 10-3-1990 by L.L. No. 2-1990]
- Step 6: The Town Planning Board has thirty (30) days after initial receipt to review and act upon said application with an approval, disapproval or approval subject to stated conditions. Said recommendation is forwarded to the Town planning Board. [Amended 10-3-1990 by L.L. No. 2-1990]
- Step 7: The decision of the Town Planning Board must be filed within seven (7) days with the Town Clerk and the Montgomery County Planning Board, if appropriate, and a copy must be furnished to the applicant. **[Amended 10-3-1990 by L.L. No. 2-1990]**
- Step 8: After the local Board has made its decision and other applicable agency reviews (Health Department, Highway Department, state agencies) have been completed and determined to be without conflicts, the permit may be issued.

MOBILE HOMES

Town of Root

Appendix A-2
Application for Permit
Individual Mobile Home

Applicant: _____ Date: _____

Permanent Street Address

Post Office Address

Manufacturer of Mobile Home: _____ Year: _____

Serial Number: _____

Location of Mobile Home:

Street Address

Post Office Address

The following provisions are being made in order to comply with this chapter:

Attachment: A plan drawn to scale showing lot boundaries and dimensions, location of mobile home and other structures and location of or plan for proposed water supply and sewage disposal system.

Signature of Applicant

Date

MOBILE HOMES

Appendix A-3
Application for Permit:
Mobile Home Park

Applicant (or Principal Officers):

Name

Name

Street Address

Street Address

Post Office Address

Post Office Address

Owner of land, if not the same:

Name

Street Address

Post Office Address

Location of Park: _____

District: _____

Attachments:

- (A) A survey of the proposed mobile home park, including:
- (1) An area map of where the mobile home park is to be located showing surrounding land uses within two hundred (200) feet.
 - (2) Name and address of owners with property within two hundred (200) feet of proposed park.
- (B) A site plan of the entire property showing the extent and topography of the area to be used for the mobile home park, including:
- (1) The size, location and numbers of mobile home park lots
 - (2) Existing and proposed shrubbery, trees and landscaping.
 - (3) Existing and proposed walkways.

MOBILE HOMES
Appendix A-3, Cont.

- (4) Existing and proposed entrances, exits, internal roadways and off-street parking.
 - (5) Locations of existing and proposed service buildings and other structures.
 - (6) Proposed method and plan for sewage disposal.
 - (7) Plans for water supply.
 - (8) Plans for electric supply and outdoor lighting.
 - (9) Plans for location of fuel lines or tanks.
 - (10) Method and plan for garbage and refuse collection and removal.
 - (11) Proposed storm drainage plan.
 - (12) Name and address of owner.
 - (13) Scale of site plan, one to twenty (1:20).
- C. A statement of what rules and regulations will be imposed upon the residents of such mobile home park.

Approval of Other Agencies:

(Health Department)

(Department of Environmental
Conservation)

(Fire Coordinator)

(Local Fire Chief)

(Signature of Applicant)

(Date)

MOBILE HOMES

Town of Root

Appendix A-4
Application for Permit:
Operation of
Mobile Home Park

(To be submitted at least thirty (30) days prior to the expiration date of the yearly permit)

Date: _____

1. Name of Property: _____
2. Tax Map Reference Number of Property: _____
3. Address:
 - a. Street or Road Number of Property: _____
 - b. Municipality: _____
4. Mailing Address: _____
5. Name and Address of Mobile Home Park Operator: _____
6. Name and Address of Mobile Home Park Owner (If different from Operator.): _____
7. Reporter Period: _____ to _____
8. Total Number of Mobile Home Stands: _____
9. Number of Occupied Mobile Stands by Month:

January	_____	May	_____	September	_____
February	_____	June	_____	October	_____
March	_____	July	_____	November	_____
April	_____	August	_____	December	_____

10. Date of Last Health Department Approval: _____
11. Comments: _____

12. Issuance Recommended by: _____
13. Issuance Denied by: _____
14. Reason for Denial: _____

MOBILE HOMES

Town of Root

APPENDIX A-5

INSERT MAP

MOBILE HOMES

Town of Root

Appendix A-6

INSERT MAP

Chapter 65

RECORDS, PUBLIC ACCESS TO

- § 65-1. Purpose and scope.
- § 65-2. Designation of records access officer.
- § 65-3. Designation of fiscal officer.
- § 65-4. Location.
- § 65-5. Hours for public inspection.
- § 65-6. Requests for public access.
- § 65-7. Denial of access.
- § 65-8. Fees.
- § 65-9. Public notice required.

[HISTORY: Adopted by the Town Board of the Town of Root 5-3-78 as L.L. No. 2-1978. Section 65-4 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ **65-1. Purpose and scope.** The purpose of this chapter is to grant the people the information and knowledge provided for in the Freedom of Information Act¹ of the State of New York, and the scope of this chapter is to be coextensive with the scope of such act.

§ **65-2. Designation of records access officer.**

- A. The Town Supervisor and the Town Superintendent of Highways are severally responsible for ensuring compliance with the regulations herein, as follows:
 - (1) As to the matters pertaining to the office of the Supervisor and of the Town Board, the following persons are designated as records access officers:
 - (a) The fiscal officer.
 - (b) The Town Clerk.
 - (2) As to matters pertaining to the Town Highway Department, the Town Superintendent of Highways is designated as records officer.
- B. Records access officers are responsible for ensuring appropriate response to public requests for access to records. However, the public shall not be denied access to records through officials who have in the past been authorized to make records or information available.
- C. Records access officers shall assure that personnel:
 - (1) Maintain an up-to-date subject matter list.

¹ Editor's Note: See Public Officers Law § 84 et seq.

RECORDS, PUBLIC ACCESS TO

- (2) Assist the requestor in identifying requested records, if necessary.
- (3) Upon locating the records, take one (1) of the following actions in accordance with § 65-6B:
 - (a) Make records promptly available for inspection; or
 - (b) Deny access to the records in whole or in part and explain in writing the reasons therefore.
- (4) Upon request for copies of records.
 - (a) Make a copy available upon payment or offer to pay established fees, if any, in accordance with § 65-8; or
 - (b) Permit the requestor to copy those records.
- (5) Upon request, certify that a transcript is a true copy of records copied.
- (6) Upon failure to locate records, certify that:
 - (a) The Town of Root is not the legal custodian for such records; or
 - (b) The records of which such records access officer is a legal custodian, after diligent search, cannot be found.

§ 65-3. Designation of fiscal officer.

- A. The Supervisor is designated the fiscal officer, who shall certify the payroll and respond to requests, in accordance with § 65-6B, for an itemized record setting forth the name, address, title and salary of every officer or employee of the Town of Root.
- B. The fiscal officer shall make the payroll items listed above available to any person, including bona fide members of the news media, as required under § 88, Subdivisions 1(g) and (i) and 10 of said Freedom of Information Law, or amendments thereto.²

§ 65-4. Location.³

Records shall be available for public inspection and copying at the Town Clerk's office, located in the Town of Root.

² Editor's Note: See now Public Officers Law § 84 et. seq.

³ Editor's Note: Amended at time of adoption of Code, see Ch. 1, General Provisions, Art. I.

RECORDS, PUBLIC ACCESS TO

§ 65-5. Hours for public inspection.

- A. The Town of Root does not have daily regular business hours. The following procedures for making an appointment to inspect and copy records are therefore established:
 - (1) As to matters pertaining to town funds, payrolls, expenditures or other fiscal matters, appointment shall be made with the Town Supervisor.
 - (2) As to matters pertaining to the Town Highway Department, appointment shall be made with the Town Superintendent of Highways.
 - (3) As to all other matters of the town, appointment shall be made with the Town Clerk.
- B. The Town Clerk shall keep posted, at all times at the Town Offices aforesaid, a current list showing the names, address and telephone numbers of the Supervisor, Superintendent of Highways and Town Clerk.

§ 65-6. Requests for public access.

- A. Where a request for records is required, such request may be oral or in writing. However, written requests shall not be required for records that have been customarily available without written request.
- B. Response to requests.
 - (1) Except under extraordinary circumstances, officials shall respond to a request for records no more than five (5) business days after receipt of the request, whether the request is oral or in writing.
 - (2) If, because of extraordinary circumstances, more than five (5) business days are required to respond to a request, receipt of the request shall be acknowledged within five (5) business days after the request is received. The acknowledgement shall state the reason for the delay and estimate the date when a reply will be made.
- C. A request for access to records should be sufficiently detailed to identify the records. Where possible, the requester should supply information regarding dates, titles, file designations or other information which may help identify the records. However, a request for any or all records falling within a specific category conforms to the standard that records be identifiable.
- D. Subject matter list.
 - (1) A current list, by subject matter, of all records produced, filed or first kept or

RECORDS, PUBLIC ACCESS TO

promulgated after September 1, 1974, shall be available for public inspection and copying. The list shall be sufficiently detailed to permit the requester to identify the file category of the records sought.

- (2) The subject matter list shall be updated periodically, and the date of the most recent updating shall appear on the first page. The updating of the subject matter list shall not be less than semiannual.
- E. No records may be removed by the requester from the office where the record is located without the permission of the respective records access officer with or by whom such records are kept.

§ 65-7. Denial of access.

- A. Denial of access to records shall be in writing, stating the reason therefore and advising the requester of the right to appeal to the individual or body established to hear appeals.
- B. If requested records are not provided promptly, as required in § 65-6B of these regulations, such failure shall also be deemed a denial of access.
- C. The position of records appeals officer is hereby created, such position to be filled by a majority of the Town Board, to serve at the pleasure of the Town Board, without compensation, except that all necessary expenses of such office, and the discharge of the duties thereof, shall be a town charge, payable from the general fund. Such records appeals officer shall hear appeals for denial of access to records under said Freedom of Information Law.⁴
- D. The time for deciding an appeal by the records appeal officer shall commence upon receipt of written appeal identifying:
 - (1) The date of the appeal.
 - (2) The date and location of the requests for records.
 - (3) The records to which the requester was denied access.
 - (4) Whether the denial of access was in writing or was by failure to provide records promptly as required by § 65-6B.
 - (5) The name and return address of the requester.
- E. The records appeal officer shall inform the requester of his decision in writing within seven (7) business days of receipt of an appeal.

⁴ Editor's Note: See Public Officers Law § 84 et seq.

RECORDS, PUBLIC ACCESS TO

- F. A final denial of access to a requested record, as provided for in Subsection E of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

§ 65-8. Fees.

- A. There shall be no fee charged for:
 - (1) Inspection of records.
 - (2) Search for records.
 - (3) Any certification pursuant to this chapter.
- B. The respective records access officer shall charge such fee for providing copies of records pursuant to a schedule to be determined from time to time by the Town Board. In no event shall any fee be set forth in such schedule as shall provide for a fee greater than the actual or approximate cost of making and providing such copies.

§ 65-9. Public notice required.

A notice containing the job title or name and business address of the records access officers and fiscal officer; the name, job title, business address and telephone number of the appeal person or persons or body; and the location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper or general circulation.

Chapter 71

STREETS AND SIDEWALKS

§ 71-1. Notification required.

§ 71-2. Presentation of notice.

§ 71-3. Applicability.

[HISTORY: Adopted by the Town Board of the Town of Root: Art. I, 2-1-78 as L.L. No. 1-1978. Section 71-2 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ **71-1. Notification required.** No civil action shall be maintained against the Town of Root or the Superintendent of Highways of such town for damages or injuries to person or property sustained by reason of any highway, bridge, person or property sustained by reason of any highway, bridge culvert or sidewalk being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge, culvert or sidewalk was actually given to the Town Clerk or Town Superintendent of Highways and there was failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, but no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or sidewalk unless written notice thereof, specifying the particular place, was actually given to the Town Clerk or Town Superintendent of Highways and there was failure or neglect to cause snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

§ **71-2. Presentation of notice.**¹ The Town Superintendent of Highways shall transmit in writing to the Town Clerk within ten (10) days after the receipt thereof all written notices received by him pursuant to this chapter and Subdivision 2 of § 65-a of the Town Law. The Town Clerk shall cause all written notices received by him or her pursuant to this chapter and all written notices received by him or her pursuant to this chapter and Subdivision 2 of § 65-a of the Town Law to be presented to the Town Board within five (5) days of the receipt thereof or at the next Board within five (5) days of the receipt thereof or at the next succeeding Town Board meeting, whichever shall be sooner.

§ **71-3. Applicability.** This chapter shall supersede, in its application to the Town of Root, Subdivisions 1 and 3 of § 65-a of the Town Law.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

CHAPTER 73

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS TOWERS, ANTENNAE and RELATED FACILITIES

- § 73-1 Purpose and Legislative Intent.
- § 73-2 Title.
- § 73-3 Severability.
- § 73-4 Definitions.
- § 73-5 Overall Policy and Desired Goals for Special Use Permits for Telecommunications Towers.
- § 73-6 Special Use Permit Application and Other Requirements.
- § 73-7 Location of Telecommunications Towers.
- § 73-8 Shared Use of Telecommunications Tower(s).
- § 73-9 Height of a Telecommunications Tower.
- § 73-10 Visibility of a Telecommunications Tower.
- § 73-11 Security of Telecommunications Towers.
- § 73-12 Signage.
- § 73-13 Lot Size and Setback.
- § 73-14 Retention of Expert Assistance and Reimbursement by Applicant.
- § 73-15 Exceptions from a Special Use Permit for a Telecommunications Tower.
- § 73-16 Public Hearing Required.
- § 73-17 Action on an Application for a Special Use Permit for a Telecommunications Tower.
- § 73-18 Recertification of a Special Use Permit for a Telecommunications Tower.
- § 73-19 Extent and Parameters of Special Use Permit for a Telecommunications Tower.
- § 73-20 Application Fee.
- § 73-21 Performance Security.
- § 73-22 Reservation of Authority to Inspect Telecommunications Towers.
- § 73-23 Liability Insurance.
- § 73-24 Indemnity.
- § 73-25 Fines.
- § 73-26 Default and/or Revocation.
- § 73-27 Circumstances Resulting in the Removal of a Telecommunications Tower.
- § 73-28 Relief.
- § 73-29 Periodic Regulatory Review by the Board.
- § 73-30 Adherence to State and/or Federal Rules and Regulations.
- § 73-31 Conflict with Other Laws
- § 73-32 Effective Date.
- § 73-33 Authority.

[Local Law Number 1 of 2006)

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

§ 73-1. Purpose and Legislative Intent. The Telecommunications Act of 1996 Affirmed the Town of Root's authority concerning the placement, construction and modification of telecommunications towers. The Town Board of the Town of Root finds that Telecommunications Towers and related facilities may pose a unique hazard to the health, safety, public welfare, and environment of the Town of Root and its inhabitants, in order to insure that the placement, construction or modifications of telecommunications towers and related facilities is consistent with the Town's Goals and comprehensive plan, the Town is adopting under the Municipal Home Rule Law a single, comprehensive, telecommunications tower application and permit process. The intent of this law is to minimize the negative impact of telecommunications towers, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town of Root.

§ 73-2. Title. This Law may be known and cited as the Telecommunications Tower Sitting and Special Use Permit Law for the Town of Root.

§ 73--3. Severability.

A. If any word, phrase, sentence, part, Section, Subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, Section, Subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

B. Any special use permit issued under this law shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Town Board.

§ 73-4. Definitions. For the purpose of this Law, and where not inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with a Telecommunications Tower, and located on the same property or lot as the Telecommunications Tower, including but not limited to, utility or transmission equipment storage sheds or cabinets.

2. **"Applicant"** means and shall include any individual, corporation, estate, trust partnership, joint stock company, association of two (2) or more persons, limited liability company, or entity submitting an Application to the Town of Root, for a Special Use Permit for a Telecommunications Tower.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

3. **"Application"** means the form approved by the Board, together with all necessary and appropriate documentation that an Applicant submits in its quest to receive a Special Use Permit for a Telecommunications Tower.
4. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, Personal Telecommunications Services (PCS), and microwave Telecommunications.
5. **"Board"** means the Town Board of the Town of Root, which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a Telecommunications Tower must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for Telecommunications Towers. The Board may at its discretion delegate or designate other official agencies or boards of the Town to accept, review, analyze, evaluate and make recommendations to the Town Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for Telecommunications Towers.
6. **"Break point"** means the location on a Telecommunications Tower which, in the event of a failure of the Telecommunications Tower, would result in the Telecommunications Tower falling or collapsing within the boundaries of the property on which the Telecommunications Tower is placed.
7. **"Camouflaged Tower"** means any Tower or supporting structure that, due to design, location, or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.
8. **"Collapse zone"** means the area in which any portion of a Telecommunications Tower could or would fall, collapse or plunge to the ground or into a river or other body of water. The collapse zone shall be no less than the lateral equivalent of the distance from the Break Point to the top of the structure plus ten feet, such being not less than one-half (1/2) the height of the structure.
9. **"Collocation"** means the use of the same telecommunications tower or structure to carry two or more antennae for the provision of wireless services by two or more persons or entities.
10. **"Commercial Impracticability"** or **"Commercially Impracticable"** shall have the meaning in this Law and any Special Use Permit granted hereunder as is defined and applied under the New York Uniform Commercial Code (UCC).
11. **"Completed Application"** means an Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of the Telecommunications Tower on the Town in the context of the land use in close proximity to the particular location requested.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

12. **"County"** means the New York State County in which the Town, Village or City is physically located.
13. **"Direct-to home satellite services"** or **"Direct Broadcast Service"** or **"DBS"** means only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.
14. **"EAF"** means the Environmental Assessment Form approved by the New York Department of Environmental Conservation.
15. **"EPA"** means State and/or Federal Environmental Protection Agency or its duly assigned successor agency.
16. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
17. **"FCC"** means the Federal Telecommunications Commission, or its duly designated and authorized successor agency.
18. **"Free Standing Tower"** means a Tower that is not supported by guy wires and ground anchors or other means of attached or external support.
19. **"Height"** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
20. **"NIER"** means Non-Ionizing Electromagnetic Radiation.
21. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or governmental entity.
22. **"Personal Wireless Facility"** – See definition for 'Telecommunications Tower'.
23. **"Personal Wireless Services"** or **"PWS"** or **"Personal Telecommunications Service"** or **"PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
24. **"Site"** see definition for Telecommunications Tower.
25. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to construct and use a Telecommunications Tower as granted or issued by the Town.
26. **"State"** means the State of New York.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

27. **“Telecommunications”** means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

28. **“Telecommunications Tower” or “Tower” or “Site” or “Personal Wireless Facility”** means a structure or location designed, or intended to be used, or used to support Antennas. It includes without limit, free standing Towers, guyed Towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a church steeple, silo, water Tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusively for fire, police and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen’s bands, amateur radio or other similar Telecommunications that do not exceed height limitations addressed elsewhere in Town regulations.

29. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Telecommunications Tower’.

30. **“Temporary”** means in relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.

31. **“Town”** means that Town of Root, New York.

§ 73-5. Overall Policy and Desired Goals for Special Use Permits for Telecommunications Towers.

In order to ensure that the placement, construction, and modification of Telecommunications Towers conforms to the Town’s Law, the Board creates a Special Use Permit for a Telecommunications Tower. As such, the Board adopts an overall policy with respect to a Special Use Permit for a Telecommunications Tower for the express purpose of achieving the following goals:

1. Implementing an Application process for person(s) seeking a Special Use Permit for a Telecommunications Tower;
2. Establishing a policy for examining an application for and issuing a Special Use Permit for a Telecommunications Tower that is both fair and consistent with the current Law of the Town;
3. Establishing reasonable time frames for granting or not granting a Special Use Permit for a Telecommunications Tower, or recertifying or not recertifying, or revoking the Special Use Permit granted under this Law;

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

4. Promoting and encouraging, wherever possible, the sharing and/or collocation of a Telecommunications Tower among service providers;
5. Promoting and encouraging, wherever possible, the placement of a Telecommunications Tower in such a manner as to cause minimal loss of real property values and minimal disruption to aesthetic considerations of the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such a Telecommunication Tower.

§ 73-6. Special Use Permit Application and Other Requirements.

A. All Applicants for a Special use Permit for a Telecommunications Tower shall comply with the requirements set forth in this Section.

B. Any Application for a Special Use Permit for a Telecommunications Tower shall be signed by an officer of the Applicant attesting to the trust and completeness of the information. The landowner, if different than the Applicant, shall acknowledge the Application and verify that they are aware of the Application and are aware that the Town may deny the Application or issue a permit with conditions. At the discretion of the Board, any false statement regarding the requirements of this Section may subject the Applicant to denial of the Application without further consideration or opportunity for correction.

C. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board as invalid without prejudice to the resubmission by an applicant of an appropriate and complete Application.

D. The Applicant shall state in writing:

1. That the Applicant's proposed Telecommunications Tower will be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal laws, rules, and regulations;
2. That the construction of the Telecommunications Tower is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the New York State.

E. No Telecommunications Tower shall be installed or constructed until the site plan is reviewed and approved by the Board. The site plan Application shall include the following additional information:

All applications for the construction or installation of a new Telecommunications Tower shall be accompanied by a report containing the information hereinafter set forth. The report shall be

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

signed by a licensed professional engineer registered in the State and shall contain the following information. Where this Section calls for certification, such certification shall be by a qualified New York State licensed Professional Engineer acceptable to the Town, unless otherwise noted.

1. Name and address of person preparing report;
2. Name and address of the property owner, operator, and Applicant, to include the legal form of the Applicant;
3. Postal address and sheet, block and lot or parcel number of the property;
4. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
5. Location of nearest residential structure;
6. Location of nearest habitable structure;
7. Location of all structures on the property which is the subject of the Application
8. Location, size and height of all proposed and existing antennae and all appurtenant structures;
9. Type, size and location of all proposed and existing landscaping;
10. The number, type and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
11. The make, model and manufacturer of the Tower and Antenna(s);
12. A description of the proposed Tower and Antenna(s) and all related fixtures, structures, and appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
13. The frequency, modulation and class of service of radio or other transmitting equipment;
14. Transmission and maximum effective radiated power of the Antenna(s);
15. Direction of maximum effective radiated power of the Antenna(s);
16. Applicant's proposed Tower maintenance and inspection procedures and related system of records;
17. Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC. If a Special Use Permit is granted, such certification will be provided to the Town on an annual basis on or before the anniversary date of the granting of the Special Use Permit;
18. Certification that the proposed Antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Town;
19. A copy of the FCC license applicable to the use of the Telecommunications Tower;
20. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Telecommunications Tower on the proposed site, though the certifying engineer need not be approved by the Town;
21. For locations where there will be ground disturbance, provide a phase one (1) archeological survey performed by a 36CFR61 qualified archeologist approved by the Town;

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

22. Propagation studies of the proposed site and all adjoining proposed, planned, in-service or existing sites;
 23. Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunications Tower that it constructs;
- F. In the case of a new Telecommunications Tower, the Applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing Telecommunications Tower(s). Copies of written requests and responses for shared use shall be provided to the Board.
- G. Certification by a licensed engineer that the Telecommunications Tower and attachments both are designed and constructed ("As Built") to meet all County, State and Federal structural requirements for loads, including wind and ice loads.
- H. Certification by a licensed engineer that the Telecommunications Tower is designed with a break point that would result in the Telecommunications Tower falling or collapsing within the boundaries of the property on which the Telecommunications Tower is placed.
- I. After construction and prior to receiving a Certificate of Compliance, the Applicant shall have certified by a licensed engineer that the Telecommunications Tower and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J. The Applicant shall submit a completed SEQRA long form EAF and a completed Visual Environmental Assessment form (visual EAF addendum). The Board may require submission of a more detailed visual analysis based on the results of the Visual EAF. Applicants are encouraged to seek pre-application meetings with the Town Board to address the scope of the required visual assessment.
- K. A Visual Impact Assessment which shall, at the Board's request, include:
1. A "Zone of Visibility Map" which shall be provided in order to determine locations where the Tower may be seen.
 2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town, including but not limited to, state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers. If requested by the Applicant, the Town Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-submission conference.
 3. An assessment of the visual impact of the Tower base, buy wires and accessory buildings from abutting and adjacent properties and streets.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

- L. Any and all representations made to the Board, on the record, during the Application process, whether written or verbal, shall be deemed a part of the Application and will be relied upon in that context and in good faith by the Board.
- M. The Applicant shall effectively screen from view its proposed Telecommunications Tower base and all related facilities and structures, subject to Board approval.
- N. All utilities leading to and away from any Telecommunications Tower site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code. The Board may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.
- O. All Telecommunications Towers and accessory facilities shall be sited so as to have the least practical adverse visual effect on the environment and its character, and the residences in the area of the Telecommunications Tower site.
- P. Accessory facilities shall maximize use of building material, colors and textures designed to blend with the natural surroundings.
- Q. An access road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent not commercially or physically impracticable. Road construction shall at all time minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Usual requirements regarding weight and carrying capacity for emergency vehicles should apply to access roads.
- R. A person who holds a Special Use Permit for a Telecommunications Tower shall construct, operate, maintain, repair, modify or restore the permitted Telecommunications Tower in strict compliance with all current technical, safety and safety-related codes adopted by the Town, the County, the State, or the United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include but are not limited to, construction, building, electrical, fire, safety, health, and land use codes.
- S. A holder of a Special Use Permit granted under this Law shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or Law, and must maintain the same, in full force and effect, for as long as required by the Town or other appropriate governmental entity or agency.
- T. The Board intends to be the lead agency, pursuant to SEQRA. The Board shall conduct an integrated, comprehensive environmental review of the proposed project in combination with its review of the Application under this Law.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

U. An Applicant shall submit no fewer than eight (8) copies of the entire Completed Application to the Town Board and a copy of the Application to the legislative body of any adjacent and adjoining municipalities and to the County Planning Agency.

V. The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial applications, e.g. future collocations. The scope of this examination shall be determined by the Board. The Telecommunications Tower shall be structurally designed to accommodate at least two (2) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:

1. The number of FCC licenses foreseeable available for the area;
2. The kind of Telecommunications Tower site and structure proposed;
3. The number of existing and potential licenses without Telecommunications Tower spaces/sites;
4. Available space on existing and approved Telecommunications Towers;

W. Unless waived by the Board, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the Application is for the shared use of an existing Telecommunications Tower(s) or other high structure, the Applicant should seek to waive any section or sub-section of this Law that may not be required. At the pre-application meeting, (this may include a site visit if required) the waiver requests, if appropriate, may be decided by the Board and its consultants. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

§ 73-7. Location of Telecommunications Towers.

A. Applicants for Telecommunications Towers shall locate, site and erect said Telecommunications Towers or other tall structures in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.

1. On existing Telecommunications Tower or other tall structures;
2. Collocation on a site with existing Telecommunications Towers or structures;
3. On municipally-owned properties;
4. On other property in the Town.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant or service provider if not granted, or the benefits that might inure, and the beneficiaries of such an alternative site.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS TOWERS, ANTENNAE and RELATED FACILITIES

An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting collocation, shall not be a valid basis for any claim of Commercial Impracticability or hardship.

Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants.

B. Upon filing an Application for a Special Use Permit for a Telecommunications Tower, the Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

C. The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for Telecommunications Towers in the Town, and all municipalities adjoining or adjacent to the Town, for a three year period from the date of the subject Application.

D. Notwithstanding that potential sites may be situated in areas described in Subsection (A) of this Section, the Board may disapprove an Application for reasons of non-compatibility, for any of the following reasons.

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
3. Conflict with the historic nature of a neighborhood or historical district;
4. The use or construction of a Telecommunications Tower which is contrary to an already stated purpose of a specific land use designation; or
5. The placement and location of a Telecommunications Tower which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
6. Or otherwise conflict with the provisions of this law.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

§ 73-8. Shared Use of Telecommunications Tower(s).

A. Shared use of existing Telecommunications Towers shall be preferred by the Town, as opposed to the proposed construction of new Telecommunications Towers. Additionally, where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new tower site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.

B. An Applicant intending to share use of an existing Telecommunications Tower or other tall structure shall be required to document the intent of the existing owner to share use.

C. With respect to an Application to share the use of an existing Telecommunications Tower that does not increase the height of the Telecommunications Tower, the Board shall waive such requirements of the Application required by this Local Law as may be upon good cause shown. The purpose to such waivers or other alternative procedures shall be to expedite for the Applicant and the Town the review and permitting for the shared use of an existing Telecommunications Tower.

D. Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the Town, to the extent practicable, unless good cause is shown.

§ 73-9. Height of a Telecommunications Tower.

A. The Applicant must submit documentation justifying to the Board the total height of any Telecommunications Tower and/or Antenna and the basis therefore. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown.

B. Telecommunications Towers shall be no higher than the minimum height necessary. Unless waived by the Board upon good cause shown, the presumed maximum height shall be one hundred-forty (140) feet, based on three (3) collocated antenna arrays and ambient tree height of eighty (80) feet.

C. The maximum height of any Telecommunications Tower and attached Antennas constructed after the effective date of this Law shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, County, State, and/or any federal law and/or regulation.

§ 73-10. Visibility of a Telecommunications Tower.

A. Telecommunications Towers shall not be artificially lighted or marked, except as required by law.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

B. Telecommunications Towers shall be of a galvanized finish, or painted with a rust-preventative paint of an appropriate color to harmonize with the surroundings as approved by the Board, and shall be maintained in accordance with the requirements of this Law.

C. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines on which the Telecommunications Tower is located.

§ 73-11. Security of Telecommunications Towers. All Telecommunications towers and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

2. Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized by the FCC's licensee to operate or service them.

§ 73-12. Signage. Telecommunications Towers shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any Antennas, Antenna supporting structures or Antenna Towers, unless required by law.

§ 73-13. Lot Size and Setback.

A. All proposed communications Towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from a Tower or Tower failure, and to preserve the privacy and sanctity of any adjoining properties.

B. Telecommunications Towers shall be located with a minimum setback from any property line and/or right of way, including highway rights of way, a distance equal to twice the height of the Tower. Further, any Accessory structure shall be located so as to comply with the minimum setback requirements for the property on which it is situated.

§ 73-14. Retention of Expert Assistance and Reimbursement by Applicant.

A. The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the Application and any requests for recertification.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

B. An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any Application. The initial deposit shall be \$7,500.00. These funds shall accompany the filing of an Application and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$2,500.00. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing, the difference shall be promptly refunded to the Applicant.

C. The total amount of the funds set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the Applicant.

§ 73-15. Exceptions from a Special Use Permit for a Telecommunications Tower.

A. No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, a Telecommunications Tower as of the effective date of this Law without having first obtained a Special Use Permit for a Telecommunications Tower. Notwithstanding anything to the contrary in this Section, no Special Use Permit shall be required for those exceptions noted in the definition of Telecommunications Tower.

B. New construction, including routine maintenance on an existing Telecommunications Tower, shall comply with the requirements of this Law.

C. All Telecommunications Towers existing on or before the effective date of this Law shall be allowed to continue their usage as they presently exist, provided however, that any modification to existing Towers must comply with this Law.

§ 73-16. Public Hearing Required.

A. Prior to the approval of any Application for a Special Use Permit for a telecommunications Tower, a public hearing shall be held by the Town Board, notice of which shall be published in the official newspaper of the Town no less than ten days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the Applicant, at least three (3) weeks prior to the date of said public hearing, shall be required to provide names and addresses of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the parcel on which the proposed new Telecommunications Tower is proposed to be located.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

B. The Board shall schedule the public hearing referred to in Subsection (A) of this Section once it finds the Application is complete. The Board, at any stage prior to issuing a Special use Permit, may require such additional information as it deems necessary.

§ 73-17. Action on an Application for Special Use Permit for a Telecommunications Tower.

A. The Board will undertake a review of an Application pursuant to this law in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.

B. The Board may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.

C. Except for necessary building permits, and subsequent Certificates of Compliance, no additional permits or approvals from the Town, e.g. site plan or zoning approvals, shall be required for Telecommunications Towers or facilities covered by this Law.

D. After formally considering the Application, the Board may approve and issue, or deny a Special Use Permit. Its decision shall be in writing and shall be based on substantial evidence upon a record. The burden of proof for the grant of the permit shall always be upon the Applicant.

E. If the Board approves the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Board's action, and the Special Use Permit shall be issued within thirty (30) days after such approval.

F. If the Board denies the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.

G. The Town's decision on an Application for a Special Use Permit for a Telecommunications Tower shall be supported by substantial evidence contained in a written record.

§ 73-18. Recertification of a Special Use Permit for a Telecommunications Tower.

A. At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date and all subsequent fifth anniversaries of the original granting of a Special Use Permit for a Telecommunications Tower, the holder of a Special Use Permit for such Tower shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

1. The name of the holder of the Special Use Permit for the Telecommunications Tower;
2. If applicable, the number or title of the Special Use Permit;
3. The date of the original granting of the Special Use Permit;
4. Whether the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Special Use Permit;
5. If the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by;
6. Any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Special Use Permit; and
7. That the Telecommunications Tower is in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations.

B. If, after such review, the Board determines that the permitted Telecommunications Tower is in compliance with the Special Use Permit and all applicable codes, laws and rules, then the Board shall issue a recertification Special Use Permit for the Telecommunications Tower, which may include any new provisions that are mutually agreed upon, or required by the force of law or regulation.

C. If the Board does not complete its review, as noted in Subsection (B) of this Section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Telecommunications Tower shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Board to complete its review as noted in Subsection (B) of this Section.

D. If the holder of a Special Use Permit for a Telecommunications Tower does not submit a request for recertification of such Special Use Permit within the timeframe noted in Subsection (A) of this Section, then such Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a recertification request for the existing Special Use Permit for a Telecommunications Tower to be extended for up to six (6) months in order to allow the Board adequate time to review the recertification request.

§ 73-19. Extent and Parameters of Special Use Permit for a Telecommunications Tower. The extent and parameters of a Special Use Permit for a Telecommunications Tower shall be as follows:

1. Such Special Use Permit shall be non-exclusive;
2. Such Special Use Permit shall not be assignable or transferable without the express written consent of the Board, and such consent shall not be unreasonably withheld;

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

3. Such Special Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for a Telecommunications Tower, or for a material violation of this Law.

§ 73-20. Application Fee.

A. At the time a person submits an Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay an application fee to the Town of Root \$5,000. If the Application is for a Special Use Permit for co-locating on an existing Telecommunications Tower, the fee shall be \$2,000.

B. An Application fee is not required in order recertify a Special Use Permit for a Telecommunications Tower, unless there has been a modification of the Telecommunications Tower since the date of the issuance of the existing Special Use Permit. In the case of any modification, Subsection (A) shall apply.

§ 73-21. Performance Security. The Applicant and owner of record of any proposed Telecommunications Tower property site shall be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this Law and any Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Telecommunications Tower, and any necessary site restoration is completed.

§ 73-22. Reservation of Authority to Inspect Telecommunications Towers.

A. In order to verify that the holder of a Special Use Permit for a Telecommunications Tower and any and all lessees, renters, and/or licensees of a Telecommunications tower place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and land use codes or other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

B. The Town shall pay for all of its costs associated with such an inspection, except for those circumstances occasioned by said holder's lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

C. Payment of such reimbursement shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

§ 73-23. Liability Insurance.

A. A holder of a Special Use Permit for a Telecommunications Tower shall secure and at all times maintain public liability insurance, property damage insurance, and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below:

1. Public Liability: \$1,000,000.00 per person/per occurrence;
2. Property Damage: \$1,000,000.00 per any one (1) claim;
3. Umbrella Liability: \$3,000,000.00.

B. The public and personal liability and property damage insurance policy shall specifically include the Town and its officials, employees and agents as additional insured.

C. The public and personal liability insurance and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State.

D. The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

F. Before construction of a permitted Telecommunications Tower is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 73-24. Indemnity.

A. Any Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnity. Such provision shall require the holder of the Special Use Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the construction, erection,

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a Telecommunications Tower within the Town. With respect to the penalties, damages or charges referenced herein, reasonable attorney's fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

B. Notwithstanding the requirements noted in Subsection (A) of this Section, an indemnity provision will not be required in those instances where the Town itself applies for and secures a Special use Permit for a Telecommunications Tower.

§ 73-25. Fines.

A. In the event of a violation of this Law or any Special Use Permit issued pursuant to this Law, the Board may impose and collect, and the holder of the Special Use Permit for a Telecommunications Tower shall pay to the Town, fines or penalties as set forth in Section 268 of the Town Law of the State of New York.

B. Notwithstanding anything in this Law, the holder of the Special Use Permit for a Telecommunications Tower may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Law or any Section of this Law. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The Town may also seek injunctive relief to prevent the continued violation of this law.

§ 73-26. Default and/or Revocation.

A. When any permitted Telecommunications Tower is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with either the Town's land use code, or the provisions of this Law or of the Special Use Permit, then the Board shall notify the holder of the Special Use Permit for a Telecommunications Tower of the specific inconsistent, non-compliant or violative use or situation. Such notice shall indicate that the Telecommunications Tower, and any appurtenant or related facilities located at the permitted site, is in violation of or non-compliance with the requirements of this Law or the Special use Permit, and that the holder of the Special Use Permit is in default of its Special Use Permit, and that the facilities must be returned to consistent, compliant use and status within seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is applicable. Notwithstanding anything to the contrary in this Subsection or any other Section of this Law, if the situation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, in the sole determination of the Board, the Board may, at its sole discretion, order the violative or non-compliant situation remedied within twenty-four (24) hours.

B. If within the seven (7) day period set forth in Section 26(A) the affected and non-compliant Telecommunications Tower is not brought into compliance with either the land use code, or the provisions of this Law, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected Telecommunications Tower into compliance, then the Board may

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

revoke such Special Use Permit for a Telecommunications Tower, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

§ 73-27. Circumstances Resulting in the Removal of a Telecommunications Tower.

A. Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of a Telecommunications Tower.

1. A permitted Telecommunications Tower has been abandoned for a period exceeding ninety consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, which in this case means not used for the intended and permitted purpose for such a period, except for situations caused by the commonly recognized definition of force majeure or Acts of God of an extraordinary and catastrophic nature and effect;
2. A permitted Telecommunications Tower falls into such a state of disrepair that it creates a health or safety hazard;
3. A Telecommunications Tower has been located, constructed, or modified on property located within the Town without having obtained the required Special Use Permit, or other necessary authorization.

B. If the Board makes such a determination as noted in Subsection (A) of this Section, then the Board shall notify the holder of the Special Use Permit for the Telecommunications Tower within forty-eight (48) hours that said Telecommunications Tower must and shall be removed, unless the Board approves an Interim Temporary Use Agreement/Permit, such as to enable the sale of the Telecommunications Tower.

C. If a Telecommunications Tower is not removed voluntarily within ninety (90) days after the permit holder has received notice, or substantial progress has not been made to remove the Telecommunications Tower within ninety (90) days of said notice, then the Board may order officials or representatives of the Town to remove the Telecommunications Tower at the sole expense of the owner or permit holder, or the Town, at its discretion, may take possession of the Telecommunications Tower.

D. If, pursuant to Subsection (C) of this Section, officials, employees, or representatives of the Town remove, or cause to be removed, a Telecommunications Tower, and the owner of the Telecommunications Tower does not claim the property and remove it within ten (10) days, then the Town may take whatever steps are available under State Law to declare the Telecommunications Tower abandoned, and sell the facility and its components.

E. If the Board approves an Interim Temporary Use Agreement/Permit for the Telecommunications Tower, such Agreement/Permit for the Telecommunications Tower, such Agreement/Permit shall be for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Telecommunications Tower shall be

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

developed by the holder of the permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed within the ninety (90) day time frame, then the Town may take possession of and dispose of the affected Telecommunications Tower in the manner noted in Subsection (C) of this Section.

F. In the event a Telecommunications Tower is no longer used for the purpose specified in the Application, or the Telecommunications Tower ceases operations for a period of one hundred and eighty (180) days in any three hundred and sixty-five (365) day period, the holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Telecommunications Tower, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Board. However, if the owner of the property upon which the Telecommunications Tower is located wishes to retain any access roadway to the Telecommunications Tower, the owner may do so with the approval of the Board.

§ 73-28. Relief. Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a Pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption, and its lack of significant effect on the Town or its residents or other service providers, is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board, and such permission shall not be unreasonably withheld.

§ 73-29. Periodic Regulatory Review by the Board.

A. The Board may at any time conduct a review and examination of this entire Law.

B. If after such a periodic review and examination of this Law, the Board determines that one or more provisions of this Law should be amended, repealed, revised, clarified, or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Board may repeal this entire Law at any time.

C. Notwithstanding the provisions of Subsections (A) and (B) of this Section, the Board may at any time, and in any manner (to the extent permitted by Federal, State, or Local Law), amend, add, repeal, and/or delete one or more provisions of this Law.

A LOCAL LAW REGULATING THE SITTING OF TELECOMMUNICATIONS
TOWERS, ANTENNAE and RELATED FACILITIES

§ 73-30. Adherence to State and/or Federal Rules and Regulations.

A. To the extent that the holder of a Special Use Permit for a Telecommunications Tower has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal Agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal Agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for a Telecommunications Tower, then the holder of such a Special Use Permit shall conform the permitted Telecommunications Tower to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

§ 73-31. Conflict with Other Laws. Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal Government, the more restrictive or protective of the Town and the public shall apply.

§ 73-32. Effective Date. This Law shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

§ 73-33. Authority. This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

CHAPTER 74

WIND ENERGY CONVERSION SYSTEMS

- § 74-1. **Short Title.**
- § 74-2. **Legislative Intent and Purpose.**
- § 74-3. **Definitions.**
- § 74-4. **Permitted and Prohibited Uses.**
- § 74-5. **Special Permit Criteria.**
- § 74-6. **Special Permit Application Procedure.**
- § 74-7. **Insurance.**
- § 74-8. **Abatement.**
- § 74-9. **Maintenance and Enforcement.**
- § 74-10. **Severability.**
- § 74-11. **Repeal of Prior Law.**
- § 74-12. **Effective Date.**

[Local Law No. 1 of the Year 2007]

Be it enacted by the Town Board of the Town of Root, Montgomery County, and State of New York, a local law establishing predictable and balanced regulations for the location of wind turbine facilities in the Town of Root and repealing Local Law No. 1 of 2006.

§ 74-1. **Short Title.** This Law may be cited as the “Wind Turbine Facilities Law.”

§ 74-2. **Legislative Intent and Purpose.** Increasing global, national, regional, and local energy demands have lead to a corresponding increase in the demand for alternative energy sources. The Town Board of the Town of Root recognizes the increased demand for alternative energy sources and the need for more inexpensive power that wind turbine facilities may provide. The purpose of this local law is to protect and promote the community’s safety, health, and welfare by properly siting wind turbine towers in a manner consistent with sound land use planning, while also allowing private and commercial providers to meet their power generating objectives

§ 74-3. **Definitions.**

A. As used in this local law, the following definitions shall apply:

1. **Roof-Mounted WECS-** a relatively small wind generating facility generating original power on-site for on-site use by the property owner or home-owner mounted on the principle building’s roof and with a maximum height no greater than ten (10) feet above the highest point of the roof on which it is mounted.
2. **WECS-** Any mechanism designed for the purpose of converting wind energy into electrical power.

WIND ENERGY CONVERSION SYSTEMS

3. **WECS, Commercial-** A WECS that generate original power on site-to be transferred to a transmission system for distribution to customers.
4. **WECS, Noncommercial-** A WECS that supplies power solely for on-site use, except that when a parcel on which a non-commercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by a noncommercial WECS and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for use, as long as no net revenue is produced by such excess electrical power.
5. **Planning Board-** the duly appointed Town of Root Planning Board.
6. **Code Enforcement Officer-** the duly appointed Code Enforcement Officer for the Town of Root.

B. Unless otherwise specifically provided, the masculine shall include the feminine and vice versa.

§ 74-4. Permitted and Prohibited Uses. [Adopted 4-23-12 by L.L No.1 of2012]

A. Roof mounted WECS shall be a permitted use and will not need to meet the special permit requirements provided herein, but must conform to all state and local building codes and have a building permit.

B. All other WECS will require a special permit for the purpose of protecting the general public of the Town of Root and properties adjacent to WECS from indiscriminate placement and related health and safety problems. The Planning Board has the authority to waive any portions of the special permit criteria and application procedures listed below for a Noncommercial Application with the exception of Special Permit Criteria "O" and any SEQR determination requirements.

§ 74-5. Special Permit Criteria. [Adopted 4-23-12 by L.L No.1 of2012]

A. No special use permit shall be granted for a WECS and/or transmission system unless it is determined by the Planning Board that the proposed use meets all of the following criteria in addition to the Town Code.

B. No experimental, homebuilt, or prototype WECS shall be allowed without documentation by the applicant of their maximum probably blade throw distance in the event of failure and determination by the planning board of appropriate setback distances on the basis of that documentation.

C. The minimum required setback distance between each WECS and all surrounding property lines, centerlines of public roads, overhead utility lines, other WECS and above ground generation facilities shall be no less than 1.5 times the proposed structure height plus the rotor radius. These setback requirements may be waived where the applicant submits a signed wavier from the owner(s) of the neighboring property, overhead utility lines or other structure in relation

WIND ENERGY CONVERSION SYSTEMS

to which the applicant does not meet the setback requirements set forth above. Where an applicant proposes to locate one or more WECS on a site consisting of multiple contiguous parcels owned or leased by the applicant, the term "property lines" shall mean the exterior boundaries of the contiguous parcels which adjoin parcels not owned or leased by the applicant.

D. The minimum required setback distance between each WECS and any dwelling or other buildings for occupancy shall be no less than 1,000 feet without written permission of the owner and the granting of a waiver by the Town Planning Board. Once the WECS is constructed, a dwelling or other building for occupancy may be constructed within the 1,000 feet if an application is made to the Town Planning Board by the WECS owner and the landowner and a waiver is granted by the Town Planning Board. Waivers may be granted based on information provided by the applicant that public safety will not be jeopardized.

E. The applicant must provide proof that no WECS 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.

F. The applicant must provide proof that no WECS 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.

G. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy WECS lighting requirements for the FAA shall be subject to on-site field testing for the Planning Board as a prerequisite to that Board's approval with specific respect to glare to existing residential uses within 2,000 feet of each tower for which such strobe lighting is proposed. Any other lighting used by the applicant will be minimal and only that necessary for safety and security purposes. Additional lighting shall be downward directed and will be installed in a manner to prevent casting glare from the site or spillage of light off the site.

H. No WECS shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic view shed, as viewed from any public road right-of-way, public body of water, or publicly owned land within The Town of Root or that extends beyond the border of the Town of Root.

I. The applicant must provide proof that all WECS 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 the issuance of any special permit for such facilities.

J. No WECS 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.

WIND ENERGY CONVERSION SYSTEMS

- K. The minimum distance between the ground and any part of the rotor blade system shall be 30 feet.
- L. All power transmission lines from the WECS to on-site substations shall be underground. A substation is defined as a structure at which electricity from various WECS locations is collected and sent to existing transmission line.
- M. 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.
- N. Access to the WECS shall be limited by means of a fence no lower than six (6) feet high around its base with a locking gate on the fence. This may be waived by the Planning Board if it deems the applicant has provided an alternative that provides public safety.
- O. Noncommercial WECS shall not exceed a total height of fifty (50) feet (inclusive of the rotor blade radius) unless the parcel on which the WECS is to be located is ten (10) acres or large, in which case the maximum total height may be 150 feet (inclusive of the rotor blade radius). Noncommercial WECS must meet all setback requirements as listed herein.
- P. Commercial WECS shall not exceed 400 feet which is the height of the tower plus the radius of the blade.
- Q. Use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.
- R. Any construction involving agricultural land should be done substantially in accords with the NYS Department of Agriculture and Market "Guidelines for Agricultural Mitigation for Wind Power Projects."
- S. WECS shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the WCS. The design of the WECS and related structures shall, to the extent reasonably possible, use material, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment. WECS shall be designed and located to minimize adverse visual impacts from neighboring residential areas, to the greatest extent feasible.
- T. WECS shall be set back at least 2,500 feet from Important Bird Areas as identified by New York Audubon and at least 1,500 feet from State-identified wetlands. These distances may be adjusted to be greater or lesser at the discretion of the planning board, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

WIND ENERGY CONVERSION SYSTEMS

§ 74-6. Special Permit Application Procedure.

A. An application to the planning board for a special permit shall be submitted to the Town Clerk and shall be accompanied by ten (10) sets of plans and other descriptive matter to show clearly the intentions of the applicant. These plans shall become a part of the administrative record to determine if the proposed use meets the requirements of this local law. At a minimum, the plans/documents should include the following:

1. The applicant and landowner(s) name and contact information.
2. The tax map numbers, existing use and acreage of the site parcel.
3. A survey map at an appropriate scale showing the proposed location of the WECS (including access roads) as it relates to the boundaries of the parcel, adjacent ownerships and existing residences, schools, churches, hospitals, or libraries, museums or designed historic or heritage sites to a distance of 2,000 feet.
4. A survey map at an appropriate scale showing any Federal, State, County or Local parks, recognized historic or heritage sites, state-identified wetlands, state forests, federal wetlands under jurisdiction of the Corp. of Engineers or important bird areas as identified in Federal, State, County, Local or New York Audubon's GIS databases or other generally available documentation.
5. Standard drawings of the WECS, including the tower, base and footings, drawings of access roads, and including an engineering analysis and certification of the tower, showing compliance with the applicable building codes.
6. Data pertaining to the WECS safety and stability, including safety results from test facilities.
7. Proposal for landscaping and screening.
8. A project visibility map, based on a digital elevation model showing the impact of topography upon visibility of the project from other locations to a radius of three miles from the center of the project. The scale used shall depict the three-mile radius as no smaller than 2.7 inches and the base map used shall be a published topographic map showing man-made features, such as roads and buildings.
9. No fewer than four, and no more than the number of proposed individual WECS, plus three color photos, no smaller than 3" by 5", taken from locations within a three mile radius from the site and to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as-built site facilities as they would appear from these locations.
10. A Full Environmental Assessment Form (EAF) and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act.

WIND ENERGY CONVERSION SYSTEMS

B. Upon receipt of the application and plans, the Planning Board will review the plans for completeness and when deemed complete, submit to other interested agencies for a coordinated review and to determine lead agency for SEQR. To help in this review the Planning Board can hire, at the applicant's expense, an engineering firm with expertise in this field. An estimate of the cost to provide this service will be submitted to the applicant. The applicant will have to provide the amount in the estimate to the Town of Root Town Clerk prior to the review process being started.

C. Upon completion of a coordinated review, the Planning Board will hold a public hearing within 62 days.

D. The Planning Board shall render its decision within 62 days of the date the public hearing is closed.

§ 74-7. Insurance. 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 WECS or any other part or parts of the generation and transmission facility.

§ 74-8. Abatement.

A. If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the permittee shall remove the WECS at their expense. Removal of system shall include removal of the entire structure, including foundations, transmission equipment, fencing from the property, roadways, etc. to return the site to its original condition.

B. The special permit shall require a permittee to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution in an amount sufficient to ensure the faithful performance of the removal of the WECS and the restoration of the site subsequent to its removal. The amount of the bond or security shall be no less than 125% of the cost of the removal of the WECS and restoration of the site. This bond or other form of security must remain in place as long as the WECS is in use and until condition A is met. If the WECS is sold or transferred, the new owner must immediately provide replacement bonds or other form of security.

C. If removal of WECS and appurtenant facilities is required and the applicant, permit holder, or successors fails to remove the towers and appurtenant facilities from the property within 30 days from the date of notification by the Town Board, the Board may contract for such removal and pay for removal from the bond.

§ 74-9. Maintenance and Enforcement.

A. The owner of each WECS shall have it inspected at least every two years for structural and operational integrity by a New York State licensed professional engineer, and shall submit a copy of the inspection report to the Town Code Enforcement Officer. If such report recommends

WIND ENERGY CONVERSION SYSTEMS

that repairs or maintenance are to be conducted, the owner shall provide to the Town Code Enforcement Officer a written schedule for the repairs or maintenance.

B. A WECS shall not begin its initial operation until inspections required by the Town of Root have been made and all necessary approvals have been given. After initial operations have begun, the Town Code Enforcement Officer or his designated representatives shall have the right at any reasonable time to enter the premises on which a WECS has been placed to inspect any or all parts of said installation.

C. After conducting an inspection, the Town Code Enforcement Officer may order the owner of a WECS to render said WECS inoperative for reasons related to assuring safety of operations, abating noise or eliminating electromagnetic interference. The owner of WECS shall not return the WECS to service until any and all of the reasons which caused the Town Code Enforcement Officer to issue the order to the owner to make said WECS inoperative have been corrected to the satisfaction of the Town Code Enforcement Officer.

D. Prior to allowing a WECS to resume operations, the Town Code Enforcement Officer may require the owner of the WECS to have an inspection made and a report issued by a professional engineer licensed in the State of New York, certifying that the WECS and/or tower is safe.

§ 74-10. Severability. If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a Court of Law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not be enacted.

§ 74-11. Repeal of Prior Law. Town of Root Local Law No. 1 of 2006 is hereby repealed.

§ 74-12. Effective Date. This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

CHAPTER 77

ARTICLE I Partial Tax Exemption

Providing a partial tax exemption on real property owned by members of volunteer fire companies or volunteer ambulance services.

- § 77-1. **Legislative Intent.**
- § 77-2. **Grant of Exemption.**
- § 77-3. **Eligibility.**
- § 77-4. **Twenty Year Service – Grant of Lifetime Exemption.**
- § 77-5. **Application.**
- § 77-6. **Non Diminution of Benefits.**
- § 77-7. **Effective Date.**

Local Law #2 of 2006 [Adopted July 19, 2006]

Be it enacted by the Town Board of the Town of Root, Montgomery County and State of New York, a local law providing a partial tax exemption on real property owned by members of volunteer fire companies or volunteer ambulance services.

§ 77-1. Legislative Intent. The Real Property Tax Law has been amended by the addition of a new section 466-c which permits a Town to grant a partial tax exemption on real property owned by an enrolled member of an incorporated volunteer fire company, fire department, or incorporated voluntary ambulance service or such enrolled member and spouse. Said partial exemption can be ten percent (10%) of the assessed value of such property for all Town, part Town, and special district purposes.

§ 77-2. Grant of Exemption. An exemption of ten percent (10%) of assessed value of property owned by an eligible person as set forth below is hereby granted from taxation with respect to Town, part Town and special district charges. In no event shall the exemption exceed three thousand dollars (\$3,000.00) multiplied by the latest State equalization rate for the town.

§ 77-3. Eligibility. Such exemption shall be granted to an enrolled member of an incorporated volunteer fire company, fire department or incorporated voluntary ambulance service residing in such county provided that:

- A. The applicant resides in the Town or Village which is served by such incorporated volunteer fire company or fire department or incorporated voluntary ambulance service;
- B. The property is the primary residence of the applicant;
- C. The property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not used exclusively for the applicant's residence, but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided in this section; and

Partial Tax Exemption

- D. The applicant has been certified by the authority having jurisdiction for the incorporated volunteer fire company or fire department as an enrolled member of such incorporated volunteer fire company or fire department for at least five (5) years or the applicant has been certified by the authority having jurisdiction for the incorporated voluntary ambulance service as an enrolled member of such incorporated voluntary ambulance service for at least five (5) years. The applicant must submit proof of such certification together with the application for an exemption.

§ 77-4. Twenty Year Service – Grant of Lifetime Exemption. Any enrolled member of an incorporated volunteer fire company, fire department or incorporated voluntary ambulance service who accrues more than twenty years of active service and is so certified by the authority having jurisdiction for the incorporated volunteer fire company, fire department or incorporated voluntary ambulance service, shall be granted the ten (10%) percent exemption as authorized by this section for the remainder of his or her life as long as his or her primary residence is located within such a county.

§ 77-5. Application. Application for such exemption shall be filed with the Assessor on or before the taxable status date on a form as prescribed by the State Board.

§ 77-6. Non Diminution of Benefits. No applicant who is a volunteer firefighter or volunteer ambulance worker who by reason of such status is receiving any benefit under the provision of this article of the effective date of this section shall suffer any diminution of such benefit because of the provisions of this section.

§ 77-7. Effective Date. This local law shall become effective upon filing with the Secretary of State.

Please Note:

[Current provisions dealing with taxation and tax exemptions are on file in the office of the Town Clerk and may be examined during regular business hours.]

Chapter 81

UNDERGROUND REGISTRY

§ 81-1. Designation of central registry office; display of master list.

§ 81-2. Master list copies; fees.

§ 81-3. Notice to be given.

[HISTORY: Adopted by the Town Board of the Town of Root: 4-2-75 by resolution. Amendments noted where applicable.]

§ 81-1. Designation of central registry office; display of master list.

The office of the Town Clerk of the Town of Root, located on No. 1048 Carlisle Road, Sprakers, in the Town of Root, New York, is hereby designated as the central registry office of all operators of underground facilities located within the geographical jurisdiction or boundaries of the Town of Root, and a master list of all such operators shall be continuously displayed at such office on and after May 7, 1975.

§ 81-2. Master list copies; fees.

Any excavator requesting a copy of the current master list of such operators shall be provided by the Town Clerk with a copy of such list upon payment to the Town Clerk of the sum of one dollar (\$1.) for each copy thereof so provided.

§ 81-3. Notice to be given.

Notice of the establishment of such central registry office shall be given by publication in the official newspaper once a week for two (2) successive weeks.

Chapter 85
VEHICLES, ABANDONED

§ 85-1. Authority to impound vehicles.

§ 85-2. Storage and charges.

§ 85-3. Notice of removal.

[HISTORY: Adopted by the Town Board of the Town of Root: 1-3-68. Section 85-2 amended at time of adoption of Code; see Ch.1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Junkyards and junk dealers – See Ch. 53.

§ 85-1. **Authority to impound vehicles.**

When any vehicle is parked or abandoned on any highway within the Town of Root during a snowstorm, flood, fire or other public emergency which affects that portion of the public highway upon which said vehicle is parked or abandoned, said vehicle may be removed by the Town Highway Superintendent.

§ 85-2. **Storage and charges.¹**

After removal of any vehicle as provided in this chapter, the Town Highway Superintendent may store such vehicle in a suitable place at the expense of the owner. Such owner, or person in charge of the vehicle, may redeem the same upon payment to the Town Highway Superintendent of the amount of all expenses actually and necessarily incurred in effecting such removal, such removal charges not to Exceed fifty dollars (\$50.), together with any charges for storage, such storage not to exceed five dollars (\$5.) per day or fraction thereof.

§ 85-3. **Notice of removal.**

The Town Highway Superintendent shall without delay report the removal and the disposition of any vehicle removed as provided in this chapter to the Town Code Enforcement Officer, and it shall be the duty of such Code Enforcement Officer to ascertain to the extent possible the owner of the vehicle or person having the same in charge and to notify him of the removal and disposition of such vehicle and of the amount which is required to redeem the same.

¹ Editor's Note: Amended at time of adoption of Code, see Ch. 1, General Provisions, Art. I.

Chapter 89

WASTE MANAGEMENT FACILITIES

- § 89-1. Title.
- § 89-2. Findings.
- § 89-3. Purpose.
- § 89-4. Applicability.
- § 89-5. Word usage; definitions.
- § 89-6. Exemptions.
- § 89-7. Coordination with State law.
- § 89-8. Prohibitions.
- § 89-9. Penalties for offenses; enforcement.
- § 89-10. Supersession; effect on other laws.

[HISTORY: Adopted by the Town Board of the Town of Root: 2-5-97 by L.L. No. 1-1997; amended 2-28-97 by L.L. No. 3-1997. Amendments noted where applicable.]

§ **89-1. Title.** This chapter shall be known as and may be cited as the "Waste Management Facilities Law of the Town of Root."

§ **89-2. Findings.** The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid and liquid waste disposal facilities, such as landfills, ash fills, resource recovery or incineration facilities. Among other factors, the Board finds as follows:

- A. The inability of geological science to precisely ascertain the existence and flow of groundwaters and to map subterranean geology makes it impossible to determine the extent to which solid and liquid waste disposal may or may not be contaminating water supplies.
- B. Moreover, the accumulated extent of hazardous waste disposal in solid and liquid waste disposal facilities cannot be measured or accurately determined because of state and federal regulations permitting disposal of residential or small user quantities of hazardous wastes.
- C. The town's need for solid and liquid waste disposal are being met.
- D. Future correction of pollution from solid or liquid waste management facilities, including sanitary landfills and incineration facilities, may be very expensive or impossible to achieve.
- E. The town's existing community character will be adversely and unalterably impacted by the location and operation of any solid or liquid waste management facilities within the town.

WASTE MANAGEMENT FACILITIES

- F. Substantial scientific opinion questions the environmental and health effects of both resource recovery facilities that incinerate or burn solid waste and of the handling and disposal of ash residue from such facilities and the containment methods for liquid waste.
- G. Solid and liquid waste regulation under New York Environmental Conservation Law (ECL) is inadequate to relieve the forgoing concerns.

§ **89-3. Purpose.** The town intends by this chapter to:

- A. Restrict the operation of solid waste management facilities within the Town of Root in order to promote a clean, wholesome and attractive environment for the community.
- B. Ensure that accurate, current information about currently exempted solid waste disposal operations within the town is available to public officials and citizens.
- C. Protect the residents of the town from undesirable effects of solid waste disposal operation, including:
 - (1) Unaesthetic results, including odors, blowing litter, increased traffic, dust and noise;
 - (2) Deterioration in property values associated with an adjacent or proximate disposal operation that may interfere with the orderly development of properties; and
 - (3) Threats to public health or the environment by contamination of air, surface water or groundwaters.
- D. To exercise the town's police powers under the Municipal Home Rule Law and §§ 130 and 136 of the Town Law for the physical and mental well-being and safety of its citizens and to restrict waste disposal operations within the town that might otherwise be permitted under the ECL. Section 27-0711 of the ECL specifically recognizes and authorizes the right and authority of a town to legislate stricter controls on solid waste management operation than state law requires.

§ **89-4. Applicability.** This chapter shall apply to all territory within the confines of the Town of Root.

§ **89-5. Word usage; definitions.**

- A. Unless defined below or the context otherwise requires, the terms and words used in the chapter shall have the same meanings as those defined in Article 27 of the ECL and Title 6, Parts 360 to 364 and 617, of the New York Codes, Rules and Regulations.

WASTE MANAGEMENT FACILITIES

B. As used in this chapter, these terms and words shall be defined as follows:

6 NYCRR – Title 6 of the New York Codes, Rules and Regulations.

ASH OR ASH RESIDUE – All the solid residue and any entrained liquids resulting from the combustion of solid waste at a solid waste incinerator, including bottom ash; boiler ash, fly ash and the solid residue of any air pollution control device used in a solid waste incinerator.

ASHFILL – Any landfill designed to accept ash, ash residue, bottom ash, combined ash or fly ash.

COMMERCIAL WASTE – Liquid or solid waste generated by stores, offices, warehouses and restaurants.

COMPOSTING – Aerobic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material used for fertilizing and conditioning land.

CONSTRUCTION AND DEMOLITION DEBRIS – Uncontaminated, inert solid waste resulting from the construction, remodeling, repair and demolitions of structures and from road building and land clearing. Such waste includes, but is not limited to bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster drywall, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and metals that are incidental to any of the above.

CONTAINMENT POND OR POOL – Any basin, tank, pond or pool for the disposal, storage, retention, procession treatment or other handling of liquid waste.

DEC – The New York State Department of Environmental Conservation.

DISPOSAL – The placement, distribution, storage, removal or transportation of solid wastes.

FACILITY – Any solid waste management facility.

HAZARDOUS WASTE – Waste meeting the definition set forth in 6 NYCRR Part 371.

HOUSEHOLD WASTE – Liquid or solid waste from residential sources.

INDUSTRIAL WASTE – Any liquid, gaseous, solid or waste substance or combination thereof resulting from any process of industry, manufacturing, trade or business. It shall include, but not be limited to pesticides, lime, acids, chemicals, petroleum products, tar and dye-stuffs.

WASTE MANAGEMENT FACILITIES

LANDFILL OR SANITARY LANDFILL – Any disposal area for solid wastes in or upon the ground.

MANURE – Refuse of stables and barnyards consisting of livestock avian excreta with or without litter used for fertilizing land.

PERSON – Any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

RECYCLING – The reuse of solid waste recovered from the solid waste stream into goods or materials suitable for reuse in original or changed form.

SEWAGE – The water carrying human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present.

SOLID OR LIQUID WASTE – All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator ash and residue and construction and demolition debris. In addition:

- (1) A material is discarded if it is abandoned by being:
 - (a) Disposed of;
 - (b) Burned or incinerated, including being burned as a fuel for the purpose of recovering usable energy; or
 - (c) Accumulated, stored or physically, chemically or biologically treated (other than burned or incinerated) instead of being disposed of.
- (2) A material is disposed of if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water.

SOLID WASTE INCINERATOR – An incinerator at which household waste and nonhazardous industrial/commercial waste are combusted for energy.

WASTE MANAGEMENT FACILITIES

SOLID WASTE MANAGEMENT FACILITY – Any facility employed beyond the initial solid or liquid waste collection process and managing solid or liquid waste, including but not limited to storage areas or facilities; transfer stations, rail-haul or barge-haul facilities; procession facilities; landfills; ashfills; disposal facilities; solid waste incinerators; resource-recovery facilities; recycling facilities; and waste tire storage facilities; containment ponds or pools; sewage treatment plants and storage tanks or containers; or any other facility of any kind designated a solid waste management facility by the DEC.

SOUND AGRICULTURAL PRACTICES - Refers to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities.

§ 89-6. Exemptions.

- A. The following are not subject to this chapter:
 - (1) Any disposal and storage of manure in farming operations following sound agricultural practices; but not including sewage sludge processing and spreading.
 - (2) Operations or facilities which receive or collect only nonputrescible, non-hazardous solid waste and beneficially use or reuse or legitimately recycle or reclaim such waste. Such exempt facilities are limited to citizen recycling programs, town recycling operations, composting, farming operations, town highway operations and bona fide salvage dealers.
 - (3) Any sewage treatment facility, but not including any sewage sludge spreading facility.
- B. Any bona fide solid waste management facility previously in existence on the effective date of this chapter shall remain exempt under the current terms and conditions of their operating permit.
- C. None of the above exemptions shall be construed to permit any activity contrary to existing building codes or other laws or as exempting any other permit required by state or local law.

§ 89-7. Coordination with state law.

- A. All relevant sections of Article 27 of the ECL and 6 NYCRR, Parts 360 to 364 and 617, are deemed to be included within and as part of this chapter, and any violation thereof shall be considered to constitute a violation of this chapter.
- B. The provisions of this chapter shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this chapter shall apply.

WASTE MANAGEMENT SERVICES

§ 89-8. Prohibitions.

No solid waste management facility shall hereafter be constructed, allowed to commence operation or to continue operation within the Town of Root.

§ 89-9. Penalties for offenses; enforcement.

- A. All violations of this chapter or any of its regulations or provisions shall be deemed Class A misdemeanors, punishable by a fine not exceeding \$5,000 or imprisonment not exceeding one year, or both. Each and every day that a violation of this chapter is permitted to exist shall constitute a separate offense.
- B. Any violation of this chapter or regulations or provisions thereof shall create a liability to the people of the town for civil penalty not to exceed \$5,000 to be after a hearing or opportunity to be heard, upon due notice and with the right to specification of the charges and representation by counsel at such hearing. Each and every day that a violation of this chapter occurs or continues shall constitute a separate violation for purposes of civil liability.
- C. Upon any violation of this chapter by any person, the town shall be entitled to obtain an injunction against such persons prohibiting further violations and, in addition, ordering that any solid or liquid waste disposed of in violation hereof be removed from the town ordering that any land on which solid or liquid waste is disposed of in violation of this chapter be restored as nearly as possible to its former condition by the removal of any waste illegally disposed of and by such other restorative measures as are available and further ordering that the operator remedy any effects of the violation of surrounding or adjacent properties or resources, including, without limitation, air, trees, crops, water bodies, wetlands and groundwaters.

§ 89-10. Supersession; effect on other laws.

All other ordinances and local laws or parts thereof in conflict herewith are superseded by this chapter; provided, however, that the provisions of this chapter shall not be interpreted as obviating any requirements or restrictions wherever it is possible to conform to the provisions of both this chapter and any other law or ordinance.

Chapter 90

ZONING BOARD OF APPEALS

§ 90-1. Board Established.

§ 90-2. Powers and Duties

§ 90-3. Fees.

§ 90-1. BOARD ESTABLISHED

- A. A Zoning Board of Appeals is hereby established by the Town Board and shall consist of five (5) members to be nominated by the Town Supervisor and confirmed by a majority of the Town Board.
- B. Any Zoning Board of Appeals members previously appointed prior to the adoption of this chapter shall serve out the balance of their existing term.
- C. **Term of Office:** Subsequent to the enactment of this chapter, ZBA members shall serve a term of three (3) years with at least two members being appointed in the year following the enactment of this chapter and the other three members in the following year.
- D. The Zoning Board of Appeals shall elect a chairman at its first scheduled session in each calendar year.

§ 90-2. POWERS AND DUTIES

- A. Zoning Board of Appeals shall consider all applications for variances either referred to it by the Town Code Enforcement Officer or by direct application by a Town property owner after denial of a proposed action by the Town Code Officer or after citation for non compliance with the Town Code by said Code Officer. Applications for a variance shall be made to the Town Clerk and upon payment of the fees set forth below shall be scheduled for a hearing.
- B. All sessions of the ZBA shall be upon NOTICE OF PUBLIC HEARING, published in a newspaper or periodical of general circulation in the Town or its immediate vicinity at least ten (10) days prior to the meeting of the ZBA.
- C. The Town Attorney, Town Code Enforcement Officer and Town Clerk shall be required to attend sessions of the Zoning Board of Appeals. The Town Clerk shall act as recording secretary for all sessions of the ZBA. All public hearings of the ZBA shall be tape recorded or recorded by stenographer.
- D. Decisions of the Zoning Board of Appeals shall be upon majority vote of the Board members, three members shall constitute a quorum.

ZONING BOARD OF APPEALS

- E. The Zoning Board of Appeals shall be required to issue a written decision on any request for a variance within sixty (60) days of the public hearing at which it heard the applicant requesting said variance. The decision shall be signed by the chairman of the Board.

§ 90-3 FEES

The Town Clerk shall collect a fee in the amount of \$25.00 to cover the cost of publication of notice of the ZBA public hearing and other administrative costs. The Town Board is hereby authorized to increase the amount of said fee from time to time as the situation may require.

ROOT

LL1 2018 FLOOD PLAN

Local Law Filing

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

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

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

of Root, Montgomery County, New York

FILED
STATE RECORDS

JAN 30 2018

DEPARTMENT OF STATE

Local Law No. 1 of the year 2018

A local law Flood Plan Management Regulations Adopted New Flood Insurance Rate Maps for

(Insert Title)

Montgomery County To Be Designated As Chapter 30 of the Town Code.

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

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

of Root, Montgomery County, New York. as follows:

See Schedule "A" annexed hereto.

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

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2018 of the ~~(County)(City)(Town)(Village)~~ of Root was duly passed by the Town Board on January 10 20 18, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body)
(repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*)
on _____ 2018, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body)
(repassed after disapproval) by the _____ on January 10 20 18. (Elective Chief Executive Officer*)

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

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

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

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

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

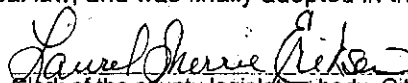
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified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

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

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

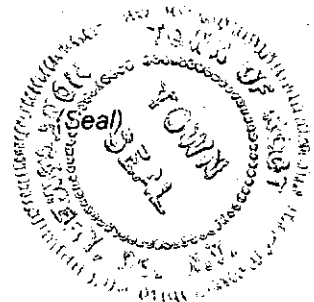
(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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



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

Date: 1/11/18



SECTION 1.0 STATUTORY AUTHORIZATION AND PURPOSE

1.1 FINDINGS

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

1.2 STATEMENT OF PURPOSE

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

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

1.3 OBJECTIVES

The objectives of this local law are:

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

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

SECTION 2.0 DEFINITIONS

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

"Accessory Structure" is a structure used solely for parking (two-car detached garages or smaller) or limited storage, represent a minimal investment of not more than 10 percent of the value of the primary structure, and may not be used for human habitation.

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

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

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

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

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

"Building" see "Structure"

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

"Crawl Space" means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Historic structure" means any structure that is:

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

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

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

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

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

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

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

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

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

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

"Recreational vehicle" means a vehicle which is:

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

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

"Start of construction" means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

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

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

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

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

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

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

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

SECTION 3.0 GENERAL PROVISIONS

3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES

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

3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard for the Town of Root, Community Number 360455, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) Flood Insurance Rate Map Panel Numbers:

36057C0144H, 36057C0162H, 36057C0163H, 36057C0164H, 36057C0166H, 36057C0170H, 36057C0310H, 36057C0320H, 36057C0330H, 36057C0335H, 36057C0340H, 36057C0345H

whose effective dates are January 19, 2018, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

(2) A scientific and engineering report entitled "Flood Insurance Study, Montgomery County, New York, (All Jurisdictions)" dated January 19, 2018.

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

Town Clerk's Office at 1048 Carlisle Road, Sprakers, New York

3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS

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

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

3.4 SEVERABILITY

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

3.5 PENALTIES FOR NON-COMPLIANCE

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

3.6 WARNING AND DISCLAIMER OF LIABILITY

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

SECTION 4.0 ADMINISTRATION

4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR

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

4.2 THE FLOODPLAIN DEVELOPMENT PERMIT

4.2-1 PURPOSE

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 3.2, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question;

existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

4.2-2 FEES

All applications for a floodplain development permit shall be accompanied by an application fee of \$ 150.00. In addition, the applicant shall be responsible for reimbursing the Town of Root for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500.00 to cover these additional costs.

4.3 APPLICATION FOR A PERMIT

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

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

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

4.4 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

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

4.4-1 PERMIT APPLICATION REVIEW

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

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

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

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

4.4-2 USE OF OTHER FLOOD DATA

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

- (2) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this law.
- (3) When an area of special flood hazard, base flood elevation, and/or floodway data are available from a Federal, State or other authoritative source, but differ from the data in the documents enumerated in Section 3.2, the Local Administrator may reasonably utilize the other flood information to enforce more restrictive development standards.

4.4-3 ALTERATION OF WATERCOURSES

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

4.4-4 CONSTRUCTION STAGE

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

4.4-5 INSPECTIONS

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

4.4-6 STOP WORK ORDERS

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

4.4-7 CERTIFICATE OF COMPLIANCE

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

4.4-8 INFORMATION TO BE RETAINED

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

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

SECTION 5.0 CONSTRUCTION STANDARDS

5.1 GENERAL STANDARDS

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

5.1-1 SUBDIVISION PROPOSALS

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

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

5.1-2 ENCROACHMENTS

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

standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,

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

- (3) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, if any development is found to increase or decrease base flood elevations, the Town of Root shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.

5.2 STANDARDS FOR ALL STRUCTURES

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

5.2-1 ANCHORING

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

5.2-2 CONSTRUCTION MATERIALS AND METHODS

- (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

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

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

(iii) openings not less than three inches in any direction.

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

5.2-3 UTILITIES

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation, or at least three feet above the highest adjacent grade in a Zone A without an available base flood elevation, or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.2-4 STORAGE TANKS

- (1) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
- (2) Above-ground tanks shall be:
 - a. anchored to prevent flotation, collapse or lateral movement during conditions of the base flood or;
 - b. installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in Section 3.2 plus two feet.

5.3 RESIDENTIAL STRUCTURES

5.3-1 ELEVATION

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

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

5.4 NON-RESIDENTIAL STRUCTURES

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

- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure shall either:
 - (i) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (ii) be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (2) Within Zone AO, new construction and substantial improvements of non-residential structures shall:

(i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus two feet (at least three feet if no depth number is specified), or

(ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 5.4(1)(ii)

- (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 5.4(1)(ii), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES

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

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (i) be on site fewer than 180 consecutive days,
 - (ii) be fully licensed and ready for highway use, or
 - (iii) meet the requirements for manufactured homes in paragraphs 5.5(2), (3) and (4).

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

- (2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the bottom of the frame of the manufactured home chassis is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the bottom of the frame of the manufactured home chassis is supported by reinforced piers or other foundation elements of

at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.

- (4) Within Zone AO, the bottom of the frame of the manufactured home chassis shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in Section 3.2 plus two feet (at least three feet if no depth number is specified).

5.6 ACCESSORY STRUCTURES INCLUDING DETACHED GARAGES

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

- (1) Within Zones A1-A30, AE, AO, AH, A, accessory structures must meet the standards of Section 5.2-1, ANCHORING,
- (2) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, areas below two feet above the base flood elevation shall be constructed using methods and practices that minimize flood damage.
- (3) Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.
- (4) Structures must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters in accordance with Section 5.2-2(3).
- (5) Utilities must meet the requirements of Section 5.2-3, UTILITIES.

SECTION 6.0 VARIANCE PROCEDURE

6.1 APPEALS BOARD

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

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

6.2 CONDITIONS FOR VARIANCES

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

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

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

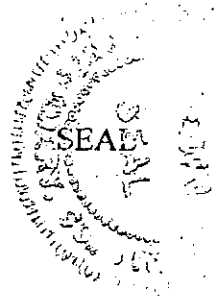
Be it enacted this 8 day of November, 2017 by the
Town Board of the Town of Root
Montgomery County, New York,
to be effective January 1, 2018.

Don A. Shys

Robert Thomas

John Mark Kuntz

John Van Patten



ATTEST Laurel Sherrie Eriksen CLERK
Laurel Sherrie Eriksen

Attachment A
MODEL FLOODPLAIN DEVELOPMENT
APPLICATION FORM

FLOODPLAIN DEVELOPMENT PERMIT APPLICATION

This form is to be filled out in duplicate.

SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Compliance is issued.
5. The permit is invalid if no work is commenced within six months of issuance, and expires 2 years from date of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements.
7. Applicant hereby gives consent to the Local Administrator or his/her representative to make reasonable inspections required to verify compliance.
8. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

(APPLICANT'S SIGNATURE) _____ DATE _____

SECTION 2: PROPOSED DEVELOPMENT (To be completed by APPLICANT)

NAME	ADDRESS	TELEPHONE
APPLICANT	_____	_____
BUILDER	_____	_____
ENGINEER	_____	_____

PROJECT LOCATION:

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well-known landmark. A map attached to this application, and a sketch showing the project layout would be helpful.

APPLICATION # _____

PAGE 2 of 4

DESCRIPTION OF WORK (Check all applicable boxes):

A. STRUCTURAL DEVELOPMENT

ACTIVITY

- ☐ New Structure
- ☐ Addition
- ☐ Alteration
- ☐ Relocation
- ☐ Demolition
- ☐ Replacement

STRUCTURE TYPE

- ☐ Residential (1-4 Family)
- ☐ Residential (More than 4 Family)
- ☐ Non-residential (Floodproofing? ☐ Yes ☐ No)
- ☐ Combined Use (Residential & Commercial)
- ☐ Manufactured (Mobile) Home
(In Manufactured Home Park? ☐ Yes ☐ No)

ESTIMATED COST OF PROJECT \$ _____

B. OTHER DEVELOPMENT ACTIVITIES:

- ☐ Fill ☐ Mining ☐ Drilling ☐ Grading
- ☐ Excavation (Except for Structural Development Checked Above)
- ☐ Watercourse Alteration (Including Dredging and Channel Modifications)
- ☐ Drainage Improvements (Including Culvert Work), Stormwater Control Structures or Ponds
- ☐ Road, Street or Bridge Construction
- ☐ Subdivision (New or Expansion)
- ☐ Individual Water or Sewer System
- ☐ Other (Please Specify) _____

After completing SECTION 2, APPLICANT should submit form to Local Administrator for review.

SECTION 3: FLOODPLAIN DETERMINATION (To be completed by LOCAL ADMINISTRATOR)

The proposed development is located on FIRM Panel No. _____, Dated _____.

The Proposed Development:

- ☐ The proposed development is reasonably safe from flooding. Entire property is in Zone B, C or X.
- ☐ The proposed development is in adjacent to a flood prone area.
100-Year flood elevation at the site is:
_____ Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
☐ Unavailable
- ☐ See Section 4 for additional instructions for development that is or may be in a flood prone area.

SIGNED _____ DATE _____

SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by LOCAL ADMINISTRATOR)

The applicant must submit the documents checked below before the application can be processed:

- ☐ A site plan showing the location of all existing structures, water bodies, adjacent roads, lot dimensions and proposed development.
- ☐ Development plans and specifications, drawn to scale, including where applicable: details for anchoring structures, proposed elevation of lowest floor (including basement), types of water resistant materials used below the first floor, details of floodproofing of utilities located below the first floor, details of enclosures below the first floor, openings in foundation for entry and exit of floodwaters.
Other _____
- ☐ Elevation Certificate
- ☐ Subdivision or other development plans (If the subdivision or other development exceeds 50 lots or 5 acres, whichever is the lesser, the applicant must provide 100-year flood elevations if they are not otherwise available).
- ☐ Plans showing the watercourse location, proposed relocations, Floodway location.
- ☐ Topographic information showing existing and proposed grades, location of all proposed fill.
- ☐ Top of new fill elevation _____ Ft. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
- ☐ PE Certification of Soil Compaction
- ☐ Floodproofing protection level (non-residential only) _____ ☐ NGVD 1929/ ☐ NAVD 1988 (MSL)
For floodproofed structures, applicant must attach certification from registered engineer or architect.
- ☐ Other: _____

SECTION 5: PERMIT DETERMINATION (To be completed by LOCAL ADMINISTRATOR)

I have determined that the proposed activity: A. ☐ Is
B. ☐ Is not
in conformance with provisions of Local Law # _____, (yr) _____. This permit is hereby issued subject to the conditions attached to and made part of this permit.

SIGNED _____, DATE _____

If BOX A is checked, the Local Administrator may issue a Development Permit upon payment of designated fee.
If BOX B is checked, the Local Administrator will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Local Administrator or may request a hearing from the Board of Appeals.

Expiration Date: _____

APPEALS: Appealed to Board of Appeals? ☐ Yes ☐ No
Hearing date: _____
Appeals Board Decision --- Approved? ☐ Yes ☐ No

Conditions: _____

SECTION 6: AS-BUILT ELEVATIONS (To be submitted by APPLICANT before Certificate of Compliance is issued)

The following information must be provided for project structures. This section must be completed by a registered professional engineer or a licensed land surveyor (or attach a certification to this application). Complete 1 or 2 below.

1. Actual (As-Built) Elevation of the top of the lowest floor, including basement (in Coastal High Hazard Areas, bottom of lowest structural member of the lowest floor, excluding piling and columns) is: _____ FT.
☐ NGVD 1929/ ☐ NAVD 1988 (MSL).
Attach Elevation Certificate FEMA Form 81-31

2. Actual (As-Built) Elevation of floodproofing protection is _____ FT. ☐ NGVD 1929/ ☐ NAVD 1988 (MSL).
Attach Floodproofing Certificate FEMA Form 81-65

NOTE: Any work performed prior to submittal of the above information is at the risk of the Applicant.

SECTION 7: COMPLIANCE ACTION (To be completed by LOCAL ADMINISTRATOR)

The **LOCAL ADMINISTRATOR** will complete this section as applicable based on inspection of the project to ensure compliance with the community's local law for flood damage prevention.

INSPECTIONS: DATE _____ BY _____ DEFICIENCIES? ☐ YES ☐ NO
DATE _____ BY _____ DEFICIENCIES? ☐ YES ☐ NO
DATE _____ BY _____ DEFICIENCIES? ☐ YES ☐ NO

SECTION 8: CERTIFICATE OF COMPLIANCE (To be completed by LOCAL ADMINISTRATOR)

Certificate of Compliance issued: DATE: _____

BY: _____

Attachment B

**SAMPLE
CERTIFICATE OF COMPLIANCE**

for Development in a Special Flood Hazard Area

**CERTIFICATE OF COMPLIANCE
FOR DEVELOPMENT IN A SPECIAL FLOOD HAZARD AREA**

(Owner Must Retain This Certificate)

Premises located at:

Owner:

Owner's Address:

Permit No. _____ Permit Date: _____

Check One:

- ☐ New Building
☐ Existing Building
☐ Fill
☐ Other:

The Local Floodplain Administrator is to complete a. or b. below:

- a. Compliance is hereby certified with the requirements of Local Law No. ____, (yr) ____.

Signed: _____ Dated: _____

- b. Compliance is hereby certified with the requirements of Local Law No. ____, (yr) ____, as modified by variance no. ____, dated _____.

Signed: _____ Dated: _____